

The Stennis amendment jeopardizes the workability of the Endangered Species Act. The amendment should be opposed. It undermines one, if not the most important, aspect of the act \* \* \* the consultation process. In addition, the grandfathering provisions do no less than insure that endangered species considerations will not be brought to light in the vast majority of Federal activities.

For these reasons, Mr. President, I oppose the amendment which is being proposed by Senator Stennis and would ask each of my colleagues to oppose it.

[From the Congressional Record, July 18, 1973]

SENATE CONSIDERATION AND PASSAGE OF S. 2899, WITH AMENDMENTS  
(Continued)

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

The PRESIDING OFFICER. Under the previous order, the Senate will now resume the consideration of legislative business, and proceed to the consideration of S. 2899, which the clerk will state.

The assistant 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 exemptions from certain requirements of that act should be granted for such actions.

The PRESIDING OFFICER. The bill is under a time limitation. Who yields time?

Mr. STENNIS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, I seek recognition for the purpose of calling up an amendment.

Mr. President, what is the pending business before the Senate? The PRESIDING OFFICER. The pending question is S. 2899.

AMENDMENT NO. 8097, AS MODIFIED

(Purpose: To require that social, cultural, economic, and other benefits to the public be considered prior to stopping certain Federal actions)

Mr. STENNIS. Mr. President, I call up my amendment which was offered yesterday in modified form, and which had some debate thereon. There is an agreed time on the amendment, Mr. President.

The PRESIDING OFFICER. The amendment will be stated.  
The assistant legislative clerk read as follows:

The Senator from Mississippi (Mr. Stennis), for himself, Mr. Eastland, Mr. Garn, Mr. Hatch, Mr. Laxalt, Mr. Young, Mr. Curtis, and Mr. Goldwater, proposes amendment No. 8097, as modified:

On the first page, beginning with line 5, strike out all through line 5 on page 14 and insert in lieu thereof the following:

"Sec. 2. (a) Section 7 of the Endangered Species Act of 1973 is amended (1) by inserting immediately after 'insure,' comma and 'insure' as practicable and consistent with their primary responsibilities, and (2) by adding immediately after the period at the end thereof the following: 'In any case involving a determination by an agency head as to what extent, if any, such action authorized, funded, or to be carried out should be modified, delayed,

or terminated in order to assure, to the extent feasible, that such actions do not jeopardize the continued existence of such endangered or threatened species or result in such destruction or modification of such critical habitat of such species, such agency head shall balance the social, cultural, economic, and other benefits to the public if such action is carried out as planned against the aesthetic, ecological, educational, historical, recreational, or scientific loss to the public which would occur if such species were to become extinct, but in no event shall such agency be precluded by reason of this Act or any other law from carrying out any such actions involving the construction or other establishment of any project or part thereof, without regard to whether or not such action jeopardizes the continued existence of endangered or threatened species or would result in the destruction or modification of critical habitat of such species, if such project or part is at least 50 per centum completed based upon the amount expended.

"(b) The provisions of Endangered Species Act of 1973 shall not be applicable to any project under contract or for which construction had been appropriated as of the date of the enactment of such Act.

"(c) No action authorized, funded, or carried out in compliance with subsection (a) by a Federal department or agency shall be deemed to be a violation of section 4(d) or 9(a)."

On page 14, line 6, strike out "Sec. 4" and insert "Sec. 3."

On page 14, line 23, strike out "Sec. 5" and insert "Sec. 4."

On page 15, line 1, strike out "sections 6 and 7" and insert "section 6".

The PRESIDING OFFICER. The Senator from Mississippi.  
Mr. STENNIS. Mr. President, I yield myself 10 minutes, and I may yield myself more time before I yield the floor.

Mr. President, as the Senator from Iowa has said, this is an important amendment. The basic proposal is a committee amendment that would not only extend the operation of the law, which would otherwise expire in September of this year, but the committee amendment proposes to modify the substance of the law and set up a special committee to pass upon questions relating to endangered species.

My amendment is really directed to the committee amendment and proposes to amend it along these lines, it being based on the Supreme Court decision, as well as the present law, in the Tellico Dam case in Tennessee. Even though it was 90 percent complete, a \$116 million dam project, with about \$100 million having been spent on it, and it being half completed when the original law was passed, nevertheless the Court held that, under the language of the present law, which the committee would propose to extend, with some modification, construction would be brought to a complete halt and stopped. Under the language of the law, the Court had no alternative.

Mr. President, in spite of the facts in that case being contrary, it seems to me, with all deference, to the rule of practical commonsense, I think the conclusion reached by the Court is the only one it could have reached under the wording of the law. It left no discretion and no practical alternative, really, once the facts about critical habitat of endangered species being destroyed were developed. This magnifies the situation and demands that despite the good purposes and the high motives of preserving endangered species—animal life, plant life, whatever it is—in spite of all the good points in favor of it, the law, as a practical matter, is just impossible and must be amended.

The committee agrees that there must be a modification, but I respectfully believe it does not go far enough.

The amendment that I propose would leave intact the idea of having a law in this field for regulation, but it would modify the law to the extent that the head of the sponsoring agency would have to make

a judgment under all the facts—and I will have the exact language in just a moment—and a determination in which he would have some discretion. It would include the idea of feasibility, even though "feasibility" is not the word used here. It would relate to the alternatives that he could consider. The Agency head would have a certain amount of discretion, and would have to make a judgment, and then that judgment would determine what should be done.

Of course, it would be appealable to the court, as is true in other instances, by a person aggrieved by the decision. It could be carried on to court and redetermined there, according to the guidelines of this law.

Mr. President, just what does it mean to refuse to make some meaningful modification of this law? I am not complaining about this, because it happened to be in my State. There has now been a solution to the situation. One of our interstate highways is in the process of construction—and the interstate highway is a national institution certainly presumed to affect all of our people—this was interstate No. 10 along the Southern border of the United States. That proposed right of way went through the habitat, or part of it, of the sand hill crane, a rather attractive-looking bird with a red top notch. Forty-seven of them were involved.

To deal with that matter has cost 2 years loss of time. It has caused the changing of the right-of-way of that interstate highway to the extent of \$4 million in added cost for the acquisition of land for highway, the approaches, and the interchange. Four million dollars has been added. But that is not nearly all the story.

To provide what was described as an additional habitat for those 47 cranes, it is costing \$18.2 million extra out of the taxpayers' pocket. And that is at a rate—I do not have my memorandum here just now, that is at a rate, for those 46 cranes, of \$485,000 each. This is not something imaginary, a mere possibility of its happening. It has already happened. That is the situation now.

The Court held, in the other case, the Tellico Dam case, that that matter was final when the gavel fell: there was no other remedy anyone had except to comply with it, the law is just that tight. I say I think they reached the right conclusion on the present wording of the law.

What does that mean? That means that, throughout the 50 States, on every proposal, almost, that is made with reference to the construction or the building or the channeling of lakes, dams, highways or any other matter, if it is Federal property or if there is Federal money going into the project, or if it is private property and is nevertheless found to be the habitat of an endangered species, that law applies.

That law applies with the inexorable application of its deadly terms and thus it kills the project. It kills the project. What has gone into this dam now, as it stands, so far as the original purpose and planning are concerned, is through, over, done. That can apply and will apply to a great number of others throughout this great land—even private property, as I said, if that private property is found to be that habitat of one of the endangered species.

The Fish and Wildlife people—and they are a respectable group—have estimated, as I recall, that there may be as many as 1 million species and separate subspecies of plants and animals that may be entitled to protection under the law if we merely extend the life of this law. With all deference, the committee amendment does not extend enough practical aid or remedy to meet these situations.

Now, what are we going to do? I have no grievance about this matter; no one has done anything to me or anyone in my State about it. But I had the privilege of being the chairman of the Subcommittee on Public Works for several years, down to but not including this year.

There we had project after project, with millions and millions of dollars, throughout this great Nation, being invested—capital investment, as we all know. Some of the greatest investments the Nation ever made in a material way is in these projects throughout our land, and more are coming. They are going to have to come. This new age demands added energy. There, time after time, in hearing after hearing, we saw the prospects of these added items of cost in the millions of dollars. So I made up my mind then that when there was a change, I was at least going to try to do something about it in a practical, effective way.

I am not asking that the law be discontinued or that the law be repealed. My amendment just sets up a remedy that provides for a board, or provides for the development of all the facts, and then a decision has to be made that is subject to court examination, subject to appeal. It has to be made within the limits of the language of this law.

They have to consider alternatives. They have to weigh the importance of the preservation of the endangered species, for one thing, against other items of the highest practical importance.

I am not an expert in this field and do not aspire to be.

Mr. CULVER. Will the Senator yield for a question at this point?

Mr. STENNIS. Yes.

Mr. CULVER. The Senator made reference to a board. Our copy of the amendment has no reference to a board.

Mr. STENNIS. The board is in the committee amendment, not mine. This relates, though, to a responsible official acting with discretion after the facts are developed. I thank the Senator for correcting me.

The PRESIDING OFFICER (Mr. Nunn). The Senator's additional 5 minutes have expired.

Mr. STENNIS. Mr. President, I was at a stopping point here, anyway. I think that outlines the main points of this amendment. Under those circumstances, I yield the floor.

Mr. Leahy addressed the Chair.

Mr. LEAHY. Mr. President, we are daily confronted with difficult and many times unsolvable crises of immense magnitude. But few penetrate to the central nature of life on a planetary basis. We are not often called upon to tamper with the ultimate questions of our environment in a sweeping, potentially final stroke.

I think of the Endangered Species Act in this grand scale. This landmark law, passed in 1973 after 8 years of hearings, must not be al-

tered by weakening amendments. I believe the 1973 act is a responsible, flexible, meticulously drafted, and efficient framework that can turn back the trend toward annihilation of this Nation's integral natural treasures, our plants, and animals.

The Endangered Species Act has worked, proven itself in over 4,500 cases of successful consultations and resolutions. If we act at all, we should strengthen, not weaken the existing law.

Ultimately, Mr. President, we are the endangered species. Homo sapiens is perceived to stand at the top of the pyramid of life, but the pinnacle is a precarious station. We need a large measure of self-consciousness to constantly remind us of the commanding role which we enjoy only at the favor of the web of life that sustains us, that forms the foundation of our total environment.

With all due respect to the planning and construction and millions of dollars invested in the Tellico Dam I find the conflict with the snail darter no reason to emasculate the Endangered Species Act. After examining the facts and history, I find that the law works.

We might say the culprit is the Tennessee Valley Authority, not the small fish discovered in 1973.

Against the backdrop of our huge marble monuments and countless bureaucratic offices along Pennsylvania Avenue, the now notorious snail darter is dwarfed. Perhaps our perspective is warped if we belittle the very existence of an animal. Every time weinker with the tender framework of life, there is a reaction, no matter how slight. We exist on this orbiting globe locked and joined with the environment. In a larger sense, we share the planetary gene pool with that snail darter in the Little Tennessee River.

I see the Endangered Species Act as the hub from which all our environmental protection and ecological awareness incentives radiate. I see an attack on the Endangered Species Act as a reversal of all we have learned in the past two decades about man's place on the Earth. No matter how I look at the issue, a dam is transitory, but extinction of a species is eternal.

Mr. President, we must draw the line somewhere. There comes a time when even valid arguments of jobs, money already invested and local politics pale against the imperatives of a species in jeopardy. I draw the line when a type of animal or plant will, by the actions of man, be wiped from the face of the Earth.

In particular, I would oppose any amendments that leave to the discretion of the agency involved the question of whether to proceed with a Federal project where a species is endangered. An amendment of this type borders on the absurd. Even where the threatening project is a private undertaking with some Federal funds or one which requires a Federal permit, any conflict with an endangered species must be deliberated under the existing act.

Would the Tennessee Valley Authority have balked at disturbing the snail darter, along with 16,000 acres of fertile farmland if not for the Endangered Species Act? An amendment granting more discretion to the sponsoring agency would pit whim and political fashion against national priorities and give whim the upper hand.

I also oppose amendments to add a grandfather clause to the present law. And I firmly oppose amendments that would exempt whole

classes of projects from compliance with the act. Here we run the risk of sanctioning projects despite their irreversible harm to habitats supporting whooping cranes, grizzly bears, bald eagles, peregrine falcons, and others.

A grandfather amendment would totally undermine the good faith consultation process inherent and successful in the act. Through faithful and determined consultation, even projects as much as 80 percent complete can be modified to preserve and protect endangered species. Grandfather clauses, in virtually every form, would lead directly to the needless extinction of unique forms of life.

The United States does not stand isolated in the community of nations who all face ultimate environmental questions. The way we relate to our fellow species is a global, even universal, crisis. Right now this country is leading the planet in coming to grips with our power and responsibility to deal with reason and compassion to live in harmony with the plant and animal kingdom.

I am aware that certain of my colleagues, renowned for their constant, dedicated efforts to protect and preserve our environment, have concluded that the act is at present too inflexible. I remain unconvinced that this environmental law is flawed enough to weaken its intent and application.

We can balance our need for development with our responsibility to the land and other life forms. We can grow as a society based on economic growth and coexist in harmony with the world. I am not opposed to responsible development. But no amount of environmental backlash now in vogue can convince me that an entire species should be extinguished to make way for a Federal project.

Mr. President, I thank the Senator from Iowa.

The PRESIDING OFFICER: The Senator from Iowa.

Mr. CURVER. Mr. President, I rise in opposition to the amendment that is offered by the distinguished Senator from Mississippi.

Mr. President, today, in 1978, the members of any elected representative body, as well as public officials and those chosen for leadership responsibilities anywhere throughout the world, are increasingly challenged, intimidated, and in fact, frustrated by the ever-increasing complexity and enormity of the public policy problems that they are called upon to address.

We live at a time, as well, where the speed of events and the explosion of knowledge only additionally compounds that problem.

Mr. President, we live at a time where we are increasingly aware that our resources are not infinite, but finite, that our margin of error is no longer what it was at an earlier day. The consequences of our own fallibility are much more serious in their implication to perhaps even the survival of human life through decisions of each and every one of us individually and collectively as a body.

We are also increasingly aware of the unprecedented interdependency of all these questions and all these issues.

When I speak of that new set of challenges to each and every one of us, in my judgment, no issue—no issue—more starkly poses that situation than the one which we are addressing ourselves today because this question goes to some of the most difficult, unfathomable questions that have always confronted mankind since the initial discussions and rational discourse.

Those questions, Mr. President, are very fundamental ones. They go to the nature of our universe. They go to the nature of our ecosystems, and our biosphere. They go to basic questions of "What does it all mean?" and whether one is intellectually and spiritually persuaded that what we experience in life is the result of some divine creation and guiding hand, or whether one believes that we are witnessing a process of natural selection.

We all have to agree that it is a most incredible and a awesome thing that we are witnessing, something for which we lack, to an embarrassing degree, to an intimidating extent, genuine comprehension and understanding.

Mr. President, I am reminded of a quote by Winston Churchill in an earlier day when he made reference to the difficulty of forecasting any possible action of the Soviet Union. He once observed that "It is a riddle wrapped in a mystery inside an enigma."

Mr. President, the same thing can be said, for the most part, about the world in which we find ourselves today.

Now, what we do know for sure, Mr. President, is that in the evolution of life forms in flora as well as fauna, there is a beginning, when species and subspecies are created or evolved, they flourish for a time and then they disappear from the earth.

A Nigerian chieftain once observed:

I conceive that land belongs to a vast family of which many are dead, few are living and countless numbers are unborn.

Mr. President, whether we speak of mankind, whether we speak of animals, whether we speak of the Furbish lousewort, whether that period of flourishing and survival is 1 year, 1 second, or 200 million years, the species will no doubt die sometime in the natural process of extinction.

Mr. President, we are advised that this process of natural extinction is being accelerated. But it is of even a graver concern to us that the unnatural acceleration is the result of the actions of mankind on the natural, pristine environment, and the consequent degradation and threat to the viability of our ecosystem, about which we know so very little.

Mr. President, we are also advised that in prehistoric times—in prehistoric times—one species was extinguished approximately every 10,000 years. But around the year 1600, we learned that one species was extinguished every 1,000 years. Today, Mr. President, it is now estimated that from 1 to 20 species are extinguished from our global environment every single year.

Mr. President, these estimates are subject to considerable debate and discussion, but the thrust and the implication of these trends are undeniable.

We know there are some 2 million species of plant and animal life in the entire world. Now we also know that of that total number biologists estimate some 200,000—200,000—may be endangered or rare today.

Mr. President, in addition, many more will be extinct before we even know they exist because, our knowledge of biological science is so tragically behind the pace of destruction that mankind has unwittingly, unknowingly, and sometimes even, yes, consciously undertaken.

Mr. President, the cause of our accelerated pace of natural extinction is man, and it is a particular problem today because our knowledge of the biological implications of these activities which accelerate the process of extinction is so woefully inadequate.

We know that this rate is in part attributable to the consequences of commercial hunting and fishing. We know that this rate of acceleration is attributable, to some extent, to the toxic poisons that an industrial society pumps and pours into our land, into our water, and into our air.

We know that the process of extinction occurs to some extent as a result of the destruction of our forests, the alteration of our water tables, our slums, our ghettos, and, yes, even our shopping centers and our suburban development. All these consequences of so-called civilization, and progress, and society carry with them the potential systematic destruction of our ecosystem.

Mr. President, man's ability to intensify and increase his capacity to destroy, degrade, and damage the environment never has been as great as it is today. It is estimated that because of bulldozers, because of cranes, because of warfare and our sophisticated capacity to destroy each other and our natural environment, it has increased some 20 times over the last 50 years.

What is the responsibility of those of us who have an obligation, as stewards of this land during our own short cycle on this Earth, before we, too, are extinct? What is our responsibility to those generations yet unborn, and why should we be concerned about toxic pollutants in the air and in the water? What difference does it make? Why should we be concerned about it? It may cost us. We may waste \$10 million in appropriations. We may have to stop a dam. We may have to stop a highway. We may have to alter the course of a flood control project. What difference does it make?

Mr. President, as the distinguished Senator from Mississippi has said, it does on the surface seem stupid to have something like a small darter, some crazy ba, some crayfish, something called a Furbish lousewort.

So you may ask, when you are talking about Tellico and \$117 million, why worry about the small darter? When push comes to shove, who should win? Which species has the votes in the next election?

Aside from esthetic or ethical considerations, aside from the understandable and natural desire to have diversity and beauty in our world and in our environment, and aside from the continued preservation and existence of these rare and exotic species, it is also true, in my judgment, that we have the ethical and moral responsibility to pass on to future generations, in as pristine a state as possible, what we in turn have inherited, and to increase our knowledge, our awareness, and our sophistication in making discriminating determinations that are informed as to who lives, and who dies, and what are the consequences.

Mr. President, if we are going to allow plants and animals to pass out of existence, the real danger, over and above the esthetic and ethical considerations to which I have made earlier reference, is the fact that we may well be losing things of irreplaceable and incalculable value to humankind, and threatening the continued existence of mankind as we know it today. We are persuaded that even though we do not understand the mystery of this ecosystem, whether by divine

creation or some other natural selection process, it is a seamless web of interdependence, possibly with some redundancy. But where and how and when the redundancy exists, we do not know.

Mr. President, some seemingly useless plant or animal might prove to be of value. We have long lists of some 600 species today which are designated as rare and endangered. We have another 2,000 waiting to go on the list. But which among those is critically important and has the kind of value to which I refer?

There is a species called the horseshoe crab. The horseshoe crab has lasted 200 million years, and it was only 3 years ago—after it was 200 million years old—that a scientist finally discovered that it had value to mankind. It was discovered that the blood of horseshoe crabs is a valuable detector of toxins in intravenous fluids.

Chemicals that have been discovered in plant life also have proven to be useful in the development of birth control pills. We are seeing countless examples in which science is beginning to find value in what heretofore had been viewed as a useless and inconsequential species, which stood in the path of mankind's pathological pursuit of progress.

Also, Mr. President, we know that each of these species and subspecies, in some mysterious way, is part of a larger gene pool for breeding, or has medicinal value we may not yet have discovered.

Biological science is barely beyond its infancy. We know there may be redundancy in this creation, in this product of evolution, but we do not know enough to understand which should be destroyed, which should be saved.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 28 minutes remaining.

Mr. CURVER. How much time have I used?

The PRESIDING OFFICER. The Senator has used 17 minutes. The Senator from Vermont has used 4 minutes. The Senator has 24 minutes remaining.

Mr. CURVER. Mr. President, increasingly, scientists and environmentalists are coming to the conclusion that destruction of the species is directly related to the viability of the human race itself; and endangered species are really nothing more than an early warning system identifying that human habitat which, by its destruction and demise, is a threat to the environment of the continued human community as we know it today.

Mr. President, in 1973, much to the credit of Congress, it determined that we should stop this unenlightened, this indiscriminate destruction of that natural habitat, and Congress overwhelmingly passed the Endangered Species Act of 1973.

In fairness, it should be pointed out that this act has worked reasonably well—in fact, remarkably well—given the enormous complication of its implementation and administration. There have been some 4,500 consultations to balance off the need to preserve and protect these endangered species against other activities of the Federal Government.

Our committee, by way of routine oversight, began to review this bill last summer.

It came to our attention that the rigidity and the inflexibility of that act, whereby the endangered species, once designated, in every

case was to be given exclusive priority against any other offsetting factors in public interest, were really having consequences of bringing forth pressures for the elimination and the emasculation of the act.

It was the judgment of our committee, after 6 days of extensive hearings, after very careful markup, that it was necessary to give this act some flexibility. We knew that even though Tellico was the most celebrated case, there were at least 12 other major projects in which the effort at consultation and the administrative resolution of conflicts between a project and endangered species had not been resolved successfully.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. CURVER. I will yield when I finish my statement. I will be delighted to yield when I finish my statement because we have time already committed on the bill and I think we have plenty of time today to speak on this.

Mr. NELSON. I am trying to help the Senator correct the record on his last statement.

Mr. CURVER. I am glad to yield to the Senator for that purpose.

Mr. NELSON. I am raising the question on 12 cases which are not going to come to Congress, and I believe the Senator has a letter from Mr. Herbst saying he does not anticipate any problem with these 12 cases. I think the record should show that.

Mr. CURVER. I will be delighted to speak to this point.

What I wanted to make clear to the Senate is that in our oversight process we had official indications of conflicts from the Fish and Wildlife Service, specifically citing 12 intractable conflicts. I have another letter from them sent when the Senator from Wisconsin received his letter which I think puts a little different slant on things. We can submit both of those for the record.

But the pertinent question for these 12 projects is: Who plays God the second time around?

The Congress is always being criticized for not getting out ahead of problems, for not anticipating, for not positioning ourselves so we can responsibly and rationally deal with the problems before we are blindsided and overwhelmed by events. The Public Works Committee was persuaded after careful consideration that it was inevitable that if not 12, then 10, then 8 conflicts would occur. We have had 4,500 consultations in the last 5 years, but it is estimated we will have 20,000 consultations next year alone. We are going to have 2,000 more plants and animals put on the endangered species list in the immediate months ahead. The potential for conflict is inevitable and unavoidable, and the committee wanted to do something that was responsible and introduce some flexibility into this act.

Mr. President, we have proposed this mechanism which in my judgment represents the most responsible and rational balancing of interests. We have a number of alternatives when these conflicts arise. Should we in the Environment and Public Works Committee be the ones to decide whether the Tombigbee Dam lives or dies? Should we be the ones to decide Tellico's fate after the Supreme Court decision? And should we be the ones to decide on each and every one of these projects in the immediate months and years ahead?

Mr. President, I say, as one who is fervently and devotedly committed to the most powerful protection of our environment and the need

to preserve and protect these species, that it does not defy our power of reason to develop a mechanism which, in my judgment, gives us the flexibility we need, and gives it within a context that insulates it from the political pressures that inevitably are going to overpower any other approach. For example, you might have a Governor decide, an agency head, or the Congress, or the President decide.

So, Mr. President, we have I believe set up a system which will afford a very carefully considered process whereby this Endangered Species Committee can weigh the evidence—we have strengthened provisions for consultation—and can reach an informed judgment. The Endangered Species Committee has been weighted in its voting so that the presumption in favor of protection of the species is overwhelming.

Mr. President, I understand the Senate must now vote on the conference report on the Coal Conversion Act. I will reserve my remaining comments until after we complete action on that conference report.

Mr. CURVER. Mr. President, under the previous order, during discussion of this bill, we took out time for consideration of the coal conversion conference report. I was speaking in opposition to the Stennis amendment. I shall reserve our remaining time and ask unanimous consent that I be able to revise and extend my remarks, with some specific objections to that amendment at this place, to follow the remarks that I gave.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CULVER. Mr. President, I shall be calling upon Senator Wallop and Senator Chafee, both members of the committee, who will speak specifically to the particular concerns we have with the Stennis amendment and why we prefer the committee bill.

I reserve the remainder of my time at this time. I understand that Senator Garn wishes to speak in support of the Stennis amendment.

Mr. GARN. Mr. President, just before turning to consideration of the Coal Conversion Act, I listened with great interest to my distinguished colleague from Iowa (Mr. Culver). In his usual eloquent, articulate manner and with great moral fervor, he interjected such morality into this debate that I feel almost ashamed to rise and offer any changes whatsoever to this great act. Nevertheless, I have overcome that and decided to stand up, in any event, despite the fact that I feel somewhat chagrined that I might trample on some rare weed that may not survive because of the horrible actions of Senator Stennis and me.

I do think that it is necessary that we have concern for endangered species—and I do. I have no idea, no reason to want to gut the act or to see it not extended. I think it was very important that the Endangered Species Act was passed in 1973, but I think what we have seen happen is what often happens in Congress. There obviously was a problem. We were building without regard to various species. We were not as concerned about the environment as we should have been. But then we passed an act that goes to the other extreme. It goes too far, and beyond correcting a problem that needed to be corrected, we create side effects that were not foreseen at the time.

Certainly, in 1973, there was a great environmental push. The Endangered Species Act passed the Senate extremely easily, with no dissenting votes. But, talking to many of my colleagues, I learn that they certainly would not have voted for it if they had known the implications and the extremes to which the act would be carried.

I think we need to face the fact that, in 1973, Congress did not say that endangered species were to be protected at any cost. If Congress had said that, it is inconceivable to me that there would not have been more mention of it on the floor or in the committee reports. What little evidence we do have, in the form of a floor colloquy by Senator Tunney, clearly indicates that that was not the intention of the Senate when it acted on the legislation.

There is other evidence: after the bill was passed, the Department of Interior issued regulations implementing the bill. Let me quote a little bit of the regulation (42 FR 4868-9). The regulation makes plain that neither the Interior nor Commerce Department

intends that section 7 bring about the waste that can occur if an advanced project is halted. . . . The affected agency must decide whether the degree of completion and extent of public funding of particular projects justify an action that may be otherwise inconsistent with Section 7.

It is plain to me that this language reflects the same understanding of the 1973 act that I have. That is that a permitting agency is required to consult with the Fish and Wildlife Service over possible endangered species, but that the final decision remains with the permitting agency. It is in that direction that the Stennis-Garn amendment attempts to go.

I see no reason why we should slavishly accept the Supreme Court's interpretation of what we did, and ratify it, as we have previously done with the Clean Air Act and the Clean Water Act.

We did not intend the extreme result, as I say. I think the Supreme Court, however, was justified in its interpretation. The 1973 Congress did not realize the strictness with which they were putting provisions into this act.

We are certainly not trying to gut the act. I am getting a little bit tired of those who favor the status quo criticizing those of us who want to put some balance, commonsense and reason into the act, so that we do not go back to what existed before 1973. That is all we are trying to do.

I repeat, we are not trying to gut the act. I do not recall anyone who wants to.

We are simply trying to take into account the real world. Man is, after all, part of nature. There is no justification for calling his actions unnatural, whether those actions involve building a dam or a bird-house.

Beavers happen to build dams, too. I do not know what is any more natural about a beaver building a dam than a man building a dam. Some of the beaver dams I have seen are rather destructive. They are not very environmentally sound. Beavers cut down a lot of trees rather indiscriminately and cause flooding. In some cases, it might be very damaging.

But somehow, things that man does are not natural.

I happen to think that is a little bit of a ridiculous position.

As it happens, man is the only animal endowed by his Creator with rationality, and the ability to foresee the results of his actions, and the ability to learn from them. With that ability comes a responsibility to act in the least destructive manner possible, and to minimize the long-range consequences of his actions.

But I do not see that our ability to see into the future requires us to cease acting entirely. The present Secretary of Interior is named Cecil

Andrus. Out in my part of the country, they think he got his name because he is always saying "cease drilling, cease mining, cease grazing, cease building." I do not see that we really need to stop everything. We do need to take as much care as is possible to evaluate, to consult, to consider, to weigh and balance. More than that we cannot ask, in my opinion, and I think the vast majority of people of this country agree with me.

It is commonsense and balance in considering these things, not hard, fast, inflexible rules that will take into consideration the rights of a furfish lousewart over the rights of man.

All we are trying to do with these amendments is to put a little balance back into the equation.

Some mechanism needs to be found to keep special interest groups from using the Endangered Species Act cynically, for their own purposes. I have talked to a number of "environmentalists" who do not care about some of these endangered species at all. They are using the act as a way to attack the construction of dams, grazing, drilling, mining, and any other activity they think is undesirable.

That is, in my view, an unacceptable use of the act, and certainly not intended by Congress, and one that we, as responsible legislators, ought to be concerned about. Environmentalists are just as much a special interest group as road builders, and they are entitled to no more deference. Just because they use the rhetoric of "the public interest" and claim to speak for the public is no indication that they actually do. Ralph Nader has never been elected. So how is he different from Henry Ford? Both represent special interest groups.

We ought to look at these measures on the basis of commonsense and logic and on the merits and not who is pushing them.

There is no doubt in my mind there are many who will vote against any changes in this act, not because they think the changes are unreasonable, not because they think they are not fair, but simply because they do not want to get on some environmentalists' dirty dozen list, because the environmentalists decide this act is untouchable.

I suggest we consider this on its merits, not on the interests of the roadbuilders, dam builders, or the environmentalists, and use our own commonsense in trying to arrive at some rational decisions.

One of the things we are trying to accomplish here today is to make certain that species are being protected because there is genuine interest in them as species, and not just because protecting them happens to prevent the construction of a dam that a few, unrepresentative environmentalists have decided should not be built.

Not all species are of equal value and importance. The easiest way to make that point is to ask ourselves what we do when the preservation of one species implies the extinction of another. The snail darter, for example, is said to feed on snails, some of which are themselves endangered. I do not know that that is in fact the case, but it is certainly conceivable. If it has not happened yet, it certainly will. What do we do in that case? Probably we will opt for the darter, as a "higher" form of life.

The examples will multiply up and down the phylogenetic chain. Nature, in her wisdom, or God in His, if you prefer, endowed this creation with considerable redundancy at the lower levels of life.

There may be as many as 10 million distinct species in the world. All but a few of these are insects and plants. Interspecific differences are so minute that a lifetime of study is required to be able to tell them apart.

Mr. President, this kind of redundancy is there for a purpose: So that the loss of an individual species will not be the catastrophe it would be if the species were the only one of its kind. There may be hundreds of species of darters, for instance.

I would be in favor of undertaking tremendous costs to preserve the bald eagle, and other major species, but that kind of effort is out of proportion to the value of the wounldin minnow, or the snail darter, or the lousewort, or the waterbug, or many others that we are attempting to protect.

We should also face the fact that Congress requires certain actions of Federal agencies which may put Federal personnel in violation of the Endangered Species Act.

For instance, under mandate by the Congress, the Fish and Wildlife Service carries out fish planting activities all across the country. Among other places, fish are planted in the Colorado River and its tributaries. There is some evidence that it is this fish planting activity, and not water diversions and withdrawals, that have brought about the endangered condition of the Colorado River squawfish.

In fact, a group of citizens are right now preparing a lawsuit which would require the resolution of this difficulty.

The congressional appropriations in support of the Tellico Dam provide another instance of conflict between the Endangered Species Act and other congressional mandates. We can expect these conflicts to grow in number if the present rigid interpretation of the act is continued.

It will not do to ignore these conflicts. We simply do not have that option. Even if we did, the conflict occurs because man has competing interests, and those interests have to be mediated. The Stennis-Garn amendment attempts to provide a mediating structure that is workable. I do not believe that this Cabinet-level committee created by the committee bill is workable.

That is really all the Stennis amendment is about, to attempt to set up a mechanism that when disputes of this kind come up, they can be mediated and a balance struck, a reasonable, workable position, rather than the hard confrontation we have now between the strict interpretation of the act and the needs of man to be able to make some of the decisions.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WAROR. Mr. President, I rise in reluctant opposition to my good friend's amendment. I do so knowing and sharing full well his frustration over many of the difficulties that have come up with the implementation of this law since 1973.

When the Senator said that he was determined, when the first opportunity presented, to do something about it that was practical and effective, I say that he has done something about it that is effective in terms of the bill—but perhaps less practical.

I say to the Senator from Utah that perhaps the 1973 Congress—and the record will reveal that—did not realize the full intent of the

strictness they had achieved in the drafting of the law. There are many assurances and statements in that record to the contrary, which time and the administration have shown to be misjudgments. As is frequently the case on the part of Congress, they misjudged how the bureaucracy would implement this.

When the Senator from Utah indicates that man is the only animal endowed with the ability to make rational judgments, I agree; but he has neglected to say that man is the only animal endowed with the ability to rationalize.

When man begins to rationalize contemporary needs or perceived needs, man sometimes gets confused with desires.

What I think the committee tried very hard to do and in my judgment, successfully achieved, was to provide a mechanism whereby man—or in this case, the Government of the United States—would be triggered into a responsible judgment that if we were, in fact, going to condemn a species to extinction or to further endangerment, we would do it consciously, not by accident, not by rationalization, and not by default. I suppose that is where one has to take a look at the amendment of the Senator from Mississippi and come down in opposition.

First of all, it establishes two grandfather clauses, one of which is for all projects under contract or otherwise underway in 1973. I think that is an extremely vague legal definition. It seems to me that we would have to take into consideration whether or not a particular project was underway, if it had applied for various Federal permits.

Mr. McCURE. Mr. President, will the Senator yield on that point?

Mr. WALLOR. I am happy to yield.

Mr. McCURE. Is the Senator speaking of the original Senate amendment or the amendment as modified?

Mr. WALLOR. I am speaking of the amendment as modified.

Mr. McCURE. Does the Senator from Mississippi agree that there is an ambiguity in what is underway, under the modified amendment? I think that may help us make a resolution of this issue.

Mr. STENNIS. Mr. President, if I may respond—

Mr. WALLOR. On the Senator's time.

Mr. STENNIS. One minute of my time.

I think the matter is cleared up. I point out the language we rely on to show that that matter is cleared up. I refer to this language:

The provisions of the Endangered Species Act of 1973 shall not be applicable to any project under contract or for which construction funds have been appropriated as of the date of the enactment of such act.

Mr. WALLOR. The problem is this: Is the entire project under contract, or is it a contract for land acquisition only? The funds appropriated in many instances would not be Federal funds.

Mr. STENNIS. This says "any project under contract or for which construction funds have been appropriated" as of that date. If it is under contract, I think it would apply either way.

Mr. WALLOR. Would it apply to any contracts or the total contract project? There is a considerable difference. As the Senator knows, many of these things go in sequential contracts that are not done entirely at one time; nor are their construction funds entirely appropriated in any given year.

Mr. STENNIS. Is the Senator talking about a power project, for example?

Mr. WALLOR. Yes—or a highway project. Not all of those are appropriated in any given year.

Mr. STENNIS. Of course, this relates to the construction, the invasion of a habitat, and related matters. If the contract is for General Electric motors, that is a remote matter. Anything that is a project that has to do with the species for the location involved. That is what is covered here.

Mr. McCURE. Mr. President, will the Senator yield? I apologize to the Senator for taking his time. However, in reading the first draft of the Senator's amendment, I had many of the misgivings that the Senator from Wyoming has. I think that even the modified Stennis amendment may have some ambiguity, and we should narrow that down as much as we can.

I understand the Senator from Mississippi to intend by his amendment, from the statement just made, that the contract would be a construction contract and not the preliminary engineering or any of the other contracts that might precede the construction phase; similarly, that the appropriation language to which he refers would be the appropriation of moneys for construction—a conscious congressional decision to go ahead with the construction phase of the project.

Mr. STENNIS. The Senator is correct. If the contract has been made or the money has been appropriated.

Mr. WALLOR. In any case, it is tighter than the original language, and I grant the Senator that. It caused me concern. It seems to be one more area in which litigation can take place. We do not need to give another living to a lawyer out of this outfit, because we have more than we possibly could do for the next two generations of lawyers.

To resume: The process of consultation has resolved many conflicts in cases which would be exempted by both of the grandfather clauses, and there is no reason to presume that any project cannot be modified to protect a species. The result of this amendment is a presumption that there is no modification possible to achieve protection both of the species and completion of the project.

The existing requirements for assuring against actions which might jeopardize the survival of an endangered species or its critical habitat will be greatly weakened by letting each agency have the sole judgment of the fate of a given species.

On page 2 of the modified Stennis amendment there is a very long and complicated sentence, some 20 inches long. If you take the operating language out of it, you come to a problem. It says in any case involving a determination by an agency head as to what extent such actions should be modified in order to assure that such actions do not jeopardize the continued existence of such endangered or threatened species or modification of such critical habitat of the species, and then it goes on. To qualify that, it will have to balance it against the social, cultural, economic, and other benefits, which is part of the Culver-Baker amendment. But it puts that into a conscious balancing factor, and it fails to do one thing that the Culver-Baker amendment does. That is that the Culver-Baker amendment, as modified by the committee, takes into account the benefits that might be achieved by alternative courses of action.

Mr. President, the Culver-Baker amendment, as modified by the committee, takes into account all those things and puts us into a con-

scious decisionmaking judgment, something which I think by admission of the committee has been lacking in the existing law the way it was drafted and certainly the way it has been implemented.

So what we have done is go one step further and provide a thoughtful, purposeful, conscious process by which these decisions can be made.

The ultimate effect, Mr. President, of the Stennis amendment would be to badly eviscerate the Endangered Species Act. I know it is an unkind word; I do not mean it is intentional. But the effect of it, not the intent, but the effect is basically to do just that. And it would reaffirm now, I trust, that we have lost our concern for the tragic losses which have occurred as the result of thoughtless and careless actions on the part of man.

What we are trying to do with the amendments that have been drafted to this bill is to put us into a conscious, careful, step-by-step process where we can balance needs of man, needs of progress, needs of economics, and with the rather awesome power that we have in our hands, the needs of survival of a variety of species.

To go on, on page 2 of the Stennis amendment, it states:

... In no event shall such agency be precluded by reason of this act, or any other law from carrying out any such actions involving the construction... without regard to whether or not such action jeopardizes the continued existence of endangered or threatened species... Is at least 50 percent completed.

Again, I point out that there are a number of areas which have gone through the consultation process, with as much as 95 percent in their construction process completed, and have been resolved, the process has been completed, the projects have been saved and the endangered species have been saved. That is what I think the committee has tried to do in the Culver-Baker amendment, and what sadly I think the Stennis amendment fails to do.

Again, I say that I share the Senator's frustrations. But I again say his amendment goes too far, that it does not allow us even to go through the consultation process. It does not allow us even to make conscious judgments, and puts that into the hands of a committee head or an agency head whose basic problem in life is not endangered species but the efficient carrying out of whatever that agency is designed to do.

Mr. President, I yield back the remainder of the time I yielded to myself off the bill with regard to the 5 minutes that I requested that I yield to myself.

The PRESIDING OFFICER. Who yields time?

Mr. CURRYER. Mr. President, I yield at this point 6 minutes on the amendment and 4 minutes from my time on general debate, for a total of 10 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFFEE. Mr. President, I address myself particularly to the grandfather provisions of the Stennis amendment, and I might say that this amendment really is a blockbuster.

If I might just read the language pertaining to the grandfather section: "... in no event shall such agency—"

Let us just say it is the Department of the Interior, the Corps of Engineers, or whatever it might be.

... In no event shall such agency be precluded by reason of this act or any other law from carrying out any such actions involving the construction or other establishment of any project or part thereof, without regard to whether or not such action jeopardizes the continued existence of endangered or threatened species or would result in the destruction or modification of critical habitat...

You can do all of those things, get rid of species if such project or a part—now here it gets difficult—"if such project or a part?"—I suppose that means any facet of the project—"... is at least 50 percent completed based upon the amount expended."

Mr. President, let us take the case of the Tellico Dam. That is what brought this issue here, I believe. In the Tellico Dam the greatest part of those expenditures were for the acquisition of the land. Let us assume they were for the acquisition of the land for this discussion. So, under Senator Stennis' amendment in a case where you bought a considerable amount of land and the land amounted to 50 percent of the total cost of the project, if no concrete has been poured, nothing irretrievable done, nonetheless, the project could still go ahead full blast. Again we are not talking about different kinds of species. We are talking about any endangered species. So it could be the bald eagle or it could be the grizzly bear or it could be any one of these marvelous mammals that we recognize and applaud, and I think everyone would agree should be there.

But, if 50 percent of the money is spent just for land, nothing done, no bulldozers coming in yet, on they can go regardless of what the damage might be.

And that in my opinion, Mr. President, just does not make sense, to leave that up to the head of the agency.

The second part of the grandfather clause, Mr. President, says, and I shall read it:

The provisions of the Endangered Species Act of 1973 shall not be applicable to any project under contract or for which construction funds had been appropriated as of the date of such act.

Again, we have a situation where we could well have had the funds appropriated before the passage of this act and then all kinds of endangered species could show up.

But the Endangered Species Act would have no effect whatsoever under the language of this amendment's second grandfather clause.

I just do not think that we want to go that far in giving the liberty, the power, to an agency or to the Federal Government, that great big monster called the Federal Government, to plow ahead just because some funds had been appropriated or the project was under contract. Apparently the people of the Nation through their elected representatives want this act on the books in order to protect endangered species.

Certainly I feel that following that grandfather provision of the Stennis amendment would be extremely dangerous.

I particularly call attention to the fact that nowhere in these grandfather provisions do we deal with the nature or the value of the project. It might be a little project that is not really of extreme significance. Even as to the Tellico Dam, which brings us here today, there is considerable question as to whether it is all that valuable. But let us not get into a debate on the Tellico Dam. All we know is that under these grandfather provisions in no manner whatsoever do we consider the nature or the value of the project. We do not consider how

far along the construction is, as far as concrete goes, or anything irrevocable done. Half the money could have been spent for the land alone. And we give no consideration to the species involved. There have been a lot of jokes in the Chamber here about the snail darter and how we should pay no attention to it, how it is of no consequence.

I do not agree with that. But let us assume that some people think the snail darter is of little consequence. Certainly some of the major species that could be affected by an action at least should be taken into consideration. But under this Stennis amendment, the grandfather clause, they are not taken into consideration whatsoever.

So, Mr. President, based on those two provisions alone, I strongly recommend that the amendment be rejected.

I yield back to the Senators who control the time.

Mr. STENNIS. Mr. President, I yield 5 minutes to the Senator from Idaho.

Mr. McCURRY. I thank the Senator for yielding time.

Mr. President, I shall comment a few moments, if I may, in a rather general sense on what we are trying to get accomplished here today, as I see it.

I was one of those who supported the Endangered Species Act and continue to support it, and anything that I say today must be against the background that I still believe that the thrust of the act is correct and that if we have to resolve doubts we should resolve them in a procedural way in favor of the endangered species. I think the fact that we are here today amending the bill indicates one of the problems that was inherent in the original legislation.

That was that it cannot admit of any judgment or at least did not admit of enough judgment.

There are three or four places where a judgment must be exercised. First of all, under the act there must be someone who petitions for the designation of a species as endangered. That is a judgment, a scientific judgment, which then must be made by a panel which makes the recommendation to the Department to the Secretary of the Interior, who must make the final judgment on the designation of the species as endangered or threatened.

That has been by the Secretary and under the law considered to be simply a scientific judgment. Is it a matter of scientific fact? It has not really been used at that level to exercise any judgment as to whether or not it is a significant species. It is just a question of is it a unique species.

My friend, Senator Chafee, has suggested that the snail darter as such may or may not be an important species, but that is not admitted of judgment under the act and, perhaps, properly so. But no judgment can be applied.

It can be argued, and perhaps should be argued, that with 130 different species the threatening of one of those minute variations is not of such great significance as to invoke the protection of the act.

But so far, at least, that judgment has not been applied.

It has been suggested by my friend from Wyoming that the amendment offered by the Senator from Mississippi will not admit of any kind of negotiation. Well, it does not require negotiation, but it certainly admits of it. It is quite possible that the negotiation would go

forward, although under the grandfather clause it would not necessarily require it.

I think there would be a great amount of political and moral suasion used if a significant species were endangered by the action even though the law did not require it. I am sure they would try to find some alternative. But I would certainly agree that in the past that was not the case. If they were not required to they did not look at alternatives. If they were not required to they did not see if there was a way to avoid the destruction of the species.

The question then in my mind comes down to whether or not the amendment by the committee injects enough discretion or whether the amendment offered by the Senator from Mississippi admits of too little discretion. The truth, as is usually the case, lies somewhere in between the two rather than one being absolutely good and the other absolutely bad.

There is another discretion that must be invoked after it is on the endangered species list, and that is what is a critical habitat for that species. There is nothing that really admits of the kind of discretion that I think ought to be exercised in balancing on the designation of critical habitat.

When it comes to the extension of habitat we run into some very, very unusual problems. My friends on the committee have heard this story too often, and I am not sure it ought to be repeated, but the grizzly is on the endangered species list, and certainly it is endangered in some areas but I can tell you it is not endangered in Yellowstone National Park.

As a matter of fact, the problem is that they are up to their waist, if not in alligators, in grizzly bears.

Grizzly bears and human beings do not cohabit well together, and since we stopped feeding grizzly bears in Yellowstone National Park, they are hungry, and hungry bears do what hungry bears do all over, they go looking for food. Sometimes they look for it in the picnic baskets; sometimes they look for food with people in cars who are in the parks; sometimes they cross the boundary and leave the park and look for it elsewhere.

That happened in my State where adjacent to Yellowstone National Park a grizzly bear, unknowingly, he did not see the signs and did not see the boundary markers, walked right out of the park and walked into an area where human beings have been living for years and grizzly bears have not been living for years.

An old couple in their cabin heard this bear at their door trying to break into their cabin. They tried to scare it away and it would not scare away because it was in absolute possession of its faculties and it knew it was bigger and stronger than an old couple, so it stood outside that door and continued to try to break it.

Finally, the old man took a gun off the peg above the fireplace and shot the bear to protect himself and his wife.

The Federal Government in that particular instance said bears are more important than human beings, and that a threatened human being was not as important as a threatened member of a threatened species and therefore, the bear must have preeminence in that man's cabin.

I do not believe that, and I do not believe my friend believes that. As a matter of fact, there is an escape clause in procedure if not in law, and that matter was tried through a local jury. The local jury thought the law was unreasonably inflexible, and the old man was exonerated even though the law makes no specific provision.

You would think that would be the end of the matter, but it is not, because the Federal Government, being so disturbed by the fact that the jury thought the man should be more endangered than the bear, has brought suit against him under the civil penalty clause.

My friends, that is ridiculous, absolutely and totally ridiculous, and it is that kind of ridiculous enforcement of the law, with no flexibility in it, that leaves us to seek solutions here on the floor of the Senate today through amendments to the act.

Whether the Stennis amendment is adopted, or some other, we need to have some flexibility on the designation of a species as a critical and threatened species. We need to have some flexibility on the designation of the critical habitat and the extension of the habitat. We have to have some protection of human beings involved in defense of themselves under circumstances such as I have given.

If, as a matter of fact, they act reasonably, why should they be permitted to kill another human being in self-defense but cannot kill a bear in self-defense? That kind of ridiculous application of the law obviously needs some rectification, and I hope before we finish the deliberation here we will have been able to achieve that.

I again thank the Senator for yielding.

Mr. STENNIS. Mr. President, I thank the Senator very much for his remarks.

Mr. President, I do not have much time left and I am going to be brief anyway.

I want to say this with all the emphasis that I know how. We need not fool ourselves. This is a new start since the Supreme Court of the United States held like they did and when they did some few weeks ago. There will be a great onrush now, in my opinion and in the opinion of others, to bring about the application of cutting off these endeavors of various kinds, making it applicable to this very, very overwhelming strict law from which there is really no appeal, except what might be offered by the committee amendment, and I will come back to that in a moment.

So let us not fool ourselves now. We marched in here in 1973, and I with great respect submit it as an illustration, with the great number of laws, voluminous and far reaching as they might be, that we have to pass on here each year when the membership at large does not have much opportunity to know all that is in them, carrying such far-reaching penalties on business and on people and on every enterprise. I mention business because when this matter really picks up now it is going to affect jobs; it will affect jobs throughout our Nation adversely. It will cut off jobs on public works, public functions, and a great host of other things that have to do with construction or change of the environment. There is no way to dodge that.

As I understand, they estimate 20,000 hearings will be involved or will be considered. The officials will be called on to pass on those matters, on that many cases, in 1 year's time, as I understand the facts.

Now, we all admit that this is an intolerable law as it is, and the committee agreed wholeheartedly with that. They submitted here, I believe, a unanimous amendment, but one written up and recommended before this Supreme Court case was decided.

So my point now is that the committee amendment admits error in the bill. It says something must be done about it, but, with great deference, it does not go far enough, whereas the amendment now before us, that we are passing on here, goes too far.

Well, you do not get perfected language written out for presentation here in the hurly-burly of debate, and so forth, and that is one good thing about an amendment; it can be cleared up or clarified and made publicly acceptable by these committees that will work on it.

So that is a part of the process. The bill has got to go to the House anyway. They have not voted out a bill yet.

But I say this will prove to be one of the most important measures, considered from either viewpoint, that we in our committee will pass on this year. Our committee will work further on it, I am sure. They are concerned about it, I am sure. But let us not just accept the finding here of a plan to create a committee to pass on it that requires five out of seven votes—five out of the seven votes on this committee or commission before the petitioner is going to get any kind of relief. Five out of seven, and two of those are professional environmentalists. It is a great profession, and there is nothing except honor attached to it, but at the same time, they will naturally lean in the other direction. Also the Secretary of the Interior is presently a very estimable man, but it is an office that, by its nature, has that same leaning.

So let us not fool ourselves. We are not setting up here an impartial commission that is going to make decisions by a majority vote.

Another thing about it is that it is written on the face of their amendment that a matter of local import only will not have any standing at all before this group. It must be either regional or national. We are shooting here, in this amendment, at a goal. Our goal is to cover the Nation and then, at a more appropriate time for preciseness, that language can be gone over and the kinks gotten out of it.

But I plead now and I urge consideration far beyond what was done before, when this bill passed not unlike passing a bill on a morning calendar call, a casual thing to do, the nice thing to do, when it was passed in 1973.

In the light of experience, in the light of the practical side of things, and in the light of this Supreme Court decision, it is found to be inadequate, and it is found that the courts cannot do anything about it, or did not do anything about it. I do not think they had any grounds to read in any discretion.

This amendment would provide some discretion, some flexibility, some exercise of power, not for or against any particular group, but that the progress of this Nation from a physical standpoint must go on, and still there will be a remedy. There is a remedy left under this amendment for the proper and reasonable protection of the small darter, the cranes, and all the other forms, the species and subspecies of animals, plant life, fishes, lizards, and all the things that we have.

I say they have their place, but there are other activities of our human family. The people have to make a living, to maintain an econ-

only, to make money to pay taxes, to solve transportation problems, everything else—that part of our life must go on, too. This law as it is now is crippling, and tremendous extra burdens are put on the taxpayer that I can illustrate here: Building a \$100-million dam and finding out at the last minute that it is not within the law; spending \$18.2 million for 47 cranes, and 3 years delay on top of all that.

So we can do a better job. One way to get at a better solution is to pass this amendment, and we will be on our way. I hope the Senate will see fit to pass this amendment, and the committee will take it on and work out a stronger and better bill.

I am ready to yield back my time.

The PRESIDING OFFICER. Who yields time?

Mr. CURVER. I want to make about a 5-minute statement.

Mr. STENNIS. When the Senator is ready to, we will both yield back our time.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. CURVER. Mr. President, I would request 5 minutes of time for further debate.

The PRESIDING OFFICER. The Senator has the right to designate his time.

Mr. STENNIS. Mr. President, may we have the yeas and nays?

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CURVER. Mr. President, just a final word before we vote.

In my judgment, the arguments in opposition to this amendment have been very ably outlined by the comments and statements of the distinguished Senator from Wyoming and the distinguished Senator from Rhode Island.

The ultimate effect of this amendment, or really any of its three essential components, would, in my judgment, be to eviscerate the Endangered Species Act. In my judgment Congress should reaffirm on this occasion its very fundamental concern for the tragic and incalculable losses which have occurred as a result of mankind's careless actions and the degradation of the natural endowment of this globe.

However, Mr. President, the Committee on Environment and Public Works recognized, in the course of its oversight work about a year ago, that in the absence of introducing some rational, sensitive flexibility into this important and necessary law, there was a very serious risk of having, in time, a proliferation of irreconcilable conflicts, with the resulting pressures on Congress to weaken the act unnecessarily.

We saw this storm cloud on the horizon well before the Supreme Court decision on Tellico; but clearly that decision reaffirmed our basic concern.

Mr. President, it was for that reason that we carefully prepared S. 2899 to get out ahead of this problem, responsibly and rationally, and avoid a short-term, highly emotional and politically expedient remedy that threatened to undercut and destroy the lofty and noble purposes of the Endangered Species Act, as it was originally enacted in 1973.

Mr. President, this amendment with its grandfather clauses, would have the effect of making any project that was underway before the enactment of that law in 1973 protected against any modification, and

certainly jeopardize the continued preservation of an endangered species. Mr. President, I have here a list of projects which were initiated prior to 1973. While I have had an opportunity to review them only very briefly, I have counted roughly a minimum of 650 projects under construction by the TVA, by the Corps of Engineers, by the Bureau of Outdoor Recreation, and by the Soil Conservation Service at the time of the signing of the Endangered Species Act. Such projects include flood control, watershed, navigation, erosion control, irrigation, and recreation benefits, among many others.

Mr. President, you never know when you are going to find an endangered species. You do not know the day you put the stamp of approval on the particular project, and you do not know after you have spent \$60 million; you do not know how far away that time might be, because in most cases we still have continuingly not developed the necessary biological expertise.

But how about tomorrow? How about tomorrow when that protected species may well be the key to a significant scientific breakthrough, the kind of finding that can enhance the future of mankind? Mr. President, this bill, S. 2899, does provide a mechanism that will introduce the necessary flexibility. It is a pragmatic and a realistic recognition of the need to have a mechanism whereby these questions in conflict can be resolved, but only after an exhaustive consultative process, and careful examination of the full range of alternative approaches, alternative designs, and alternative uses. Then and only then, after this thorough process, can that conflict be presented to this committee for ultimate resolution and disposition.

Furthermore, the bill requires that when a critical habitat designation is made, the agency involved can make no irreversible or irreversible commitment of resources which would preclude the consideration of other alternatives to its project.

Our bill would strengthen the act and the consultative requirements. Once a project agency petitions the Fish and Wildlife Service, one of the parties to those discussions will give their judgment on whether or not there has been a good-faith effort to achieve a mutually agreeable and acceptable resolution of the conflict so as to protect the endangered species to the maximum extent.

If the Service says such a consultation has not taken place, then, Mr. President, the Committee could send the agencies back for additional consultation.

We have tried to design a committee that, unlike ourselves, is relatively free of intense lobbying and political pressures. These can be factors taken into consideration but are not in and of themselves, decisive. This commission will be composed of seven members who are relatively insulated and isolated from those pressures. They are also better equipped by background, training, and expertise to make informed, scientific, knowledgeable judgments, not to be buffeted by the political winds of the moment but to be sober in the implementation of this act.

The bill requires, in any case that five out of seven of those members approve the exemption because they determine that it satisfies some very carefully designed, explicit criteria which insure that the most excruciating and painstaking efforts have been made to reach an accommodation that will protect the endangered species. But, Mr.

President, it affords an opportunity for flexibility that is informed, and this is necessary if we are going to balance the appropriate interests which are involved here.

Mr. President, Oliver Wendell Holmes once said that every principle tends to declare itself to its logical extreme but each is, in fact, bounded by the neighborhood of competing principles of policy.

Mr. President, it seems hard to find or think of a case where that observation is more pertinent or appropriate than it is today. The noble principles taken to the logical extreme of the 1973 act, as interpreted by the Supreme Court of the United States in the case of *Puan Hill*, clearly are being balanced by competing principles of yet another sort. The real question before this Congress is whether we can act responsibly to adjust, to calibrate, to accommodate that competition of principles within a forum that is best equipped by its very nature and its composition to make intelligent and rational judgments in behalf of the goal of best achieving the basic and fundamental principles implicit in the original act.

Mr. President, this bill does provide a mechanism for balancing such competing values, but it does so in a responsible and rational way. For this reason I respectfully urge the defeat of the Stennis amendment because, in my judgment, it would have the consequence of fundamentally and basically destroying the original intent and purpose of this act. The 1973 grandfather provisions take no account of the species involved, the nature, or the value of the project, or the extent to which it could be modified.

Finally, Mr. President, we know that consultation has already resolved many conflicts in cases which would be exempted by the Stennis amendment. There is no reason to assume that any project cannot be modified to protect the species. This is true regardless of the year the project was initiated or its stage of completion.

Mr. President, I urge the defeat of the Stennis amendment because it does not provide the criteria upon which the appropriate balancing of these very important competing environmental, social, economic, and political values should be ultimately weighed.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Mississippi. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.  
Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

Mr. STEVENS. I announce that the Senator from Texas (Mr. TOWER) is necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. Tower) would vote "nay."

The result was announced—yeas 22, nays 76, as follows:

[Rollcall Vote No. 220 Leg. 1]

YEAS—22

Allen  
Bartlett  
Burdick  
Curtis  
DeConcini  
Eastland  
Ford  
Garn

Goldwater  
Hansen  
Hatch  
Helms  
Huddleston  
Laxalt  
Long  
Morgan

Scott  
Sparkman  
Stennis  
Stevens  
Thurmond  
Young

NAYS—76

Abourezk	Graham	Muskie
Anderson	Hart	Nelson
Baker	Haskell	Nunn
Bayh	Hartfield, Mark O.	Packwood
Bellmon	Hartfield, Paul G.	Pearson
Biden	Hathaway	Pell
Blanton	Hayakawa	Percy
Bumpers	Helms	Proxmire
Byrd, Harry F., Jr.	Hodges	Randolph
Byrd, Robert C.	Hollings	Ridgely
Cannon	Humphrey	Riegle
Case	Jackson	Rohr
Chafee	Javits	Sarbanes
Chiles	Johnston	Sasser
Church	Kennedy	Schmitt
Clark	Leahy	Schwelker
Craxton	Lugar	Startford
Culver	Magnuson	Stevens
Danforth	Marinas	Stone
Dole	Matsunaga	Talmadge
Domond	McClure	Wallop
Durkin	McDermott	Welcker
Eagleton	McIntyre	Williams
Gleason	Melcher	Metzenbaum
Gravel	Metzenbaum	Moynihan

NOT VOTING—2

Inouye

Tower

AMENDMENT NO. 3245, AS MODIFIED

(Purpose: To prohibit exemptions which would violate international treaty obligations of the United States)

Mr. PERL. Mr. President, I call up my amendment No. 3245, as modified.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Rhode Island (Mr. PERL), for himself, Mr. Welcker, Mr. Case, and Mr. Cranston, proposes amendment No. 3245, as modified.

Mr. PERL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.  
The amendment, as modified, is as follows:

On page 9, between lines 16 and 17, insert the following:

(14) Notwithstanding any other provision of this Act, the Committee shall be prohibited from taking under advisement, or in any way considering for exemption, any application made to it, if the Secretary of State, after a review of the proposed Federal action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any submission made under subsection (d) (1) of this section, that the granting of any such exemption and the carrying out of such proposed action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

Mr. PERL. Mr. President, the amendment which I am proposing on behalf of myself and Senators Case and Cranston a modified version of my amendment No. 3245, submitted yesterday, simply would amend the bill pending before the Senate to prohibit the Endangered Species Review Committee from taking under advisement any appli-

cation submitted to it for exemption, which the Secretary of State has reviewed and determined is, or would be, in violation of an international treaty obligation of the United States.

As my colleagues are aware, the United States has entered into several treaty obligations with other nations which seek to protect endangered species, such as the Migratory Bird Treaty of 1909 with Canada, the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere signed by the United States and 16 Latin American nations, and most recently, an international agreement with the Soviet Union designed to protect 208 species of migratory birds.

Mr. President, as chairman of the Foreign Relations Subcommittee which has jurisdiction over international environmental matters, I am very much concerned that the United States honor its commitments under treaties and conventions such as these with respect to the protection of endangered species.

The amendment which we are proposing is simply to assure other nations with whom we have such treaties and agreements that, although the United States may at some point in the future exempt certain projects or actions from certain provisions of the Endangered Species Act, we have no intention of considering for exemption an action or project which is, or would be, in violation of an international treaty or other international obligation affecting endangered species.

Mr. President, because I believe it may be possible for an application to reach the Endangered Species Review Committee which might potentially be in conflict with an international agreement, I think the pending legislation is a proper forum for assuring other nations that such applications will go no further, and this amendment makes that assurance.

It is vitally important, as my colleagues know, that the United States stand by its commitments under these obligations and even one violation of an agreement made in good faith between the United States and another nation should not be permitted by any Federal action. This amendment is simply an insurance policy, written into the law, that no such violations will occur.

I hope the Senate will act favorably on this amendment to uphold those commitments to other nations.

Mr. President, this amendment would simply stress the fact that we intend to abide by our treaty obligations. When we have signed a specific treaty with another nation—for example, as we did with the Soviet Union concerning migratory birds just last week—with regard to one of those examples of wildlife that are covered by such a treaty, we cannot move by domestic law in violation of that treaty obligation; and the Department of State is limited to 60 days to put the committee on notice that this project will endanger a species that has been protected under treaty law. It does not really change the law. It simply emphasizes the fact and reassures foreign nations that we are not going to go ahead through exemptions to domestic law in violation of international treaties.

Mr. MAWATSON. Mr. President, will the Senator yield?

Mr. PERL. I yield.

Mr. MAWATSON. A good example of that would be the whooping crane, which goes into Canada. We have a protectionist treaty with

Canada with respect to that bird. There are some species of rare ducks about which we have treaties with Mexico and Canada.

Mr. PERL. Those are excellent examples of what I am talking about. I have talked with the manager of the bill, and I understand the amendment might be acceptable to him.

I am willing to yield back my time.

The PRESIDING OFFICER. The Senate will be in order.

Mr. WALLOR. Mr. President, the Senator is nearly correct. It might be acceptable.

I ask the Senator if the species on international treaties are subject to the prohibition of section 7.

Mr. PERL. They would be, if they are the subject of an international treaty.

Mr. WALLOR. One of the problems I have with the amendment as drafted is the language "taking under advisement." It seems to me that limits them totally. They cannot even consider that on the basis of a finding by the Secretary of State. The language reads:

The committee shall be prohibited from taking under advisement or in any way considering for exemption any application made to it.

It seems to me that the committee easily could be allowed to take something under advisement, to make a determination on its own.

Mr. PERL. The prohibitions under this section do not apply to those that are covered under this section.

Mr. WALLOR. They do not?

Mr. PERL. Under the convention, they do not apply. This is what I am informed. I have not read it.

Mr. WALLOR. Does the Senator agree that the language prohibiting them from even taking something under advisement is not in violation of an international treaty?

Mr. PERL. I agree that is not in violation of international law, to consider a violation of international law. The only violation is if you violate it.

Mr. WALLOR. What I mean to say by raising the point we are talking about is that it would seem that the Secretary of State might not even be aware of it unless the committee had taken it under advisement. It might be that the process we are trying to devise is something that would clear with the Secretary of State those endangered species that might be on the international list.

Mr. PERL. Perhaps if we eliminate the words "taking under advisement."

Mr. WALLOR. I honestly think that would be useful to the amendment and would get to what we are trying to do, because we do not want to involve this committee in trying to destroy the international treaty arrangements of the United States. It seems to me that that is a process that might take place inadvertently, as it were.

Mr. PERL. Why do we not eliminate the words "taking under advisement or in any way"?

Mr. WALLOR. I think that would make the amendment acceptable.

Mr. PERL. I do not think I need unanimous consent. I ask that the amendment be so modified, Mr. President, and I ask for a vote on the amendment.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Mr. CURYER. Does the Senator really desire a vote on the amendment?

Mr. PELL. Just a voice vote.

The PRESIDING OFFICER. Will the Senator send his modification to the desk?

The modified amendment is as follows:

(14) (A) Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption, any application made to it, by the Secretary of State, after a review of the proposed Federal action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any submission made under subsection (d) (1) of this section, that the granting of any such exemption and the carrying out of such proposed action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

Mr. WALLON. Mr. President, I ask unanimous consent that Donna Maddox, of Senator Percy's staff, may have the privilege of the floor during debate and votes on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON. Mr. President, I should like the attention of the manager of the bill, Mr. Culver.

I understand that there may be three or four amendments that the managers may be prepared to accept, and I would call those up now.

Mr. CURYER. Mr. President, will the Senator yield to me for a moment, for a resolution not in connection with this bill?

Mr. NELSON. I yield to the Senator from Florida, without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### AMENDMENT NO. 3127

Mr. NELSON. Mr. President, I call up amendment No. 3127 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. Nelson), for himself and Mr. Brooke, Mr. Abourezk, Mr. Cranston, and Mr. Anderson, proposes an amendment numbered 8127.

Mr. NELSON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 13, line 24, insert "\$750,000" in lieu of "\$2,500,000".

On page 13, line 26, insert "\$750,000" in lieu of "\$2,500,000".

On page 14, line 1, insert "\$750,000" in lieu of "\$2,500,000".

Mr. NELSON. Mr. President, I modify my amendment to add at the end of the amendment the words: "The chairman of the committee shall furnish a report to the Congress at the end of fiscal year 1979. The report shall speak to the adequacy of the budget authority contained in this amendment."

The PRESIDING OFFICER. The Senator will send his modification to the desk.

The modified amendment is as follows:

On page 13, line 24, insert, "\$750,000" in lieu of "\$2,500,000".

On page 13, line 26, insert, "\$750,000" in lieu of "\$2,500,000".

On page 14, line 1, insert, "\$750,000" in lieu of "\$2,500,000".

The Chairman of the committee shall furnish a report to the Congress at the end of fiscal year 1979. The report shall speak to the adequacy of the budget authority contained in this amendment.

Mr. NELSON. Mr. President, this amendment simply proposes to cut the authorization for the Interagency Committee from \$2,500,000 per year to \$750,000 per year.

I think that \$750,000 authorization is an ample authorization.

Mr. CURYER. Mr. President, the distinguished Senator from Wisconsin has proposed this reduction in the amount of money to be budgeted for the operation of the Endangered Species Committee that will be established by this bill.

The committee had difficulty in anticipating the total amount of money necessary to responsibly, effectively, and properly carry out the intentions of this legislation.

After careful consideration with the minority members of the committee, I think we all agree with the objective of the Senator's amendment—to assure that we are not creating a costly bureaucracy.

I appreciate the Senator's agreement to modify his amendment to require a report from the committee at the end of 1 year. It seems to me that this is a judicious and prudent thing to do. We should have their judgment, after the experience they have had under 1 year's existence, as to the adequacy or inadequacy of this level of funding.

With that observation, I wish to thank the Senator from Wisconsin for making it clear that the Senate is not attempting to establish another costly bureaucracy. It is my understanding that it is acceptable to the minority as well. I move for a vote on its adoption.

Mr. NELSON. I yield back the remainder of my time.

Mr. CURYER. I yield back the remainder of my time.

The PRESIDING OFFICER (Mrs. Allen). The question is on agreeing to the amendment of the Senator from Wisconsin, as modified.

The amendment, as modified, was agreed to.

#### AMENDMENT NO. 3129

Mr. NELSON. Madam President, I call up amendment No. 3129 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. Nelson), for himself and Mr. Brooke, Mr. Abourezk, Mr. Cranston, and Mr. Anderson, proposes an amendment numbered 3129.

Mr. NELSON. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, line 23 change the period to a colon and add the following: "Provided, That an environmental impact statement which discusses the im-

precis upon endangered and threatened species or their critical habitat shall have previously been prepared with respect to any Federal action exempted from the requirements of subsection (e) of this section by such final determination of the Committee."

Mr. NELSON. Madam President, this amendment No. 3129 simply provides that an environmental impact statement which discusses the impact upon endangered and threatened species or their critical habitat shall have prepared on any Federal action that comes before the committee for an exemption.

This amendment would apply to a very small number of cases, actions which involve wetlands protection under section 404 of Public Law 92-500.

Mr. OLIVER. Madam President, if I could just say to the Senator from Wisconsin I respect the intent of his amendment. It does seem to me difficult to imagine a situation actually arising, however, where under the very exhaustive and elaborate consultative processes that are required under this bill a project in irreconcilable conflict could actually get that far along in the process without an EIS being prepared.

But I do believe that the amendment essentially corresponds with the intent of the committee, and I do not personally have any objection to it. Perhaps the Senator from Wyoming would want to speak to this amendment.

Mr. WALLOP. Madam President, if I may engage the Senator in a dialog here, it is probably true, as the Senator from Iowa stated, that it is difficult to imagine any set of circumstances in which the impact statement on endangered or threatened species will not have been prepared.

But the Senator from Idaho, as the Senator may know, is concerned about the requirement or lack of requirement presently for an environmental impact statement regarding the designation of a critical habitat right now.

I asked the staff if they will try to locate him, because I think it is important to try to get all this discussion in at the same place.

The part of the amendment that troubles me, and I wish to have the Senators' comments on it, is not the impact on the endangered or threatened species but the phrase "or their critical habitat shall have previously been prepared." It strikes me that that may not have been the case in terms that the Senator from Idaho is looking at right now.

I wonder if that phrase is necessary after all the mandates and the requirements for consultation and findings that are necessary before anyone can even get to the Commission.

Mr. NELSON. I think the Senator from Wyoming and the Senator from Iowa are correct, that it would probably be an unusual case— from Iowa be a rare case—but in all cases other than those involving wetlands there has to be an environmental impact statement.

There may be a Federal dredge and fill project involving a large marsh. The project may adversely affect the habitat of an endangered species. This amendment provides that an environmental impact statement (EIS) would have to be filed before the committee acted. All other projects, actions other than 404 projects will have an EIS for the committee to review. It is not an additional requirement.

Mr. WALLOP. I guess if it is the Senator's intention to limit this to that which has been designated critical habitat as well as the endangered or threatened species itself and not necessarily the range, I think it is acceptable.

But if it is not the Senator's intention to limit it to a habitat that has been designated, I think it would require a little bit of discussion as to what the intent was.

Mr. NELSON. All this amendment does is require that any 404 project, for example, would have an EIS, just like any other project before it went to the committee. Under the law (Public Law 92-500) 404 permits exempt from filing an EIS statement in certain circumstances.

Amendment 3129 does not require all 404 projects to have an environmental impact statement but only those in which an endangered species was involved, and in which there was an appeal to the committee created by the Culver-Baker amendment. So everybody, therefore, respecting endangered species involving Federal projects is treated exactly alike.

Mr. WALLOP. Then I wonder, if the Senator is talking about designated critical habitat, and I wonder if that would not be perfecting language, rather than leave it for an interpretation?

Mr. NELSON. What does designated critical habitat mean?

Mr. WALLOP. Right now the Secretary of Interior designates critical habitats.

Mr. NELSON. I do not think it ought to be expanded to say "designated." I think this amendment simply proposes to treat this kind of problem exactly the same way as all other problems that would finally get to the committee under the pending amendment. It involves a dredge and fill of wetlands, which may be a critical habitat of a threatened species, and all it says is that these actions have to have an EIS.

Mr. WALLOP. I do not quarrel with the intent of the Senator. What I am suggesting is that we do not want competing entities designating critical habitat. There is a carefully constructed entity which now designates them, and it would seem to me we do not want a court interpreting it or designating additional or lesser land as being critical habitats. That is why I suggested that as long as we are dealing with the structure of the bill as it exists and the law as it exists that the Secretary is the one who designates the critical habitat.

It would seem to me we want to limit the effect of what the Senator is trying to do in both directions, both with respect to interpretation by the court that a critical habitat might be smaller or an interpretation by a court that a critical habitat might be larger. I do not think it does violence to the intent of the Senator. I think it does exactly what is prescribed right now in the law and brings in the additional 404 requirements that he seeks.

Mr. NELSON. Madam President, as I understand, the Senator from Wyoming proposed a few moments ago to add the word "designated." Where would that change appear in his amendment?

Mr. WALLOP. Prior to the words "critical habitat."

Mr. NELSON. Is it agreeable to the Senator that we accept this amendment, with a discussion that makes clear what we are talking about?

Mr. WALLOP. It is agreeable.

Mr. NELSON. All right.

Mr. WALLOR. And it would be my interpretation of what the Senator is intending to do that the critical habitat referred to in his amendment as requiring an environmental impact statement would be that critical habitat which has been designated by the Secretary in accordance with the provisions of the Endangered Species Act.

Mr. NELSON. That states it as I understand it, and exactly the way it is intended.

Mr. WALLOR. As limited to that in both directions, to be made neither larger nor smaller by court interpretation?

Mr. NELSON. Correct.

Mr. WALLOR. I thank the Senator from Wisconsin.

Mr. NELSON. I thank the Senator from Wyoming. I yield back the remainder of my time.

Mr. CURVER. Mr. President, I suggest a vote.

Mr. McCURRE. Mr. President, will the Senator yield me 1 minute?

Mr. WALLOR. I will be happy to.

Mr. McCURRE. Mr. President, I was called from the floor for a moment. Do I understand that the Senator has now modified his amendment?

Mr. WALLOR. No, the amendment is taken as drafted, but the legislative history has made clear that the critical habitat that is referred to in the Senator's amendment is that which is designated by the appropriate agency in accordance with the Endangered Species Act as it now exists.

Mr. McCURRE. Would this require an environmental impact statement only upon the designation of the critical habitat, in the event the matter is taken to the committee?

Mr. NELSON. That is correct. If in the course of a project an endangered species is discovered, and it involves a critical habitat, the question then would not be resolved until the agency comes before the committee. An environmental impact statement would be required before the committee could act on the question of an exemption. That is all.

Mr. McCURRE. Madam President, it will be my intention to offer an amendment as a substitute for the amendment now pending.

Mr. WALLOR. Madam President, may I inquire as to the parliamentary situation if that was done?

The PRESIDING OFFICER. When all time on the amendment has been yielded back, the substitute amendment would be in order.

Mr. WALLOR. The problem is that the floor manager's impression is that the amendments have been accepted and all time has been yielded back—or does the Senator from Iowa have some time remaining?

Mr. CURVER. No, I have nothing further.

Mr. WALLOR. Then is it in order to offer the substitute before the ruling of the Chair?

The PRESIDING OFFICER. The amendment has not been adopted. When the time has been yielded back, then a substitute would be in order.

Mr. McCURRE. Then, Madam President, if the sponsor of the amendment and the manager of the bill are prepared to yield back all remaining time on the Nelson amendment, I will offer my substitute at this time.

Mr. NELSON. I yield back the remainder of my time.

Mr. CURVER. I yield back the remainder of my time.

## AMENDMENT NO. 1419

Mr. McCURRE. Madam President, I send to the desk a substitute amendment and ask that it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 13, line 23, insert the following—

The Senator from Idaho (Mr. McCURRE) proposes, as a substitute for the amendment of the Senator from Wisconsin (Mr. NELSON) an unprinted amendment which will be numbered 1419:

Mr. McCURRE. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The amendment is as follows:

On page 13, line 23, insert the following: The Endangered Species Act of 1973 is amended by adding the following new section:

## CRITICAL HABITATS

Sec. 18(a). Notwithstanding any other provision of this Act or of any other law, an action taken by any Federal department or agency involving the designation of any area or areas as critical habitats of endangered or threatened species shall be deemed to be a major Federal action significantly affecting the quality of the human environment requiring the filing of an environmental impact statement under the National Environment Policy Act of 1969: Provided, In the opinion of the Secretary of Interior, a satisfactory environmental impact statement under the National Environment Policy Act of 1969 has not previously been conducted which will satisfy the intent of this section.

(b) Said environmental impact statement as established in subsection (a) of this section shall give equal consideration to all environmental, social and economic questions arising from the proposed designation of said critical habitat; and the Secretary of Interior shall be required to make all judgment resulting from said environmental impact statement taking into equal consideration all such environmental, social and economic questions.

(c) Until such time as said environmental impact statement is completed and utilized by the appropriate Federal department or agency in making said critical habitat designation no State or Federal department or agency (or judicial decision) can delay or deny on the basis of said critical habitat designation, any loan, grant, license, permit or other such action.

(d) The provisions of subsection (c) of this section will not apply if, at the discretion of the Secretary of Interior, he determines any such loan, grant, license, permit or other such action will result in irreversible damage to said critical habitat that may result in the extinction of any endangered or threatened species.

(e) Following any determination of the Secretary of Interior pursuant to subsection (c) of this section, the Endangered Species Committee as established in Section 7 of this Act will, within 90 days of the Secretary's decision, make a determination of whether any loan, grant, permit, license or any other such action will result in irreversible damage to said critical habitat that may result in the extinction of any endangered or threatened species. In making such determination, the Committee will review and take into consideration all available pertinent information, and, to the extent necessary, require additional information to be developed for their review and consideration before such determination is made.

Mr. CURVER. Madam President, will the Senator yield for a question?

Mr. McCURRE. Has the reading of the amendment been dispensed with?

The PRESIDING OFFICER. The amendment is not properly drafted, and so it is not in order. It does not hit the same part of the bill as the Nelson amendment. Therefore, it does not qualify as a substitute.

Mr. McCURRE. Madam President, I have been advised that although both the Nelson amendment and my amendment deal with

the question of establishing an environmental impact statement, that they are not necessarily in conflict with each other. I ask unanimous consent to withdraw my amendment at this time.

The PRESIDING OFFICER. The Senator does not have to withdraw his amendment. It is not in order.

The question is on agreeing to the amendment of the Senator from Wisconsin.

Mr. WALLOR. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WALLOR. I do not want the Senator from Idaho to lose his opportunity to bring up his amendment. I would like the parliamentary ruling that the two are not in conflict with each other and would not be considered as a second amendment to the same—

The PRESIDING OFFICER. The Chair does not interpret amendments. Procedurally, the amendment of the Senator from Idaho will be in order after disposition of the amendment of the Senator from Wisconsin.

Mr. McCLURE. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wisconsin.

The amendment (No. 3129) was agreed to.

AMENDMENT NO. 3128

Mr. NELSON. Madam President, I call up my amendment No. 3128 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON), for himself, Mr. BROOKER, Mr. AHOUEKZ, Mr. GRANSTON, and Mr. ANDERSON, proposes amendment numbered 3128.

Mr. NELSON. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 13, line 16, insert a new subsection (h) as follows:

"(h) Notice.—The sixty-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (e) of this section granting an exemption from the requirements of subsection (a) of this section."

Relater subsequent subsections (i) through (l), respectively.

Mr. NELSON. This is a simple amendment.

The opportunity for review of the decisions of the interagency committee to be established by the Culver-Baker bill could be rendered meaningless without a waiver of this 60-day notice requirement. This is because any exemption granted by the committee could be acted upon before the 60-day period elapsed. To avoid that possibility and to preserve an effective opportunity for review, this amendment would waive the 60-day notice requirement for review of final decisions of the committee granting exemptions from the act.

Mr. CURVER. Has the Senator finished?

Mr. NELSON. Yes.

Mr. CURVER. Madam President, I believe this is a very useful amendment to the pending bill, Section 11(g) of the Endangered Species Act authorizes citizens to bring civil suits to enjoin any person, including governmental officers or agencies, from violating the act. That provision, however, requires that citizens who intend to bring those suits, as the distinguished Senator from Wisconsin has stated, give 60 days notice. The purpose and the intent of this statutory requirement is, of course, to afford an opportunity for the alleged violator to make the appropriate corrections and hopefully avoid litigation.

As the Senator from Wisconsin properly points out, in that if the Endangered Species Committee established under this bill were to approve an exemption in a particular case, the opportunity for review of that decision would frankly be rendered quite meaningless if we were to continue this same requirement for a 60-day notice period. Of course, the time between their decision to exempt and the requirement for a 60-day notice before a lawsuit could be initiated would, of course, create a timeframe within which the species involved could be destroyed. It would deny the opportunity for court appeal and the opportunity for judicial review of the decision by the Committee on Endangered Species.

I thank the distinguished Senator from Wisconsin for this amendment. I think it does address and correct a potential problem in the bill, and it corresponds to the intent of the Environment and Public Works Committee at the time of our drafting.

Mr. McCLURE. Will the gentleman yield?

Mr. CURVER. I yield.

Mr. McCLURE. Is it the understanding of the Senator from Idaho that the amendment now offered applies only to a waiver of the 60-day notice with respect to the final determination of the committee? Mr. CURVER. That is correct, and only in that particular case where an exemption had been granted under the provisions of S. 2899. It would not have any application in any other circumstance.

Mr. McCLURE. It would only be in the granting of an exemption by the committee in which event they could go ahead with the action that might damage or cause some irrevocable or irreversible harm to a threatened or endangered specie, but it would not apply to the opposite action of the committee. If any court action were taken to review the alternative action of the committee in denying the exemption the 60-day stay would be in effect?

Mr. CURVER. That would certainly be my understanding, but I think for purposes of legislative history the author of the amendment should be afforded the opportunity to respond to the inquiry.

Mr. NELSON. Will the Senator restate his question? Mr. McCLURE. The committee can take one of two actions, or perhaps they could try more, they either grant an exemption or they deny an exemption. The only circumstance in which this amendment would apply is when they have granted the exemption, therefore opening the door to go forward with the action, and in no other circumstance would this exemption apply. If, for instance, the committee had refused to grant the exemption, the suspension of the 60-day notice would not be effective and the 60-day notice would be required, if the committee takes any action other than granting the exemption.

Mr. NELSON. In the case of a denial, the person who had challenged would be, I assume, challenging on the narrow ground that the committee had abused its authority.

Mr. McCURRY. And the 60-day notice requirement would be in effect in that event?

Mr. NELSON. No.

Mr. McCURRY. The only event in which it would not apply is when the committee has granted the exemption, but in no other circumstance would the 60-day notice requirement be waived under the Senator's amendment?

Mr. NELSON. That is correct.

Mr. McCURRY. I thank the Senator.

Mr. NELSON. May I make an inquiry of the Senator from Idaho.

Mr. McCURRY. Yes.

Mr. NELSON. Was it the desire of the Senator from Idaho to call up the amendment?

Mr. McCURRY. No.

Mr. CURVER. May we have a vote on the amendment? I yield back my time.

Mr. NELSON. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wisconsin.

The amendment was agreed to.

Mr. NELSON. Madam President, I suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. NELSON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### AMENDMENT NO. 3126

Mr. NELSON. Madam President, I call up amendment No. 3126 and ask for its consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin, for himself and Mr. Brooke, Mr. Abourezk, Mr. Cranston, and Mr. Anderson, proposes amendment No. 3126:

On page 1, line 4, strike everything after "1978", through "Secretary", on page 14, line 22.

Mr. NELSON. Madam President, this amendment would strike everything in the bill except the extension of the authorization for the Endangered Species Act. I listened with interest this afternoon to the eloquent speech made by the distinguished Senator from Iowa in defense of the 1973 act. It struck me, as the Senator from Iowa spoke and when he had finished, that he had made the most compellingly eloquent defense of leaving the 1973 law as it is, without change, that I have heard from any source on or off the floor of the Senate.

I have been assuming all afternoon, after listening to that magnificent speech—and, I assume, also heard it—would be so persuaded by what he said that he would get up and withdraw his amendment to the Endangered Species Act. Perhaps the distinguished Senator from Iowa intends to do that at some later moment.

Mr. CURVER. Will the Senator yield?

Mr. NELSON. Yes.

Mr. CURVER. I just hope he is not holding his breath until that opportunity presents itself.

Mr. NELSON. No, I had not been holding my breath, but I had been waiting breathlessly. I do want to say that I have not before heard, in any forum, a more magnificent defense of this law. I have not heard in any finer capsule outline of the history of the disappearance of the species, particularly the destruction and elimination of the species caused by the intrusions of the activities of mankind in the past 200 or 300 years, since the industrial revolution.

I just wanted to endorse what the Senator said and add to his speech just a few words in support of what really adds up to a compelling argument why the law ought to be left alone.

For almost 5 years since the Endangered Species Act was adopted unanimously in the U.S. Senate and with only four dissenting votes in the House, in that 5-year period, the law has worked very, very well indeed. I remember the debate. In fact, I remember the legislation enacted in the sixties as the first step toward the protection of endangered species. We began to take these steps based upon our growing alarm over the rapid extinction all over the world of various species that had been here for hundreds of thousands of years.

What is the record of that act and what exactly has happened to cause the Congress and the country to get into some kind of uproar over the threat to "progress" that some people have said this act now poses?

In 5 years, there have been 4,500 consultations over projects which might or might not have had some impact on some habitat of some endangered species. After those 4,500 consultations, some of which only involved a telephone call, some of which involved much more time than that, 260 cases were identified in that 5-year period in which the proposed action was believed to threaten the habitat of an endangered species. Therefore, some resolution of that conflict between the project and the habitat of the endangered species had to be worked out.

What was the result in this whole 5-year period of all these consultations? The result was that 250 of these projects in which the habitat of an endangered species was found were worked out, the projects modified, the habitat of the endangered species protected. With one exception, the Tellico Dam in Tennessee and the snail darter, I will comment on that case momentarily.

In that case, we were dealing with a dam, or, more broadly speaking, a recreational-industrial development project which was conceived almost 40 years ago, in 1939, at a different period in history, under different circumstances, under different laws, a project designed, conceived, proposed by the Tennessee Valley Authority which under the law does not have to go through the authorizations and benefit-cost discipline of all other water resource development projects.

In fact, none of the other agencies of the Federal Government have the authority to do what the Tennessee Valley Authority did with this project in Tennessee.

What is the project that is causing such a fuss?

Well, the public interest is one that should not have been started in the first place. The public interest would be better served if we left the land alone. Furthermore, I think it is pretty clear that the public interest

would be better served if the project were never completed, apart from any consideration whatsoever of the Endangered Species Act and the small darter. Apart from any consideration of the small darter or the Endangered Species Act, the project, the public interest, would be better served, if it were not completed anyway, despite the fact that \$22 million has been spent in the construction phase of the dam to create an impoundment of 14,000 acres.

Now, all kinds of people who have not looked at the project, in fact, almost everyone I have talked to about the project has been under the impression that somehow or other this was an important Tennessee Valley Authority project for the purpose of producing power and controlling floods.

There is hardly anything left, if one has ever flown over the Tennessee Valley, to dam any more. They have built all the dams they need.

No, this is not a flood control project, that is coincidental. It is not a power project, that is coincidental.

It is an industrial development, flat water, recreational, residential project. That is what it is.

The \$120 million project is projected to have a value of less than \$1 million a year in flood control and produce \$3 million worth of power. Now, juxtapose those two figures, less than \$1 million worth of flood control value, \$3 million worth of off peak power, against the agricultural loss.

As a consequence of the project, 38,000 acres of land condemned, 14,000 acres of prime agricultural land is going to be flooded. All in this impoundment.

What is the agricultural value in production and related businesses of retaining this agricultural land in production? The value is estimated to be between \$38 million a year and \$52 million a year in agricultural production and related activities of agribusiness. That, against less than \$1 million in flood control and \$3 million a year for power production.

We should not be taking 14,000 acres of prime agricultural land out of production at this stage in history. Why do we need to create some flat water recreation when there is an excess of it all around the project area.

So the fact of the matter is that we have a project that should not have been started, should not be completed, and now, as a consequence of the project being stopped, because it turns out that it involves an endangered species, everybody has joined in the stampede to modify a very good law.

Not a single episode in this 5-year period, not a single event, not a single problem, has occurred that justifies, that is a valid reason for changing the law.

Why do we not leave it alone?

As a matter of fact, Senator Culver's speech was eloquent testimony to the fact that there need be no change in the law. It works very well. Very few laws that I know of, or anybody else knows of, work that well.

Mr. CURVER. Will the Senator yield? I just have a question I just wondered—

Mr. NELSON. Just let me respond. I want to remind the Senator that I will be gracious to him, I attempted to get a question in this morning

and I could not interrupt the Senator there in that eloquent speech. But I will yield for a question.

Mr. CURVER. As I recall this morning, the Senator from Iowa very graciously yielded upon the Senator's initial request.

Mr. NELSON. Well, the Senator did.

Mr. CURVER. I am seeking reciprocity this afternoon.

Mr. NELSON. The Senator did yield. Go ahead.

Mr. CURVER. The question I have for the Senator is: If this act has worked so wonderfully, for the last 4 years, if all conflicts have been resolved by consolidation, why does he fear the Culver-Baker amendment? Clearly, by his assessment of the situation, the committee will never have any work to do, and next year will come back to us and say, "We tried but couldn't even spend that money because there were no conflicts."

The fact is that we have actually strengthened the Endangered Species Act, actually strengthened it with this bill, by requiring good-faith consultation with this requirement it will even be less likely, as far as the Senator's assessment of the problem is concerned, that the committee will ever have any business at all.

Mr. CURVER. Is the Senator willing to wait to worry?

Mr. NELSON. Is this what the people of Iowa—

Mr. CURVER. Is the Senator willing to wait to worry?

Mr. NELSON. I worry about several things.

Mr. CURVER. Madam President, I oppose the amendment, and I would like to yield at this time to Senator Nelson.

Mr. NELSON. Madam President, if I understand the question the Senator from Iowa asked, the Senator from Wisconsin is worried about the amendment of the Senator from Iowa and the Senator from Tennessee.

The first thing I would be suspicious about would be the joint authorship. But we will skip that and move on.

I worry about it, because it punches a big hole in a very good law, and it permits a group of people who serve on a committee to make a decision to destroy the endangered species. Many of those people at one time or another, will have a project that comes before his committee.

What I say is that endangered species are so important, all species are so important, that our wisdom about making a decision as to which of them should survive or not is insufficient for me to trust a handful of people to make that decision for us. I think the law was very good and well thought out and very carefully designed to be sure that a handful of people could not get together and say, "We have the knowledge and we have the wisdom and we have the judgment to decide whether or not that species shall survive."

Since this 1973 law was designed to say, "You either modify the project to accommodate the habitat of the endangered species or there is no project," it is a very powerful level which caused every case to be resolved, except the snail darter, which is a sport that is unlikely to occur again under any circumstance, in any event.

I wonder whether the Senator will yield me some time in order to finish my remarks? That would save me calling up another amendment. Or does the Senator intend to reserve the time?

Mr. CURVER. I would like to reserve the time. All I have is 15 minutes in opposition, under the previous time agreement. I suppose I have less than that now.

The PRESIDING OFFICER (Mr. Metzgerbaum). The Senator has 11 minutes remaining.

Mr. NELSON. I would not want to ask unanimous consent. I will call up another amendment, for the purpose of being able to repeat my remarks and to put material into the record.

AMENDMENT NO. 1420

Mr. CURVER. Mr. President, I send a substitute amendment to the desk at this time and ask for its immediate consideration. We could divide that time.

Mr. NELSON. Would the Senator permit me then to conclude my remarks, which will not take very long?

Mr. CURVER. All right. I would be delighted.

The PRESIDING OFFICER. Is the Senator from Iowa asking unanimous consent, in view of the fact that this amendment would not be in order while the first amendment is still being considered?

Mr. CURVER. Yes, I make such request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CURVER. Mr. President, we have 10 minutes remaining on the original Nelson amendment?

The PRESIDING OFFICER. Nine minutes remain on the original Nelson amendment.

Mr. CURVER. Can the Senator finish in that time?

Mr. NELSON. I think so.

Mr. CURVER. I yield to the distinguished Senator from Wisconsin time on the original Nelson amendment, such time as he may need.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. Curver) proposes an unprinted amendment numbered 1420 to amendment No. 3126:

On page 8, line 8, strike the word "procure" and insert in lieu thereof "obtain".

Mr. NELSON. Mr. President, I was remarking that this law has worked very well, and no case has been made on the floor or off the floor that presents a valid rationale for changing the law. It may very well be, and I suspect that it is likely, that some of the proponents of this proposal are supporting this approach because of their perception of what the political reality is. They believe that unless some accommodation is made in the law, the forces who are making a powerful thrust for change will come up with amendments that are much more serious than the one designed by the Senator from Iowa and the Senator from Tennessee.

I will say—I think it is correct—that if it is politically necessary to modify the law, then I think that the distinguished authors of the pending measure have done a pretty good job of designing a modification.

However, my argument at this time is that there is no justification for modifying the law. The panic being expressed in Congress and elsewhere in the country by industrial developers, politicians, and

others about the great threat to progress that the Endangered Species Act presents is a smoke screen. It does not have substance. It is, in fact, not founded on any basis of fact at all, because the act has worked very well. The Tellico Dam is not a valid case to use.

So what are we really left with when we stop to consider it?

Mr. BAKER. Mr. President, will the Senator yield for a moment?

Mr. NELSON. I yield.

Mr. BAKER. Mr. President, I have listened with great interest as the distinguished Senator from Wisconsin spoke of the political realities concerning the Endangered Species Act and suggested that the authors of the amendment before the Senate today, Senator Curver and I, may have proposed this amendment in response to these political realities, I suspect that, in a manner of speaking, he is right; but I also suspect that it is a different type of political reality from what he had in mind.

I am absolutely convinced that after the decision of the Supreme Court in the Tellico case, if we did not build more common sense into the Endangered Species Act, if we did not create some flexibility, if we did not create some way to relieve the tensions created by situations like Tellico, if we did not affect the realism that the law requires in the long term, the Endangered Species Act would expire; that there would be so much opposition to it that the act would be in jeopardy.

The political realities, as I think of them, are that, in the sense that we are formulating public policy, politically it is in the best interests of this country to continue to have legislation like the Endangered Species Act on the books. But if such legislation is to survive and endure, it has to be realistic.

In my view, experience has shown us so far that the present Endangered Species Act is not realistic and that the amendment proposed by the committee is not only necessary but also essential if the program is to continue.

I thank the Senator for yielding.

Mr. NELSON. Mr. President, I think the distinguished Senator from Tennessee said approximately what my guess was as to the reason for the proposal, except that I would not agree with the observation of the Senator that this law is not practical.

The argument I am making here is that all the emotional upset around the country over the Endangered Species Act because of Tellico and the snail darter is not justified by the facts. That is the argument I am making here.

Mr. BAKER. Mr. President, if the Senator will yield for another moment, I disagree most respectfully with that. I think there is no panic, no emotion. Those of us who have seen this confrontation develop over the years I think have been very patient. We have seen the investigation commence in the U.S. District Court and seen that court rule in favor of the completion of the dam, to see two appeals taken and now the final culmination of the Supreme Court's decision on this matter just a few days ago. We are sitting down there in Tennessee watching as a Federal agency, the TVA, has completed or virtually completed a \$116 million dam that they cannot close or use.

I think the people of Tennessee and the Tennessee Valley region have been very unemotional about it. I think they have responded with

remarkable restraint. I think if I were to cater to the emotions of my constituents or if I were to speak in political tones, meaning political get-re-elected terms, that what you do is simply exempt that dam, and there may be a movement to do that, maybe some people would be more pleased if we did that, if we just exempted the Tellico Dam. But I do not believe exemption for particular projects is a legitimate function of Congress.

I think the act should be adjusted to take care of those situations where the act clearly did not work, and do so carefully, dispassionately, and without emotion.

I believe the people of this country and of my region have been remarkably restrained in that respect, but I am not sure how much longer they will be if we do not bring them legislative relief in the form of the amendment proposed by the distinguished Senator from Iowa.

Mr. CURVER. Mr. President, will the Senator yield at this point as long as he is on my time?

Mr. NELSON. I yield to the Senator from Iowa.

Mr. CURVER. Have both Senators finished? I wonder if the Senator has had a chance to finish?

Mr. NELSON. I have not had a chance to say anything yet based on the 9 minutes the Senator so graciously yielded to me. We will be moving to a substitute, and I will be glad to yield to the Senator right now and maybe I can finish.

Mr. CURVER. Go ahead, finish.

Mr. NELSON. I wanted to complete my thought. I have read the Record, read the speeches, and read news stories. Furthermore I have received some emotional letters as a matter of fact, from people about the small darter and how useless it is. My point remains, and I repeat what it has been from the beginning that the law has worked very well. The Tellico Dam case is not a very good case because there is a very good argument that the dam should not have been started in the first place. Now that it is started, it should not be completed.

It is like one project in my State, by the way, in which there is also a great deal of emotion, the La Farge Dam. This Corps project should not have been started. It is two-thirds completed, and in my judgment it should not be completed either.

Mr. BAKER. Mr. President, will the Senator yield just for a second?

Mr. NELSON. I yield.

Mr. BAKER. I only point out that I do now know whether the dam should have been started or not, but it was started before I came to Congress almost 12 years ago and long before the Endangered Species Act was ever enacted. Maybe it was a mistake to build Tellico Dam. I do not know. But you cannot go back and undo that decision and you cannot carry off that \$116 million worth of concrete.

My point is you ought to go ahead, finish it, and make the law conform to it.

The PRESIDING OFFICER. The time of the Senator from Wisconsin has expired.

Mr. NELSON. Mr. President, let me ask the Senator. Maybe I can finish in 3 minutes. I ask the Senator from Iowa is he going to move to the substitute amendment? Then I will just take 3 minutes of that. Is that satisfactory?

Mr. CURVER. All right.

Mr. NELSON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. NELSON. Are we now then on the substitute amendment, all time having been yielded back?

The PRESIDING OFFICER. The Chair wishes to clarify that we are now on the amendment of the Senator from Iowa which is an amendment to perfect the text of the proposed amendment which is to be stricken by the amendment of the Senator from Wisconsin.

Mr. NELSON. Do I understand the Chair to be saying this is a perfecting amendment to the amendment offered by the Senator from Wisconsin?

The PRESIDING OFFICER. It is a perfecting amendment to the language which the Senator from Wisconsin proposes to strike from the original text.

Mr. NELSON. And that is the amendment which is the pending business?

The PRESIDING OFFICER. The Senator is correct.

Mr. NELSON. And there are 15 minutes to a side on that amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. NELSON. Mr. President, I wish to conclude with one point—the act should not be changed. No evidence has been produced to justify a change. I simply wish to point out that, when you think about it, what we are really left with are those who think we have to modify the Endangered Species Act because some project may be affected in their area at some time in the future. What we are really left with is the position of those whose basic argument gets down to this: Someday, sometime in the vague misty future some unplanned, some unknown project not yet conceived by anyone, not yet proposed, may be stopped someday in that distant future in order to protect some unnamed species of unknown value. That is really about what the argument comes down to.

As to one final point, the committee report, the proponents of the amendment make the argument that there are on the horizon projects that are threatened by the Endangered Species Act, important economic projects for the benefit of the country which will be stopped by the act unless it is modified.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. NELSON. I thought there were 15 minutes to each side on this amendment.

Mr. CURVER. I thought the Senator wanted 3 minutes at this point. The PRESIDING OFFICER. The Senator is correct. There are 15 minutes on each side.

Mr. NELSON. The amendment is 30 minutes, with 15 minutes to each side.

Mr. CURVER. If I could say to the Senator, we have a problem, because I have tried to generously give the Senator time on his original amendment and now we are into the substitute amendment and we do have other Members who want to speak to some of the very important points that the Senator raised.

We are going to have difficulty unless we go ahead and submit another substitute amendment or in some other way get the time necessary to address the general points that the Senator raises. I think we do wish to respond.

Mr. NELSON. The Senator from Wisconsin is speaking on his 15 minutes, and I will use it.

Let me point out to the Senator from Iowa that this unanimous-consent agreement was made on the floor with no notice to me. I very graciously said to the Senator I will not come to the floor and insist upon a request.

Mr. CULVER. Said to which Senator?

Mr. NELSON. I said to the Senator from Iowa and the Senator from West Virginia, standing there, and as an accommodation I said: "All right. I will not ask for the hour and 30 minutes that was given to the Senator from Mississippi on his main amendment." I said, "We will just call it up and try to get my statements in. If necessary, I will offer an amendment, speak to it, and withdraw it."

And I have not violated that agreement, and the Senator from Wisconsin is now speaking on that one part of the 15 minutes of the amendment the Senator offered. If the Senator wants me to offer an amendment, I will offer one right now and finish my remarks.

Mr. CULVER. Let me just say that the Senator is, of course, correct, when he says he originally was not privy to the unanimous-consent agreement entered into by the majority leader and minority leader and other members of the committee.

There was provision for, in the case of the amendment of the Senator from Mississippi, an hour and a half. When the Senator subsequently came to us it is true we said if he made that request it was our understanding that objection would be heard to changing the unanimous-consent request to give the Senator another hour and a half, because there were other Senators with similar desires to offer amendments who would make similar requests.

It is true the Senator can offer this approach to just send in a series of amendments to get the necessary time. In fact I offered one in effect, to help the Senator.

Mr. NELSON. Just what is the Senator's complaint? I am puzzled.

Mr. CULVER. I wonder what the Senator's complaint is. I asked if I could speak now on the points that the Senator has made, and apparently he feels it is inconvenient to permit that now. So I would suggest that it is true the Senator has 15 minutes. The Senator asked me before could he have 3 minutes of that time now, because technically it is my amendment pending.

Mr. NELSON. I did not ask for 3 minutes of that time. The Senator or the Chair misunderstood me. My point is, what is the Senator's complaint? I am trying to complete my remarks.

The Senator has three times interrupted. I have allowed the interruptions. The Senator from Tennessee did the same, and I allowed the interruption. Now I intend to finish my remarks. I did not notice the Senator from Iowa having interruptions in his long, long presentation today. So I would expect the same courtesy out of him and, in any event, I am going to finish my remarks.

Mr. CULVER. The Senator from Iowa's presentation. I think if you put a clock on it, is not quite, even at this stage, equal to the time the Senator from Wisconsin has already utilized.

Mr. NELSON. All right. Then make it up later this evening. But in any event I am going to finish my remarks, and I will not submit to any interruption.

The PRESIDING OFFICER. The Chair wishes to point out that there is pending the amendment of the Senator from Iowa. Under the rules the Senator from Iowa is entitled to have 15 minutes. The unanimous-consent agreement provides that in the event the manager of the bill is in favor of any such amendment or motion the time in opposition thereto shall be controlled by the minority leader or his designee.

Under the circumstances, the proponent of the amendment, the Senator from Iowa, has control of 15 minutes and the minority leader or his designee has control of the adversary 15 minutes.

Mr. BAKER. Under those circumstances I previously designated the distinguished Senator from Wyoming to stand in my place and stand in control of the time under the order.

Mr. CULVER. Mr. President, I will give the distinguished Senator from Wisconsin what time he needs of my 15 minutes to complete his statement. If necessary, we can just submit another substitute amendment at a later time and extend the time.

Mr. NELSON. I thank the Senator from Iowa.

Now, let us complete one more point, the argument has been made in the committee report and by the Senator from Iowa, using the committee report, that on the horizon is a substantial number of cases that are going to create problems. These "substantial number of cases" actually are 12 actions.

I wish to put in the Record two letters from the Department of Interior, Assistant Secretary for Fish and Wildlife and Parks, Mr. Bob Herbst. One letter is addressed to me, dated July 12, 1978. The other letter is dated July 14, 1978 and is addressed to the Senator from Iowa. Now if you look at pages 2-3 of the committee report the argument is made that there is this "substantial number of actions on the horizon that are going to be stopped by the Endangered Species Act.

What does Mr. Herbst say about that? Well, Mr. Herbst says, and I quote in part from the letter addressed to me:

We are confident and hopeful that no major controversy will develop with the other projects either so long as the consultation is conducted by open-minded people with an honest desire to accomplish the concerned project, while minimizing adverse effects on the critical habitats of endangered or threatened species.

In the letter to Senator Culver, he says basically the same thing. He says:

We cannot say that one or more of the remaining nine projects on which consultation has not taken place will not result in an impasse or a conflict. That possibility always exists.

Well, a possibility always exists for almost anything. But the fact of the matter is that the Committee report, relying upon some statement of some 12 projects that may be held up, is pretty compellingly refuted by the letter from the Assistant Secretary of Interior for Fish and Wildlife and Parks.

Of those 12 "irresolvable" projects, 3 have already been resolved. That brings it to nine. In the next week or so, another one will be resolved, and that brings it to eight. Interior believes and both Herbst letters strongly reflect the belief that all these eight will be resolved.

So I suspect that within the very near future all of the cases relied upon cited by the Committee will dissolve into thin air and we will be back where we started. In the meantime we will have amended a good

law and put in a gaping loophole in the current Endangered Species Act that is totally unnecessary.

If someday, sometime in the future, there were some project that nobody has yet thought about, that is so important to the economy of the Nation that it would be necessary to make some decision that might sacrifice an endangered species, why do we not wait until that occasion arrives? It is not here yet. It is the worst scenario scene that people can design. It is a scare story that has not happened and is unlikely to happen. Who is to say that the Tellico Dam, for example, is more important than any endangered species?

I ask unanimous consent to insert in the Record a letter from the Acting Secretary of the Interior, Mr. Joseph, who is against any change in the law; two letters from Mr. Herbst, one addressed to myself and one addressed to Senator Culver from Iowa.

There being no objection, the material was ordered to be printed in the Record, as follows:

U.S. DEPARTMENT OF THE INTERIOR,  
Washington, D.C., July 12, 1978.

Hon. GAYLORD NELSON,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR NELSON: This is to provide you with the views of this Department on legislation pending in the Senate to amend the Endangered Species Act of 1973.

Section 7 of the Act has been the recent subject of considerable publicity and misunderstanding and is the primary target for amendment. As you know, this section prohibits Federal agencies from authorizing, funding, or carrying out any action that may jeopardize the continued existence of endangered or threatened species or destroy or modify their critical habitats. S. 2889, scheduled to be considered by the Senate in the near future, would establish a 7-member committee to rule on exempting Federal agencies from compliance with section 7 when an "irresolvable conflict" exists. An amendment to S. 2889 to be submitted by Senators Stennis, Eastland and Garn would exempt projects underway on the date of enactment of the Act in 1973 and those projects which are half completed when a species is listed, and would modify the statutory responsibility of Federal agencies under the Act.

This Administration is firmly committed to implementation of the Endangered Species Act and is opposed to any substantive changes to section 7. Man's activities threaten a growing number of species with extinction. However, many endangerments and extinctions can be prevented by the protection of a relatively small area or by the careful development of land and water use projects. I believe that the section 7 consultation process has proved that there are resource development alternatives which will allow resource utilization and yet insure abundant natural diversity.

The implementation of section 7 is not having the profound adverse impact on Federal action that many believe. The Fish and Wildlife Service has carried out over 5,000 consultations under this section. In over 4 years only three cases have reached the courts, and only one of these has resulted in what some consider an impasse. Even in this case—the Tellico Dam and Reservoir project—consultations have resumed and I believe the conflict can be resolved in a mutually satisfactory way. I should be noted that all of these projects were initiated before complete environmental planning was required by the National Environmental Policy Act. At the present time, an Environmental Impact Statement is prepared before a project is initiated will identify potential endangered species and other similar problems.

Obviously, the existing administrative processes are adequate in assisting Federal agencies to carry out their actions in ways which are consistent with the needs of listed species and they should be given an opportunity to increase in effectiveness as the system becomes better understood. It is significant that Federal development agencies are, to an increasing extent, seeking compliance with the Act at early stages of project formulation and development when options are

easiest to address. President Carter has directed a survey of all Federal lands to identify habitat critical for listed species to avoid the possibility that such habitats will be identified too late to affect project planning. The Endangered Species Act is still in its infancy and we expect to see many of the problems encountered thus far dissipate as compliance becomes an integral part of Federal natural resource development planning.

To amend section 7 at this point would be premature and would certainly undermine the consultation process. Development agencies would be reluctant to enter into meaningful consultation if there is any possibility of an exemption. Sponsors of projects which have suitable alternatives to minimize or eliminate adverse impacts would be reluctant to implement even minor modifications.

S. 2889 would also provide an exemption from the prohibitions on possession and trade in section 9 of the Endangered Species Act for endangered or threatened raptors legally held in captivity or a controlled environment on the date of enactment of the Act or the "domestic captive produced progeny" of such raptors. This Department recognizes that strict application of these restrictions at time creates obstacles to effective propagation, exchange and other activities involving captive wildlife, a result contrary to the spirit of the Act. In response to this, the Fish and Wildlife Service published a notice in the Federal Register of April 14, 1978, to treat captive populations as separate "species" from wild populations. This would provide for the listing of certain otherwise endangered species as threatened, and allow for possession, transfer, exchange and commerce in these animals. Therefore, exemptions for individual groups of animals, in this case raptors, is neither necessary nor appropriate to resolve alleged hardships. This Administration firmly believes that the Endangered Species Act provides a sound, rational and flexible approach to resource management which should not be jeopardized because of unjustified overreaction. The Act has been given a hard test and it is working well.

Sincerely yours,

JAMES A. JOSEPH,  
Acting Secretary.

U.S. DEPARTMENT OF THE INTERIOR,  
Washington, D.C., July 12, 1978.

Hon. GAYLORD NELSON,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR NELSON: Earlier this year a list of 12 Federal projects (attached) that may pose "potential consultation problems" was prepared for the Senate Subcommittee on the Environment at the request of key subcommittee aides. It was not intended then nor is it accurate now to state that these potential consultation problems represent insurmountable obstacles that will result in "Tellico-like" situations after the consultations are completed. In fact, consultations have now been completed on three of these projects (Miami Jetport—Florida, Dickey Lincoln—Maine, and Osceola phosphate mining—Florida) and no jeopardy to the concerned endangered species was found providing reasonable precautions are taken as outlined in the Biological Opinions concerned.

We are confident and hopeful that no major controversies will develop with the other projects either so long as the consultation is conducted by open-minded people with an honest desire to accomplish the concerned project, while minimizing adverse effects on the critical habitats of endangered or threatened species. We can assure the U.S. Congress that the Department of the Interior will always approach the consultation table with this point of view.

Sincerely yours,

BOB HERBST,  
Assistant Secretary for  
Fish and Wildlife and Parks.

JULY 14, 1978.

Hon. JOHN C. CULVER,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR CULVER: At your request, this letter has been prepared to further clarify my letter to Senator Nelson dated July 12, 1978 (copy attached). Our letter was prepared to answer questions that he had about the list of 12 Federal

projects that might pose potential consultation problems. My letter to Senator Nelson does not repudiate the list of 12 projects submitted to your subcommittee earlier this year at the request of key subcommittee aides. My letter simply states what that list of Federal projects was intended to convey to your subcommittee, inasmuch as there is apparent confusion on this issue.

We cannot say that one or more of the remaining nine projects on which consultation has not taken place will not result in an impasse or a conflict. That possibility always exists. We can say and we do sincerely believe that no major controversy will develop with the nine remaining projects so long as the consultation is made on both sides of the consultation table to permit Federal projects that Congress has approved to be developed while doing what is necessary to protect endangered and threatened species and their critical habitats.

Our list of projects that might pose problems is based upon our ability to anticipate these kinds of problems. Our experience to date reveals that the problems that often are most vexing are those that cannot be anticipated readily. We have dealt with these effectively in the past, but it is obvious that the potential for greater complexity and a resultant increased difficulty in resolving problems is real and growing.

We remain confident that good-faith consultation is the key to the successful resolution of conflicts between projects or programs and the Endangered Species Act. Let me make it clear that I would hope and expect that most consultations will lead to a resolution satisfactory to the needs of both the species and the project. However, this is not to say that impasses will not occur.

I am pleased to reiterate that this Department will do its utmost to carry out its responsibilities under the Act and that we will always approach the resolution of conflicts in good faith.

Sincerely yours,

ROBERT I. HERRBT,

*Assistant Secretary for Fish and Wildlife and Parks.*

Mr. WEICKER. Mr. President, will the Senator from Wisconsin yield?

Mr. NELSON. I yield the floor.

Mr. WEICKER. I just rise, Mr. President, to support the position of the Senator from Wisconsin.

Mr. President, in 1973, the Senate decisively endorsed the Endangered Species Act with the intent to mitigate man's effect on the destruction of life. We wisely recognized the importance of all creatures of the Earth and how much we have yet to learn of their potential worth. Notwithstanding the esthetic and spiritual values of such animals as the giant blue whale, and the practical medicinal benefits of minute plants, all life is part of an intricate, interdependent web. No single species, therefore, is unimportant.

The Endangered Species Act has served its purpose well. With the sole exception of TVA, Federal agencies testified before Congress that they have been able to accommodate the survival of an endangered species with the intent and purpose of their public works projects. Hundreds of conflicts have been resolved due to good faith inter-agency cooperation. Implementation of the act proves that man and animal can successfully live together, as they should.

I am afraid, however, that the success of this act and the logic that led to its passage will be severely undermined by the existence of a Federal project whose potential benefits should have been questioned from the start. The Tellico Dam and the seemingly innocuous snail darter are the focus of a new controversy over the alleged inflexibility of the Endangered Species Act. Understandably the idea of a 3-inch fish halting a multimillion dollar dam seems comical at face value.

Mind you, I must admit I have no special revenge for the snail darter. But, at the same time, I have no love for the Tellico Dam. In

the past, TVA officials failed to reassess the value of a project that was first conceived in 1939, but not begun until 1967. Responsible persons, including the present chairman of the Tennessee Valley Authority, question the benefits of the plan if it is allowed to go full term. Closing the gates of the Tellico Dam will not only destroy the last habitat of the snail darter, but also 17,000 acres of high quality farmland, the last free-flowing section of the Little Tennessee River, and numerous historical and archaeological sites, including the ancestral home of the Cherokee Indian. All this would be accomplished in exchange for a 0.0005 percent increase in TVA's energy output.

Yet, because of this one questionable undertaking, we are now ready to consider a bill, S. 2899, which will give the U.S. Government the authority to condemn a species to extinction. The Culver-Baker proposal allows a seven-person committee to provide an exemption for a project if its benefits outweigh the benefits of conserving a species. What are the criteria? Is the species edible? Does it provide for other species? Is it pretty to look at? I believe we simply do not know enough about life and its interactions necessary to maintain the health of our planet to make such decisions.

Certainly, the effect of the proposal would not be detrimental if Federal agencies truly dedicated themselves to resolving a conflict with an endangered species as they have done over the past 5 years. But there is a danger that those same agencies will now have the license to push ahead with their programs and defer the problem to the committee.

Hence, the committee will be faced with the cut and dry decision to either save a project or a species. I contend that the success of the act in the past has clearly shown that the United States Government does not have to play God and make such life and death decisions.

Therefore, I urge my colleagues to support the Nelson amendment to S. 2899. Let us not let the fate of the Tellico Dam excite us into changing a law that works.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. WALTON. Mr. President, if I understand it correctly, we have 15 minutes?

The PRESIDING OFFICER. The Senator from Wyoming is correct.

Mr. CURVER. Mr. President, I wish to say—

The PRESIDING OFFICER. The Chair understands the Senator from Iowa has the entire 15 minutes.

Mr. CURVER. Yes.

I wish to say at the outset how very much I respect the sincerity and the integrity of the statements of the distinguished Senator from Wisconsin. If there is to be a Member of this Senate who is to be cited for leadership in the area of environment throughout the terms of his service in this Chamber, it would have to be the distinguished Senator from Wisconsin and one or two others of similar stature, and commitment and concern.

Mr. President, there have been a number of statements made here with the implication that the action that the committee is recommending to the Senate is somehow being prompted and triggered in the form of a panic reaction to a problem that really and truly does not yet exist.

Mr. President, if there is a problem with regard to the legislative process, given the nature of our current public policy problems, it is our inability to anticipate problems and to get out and position ourselves responsibly and rationally in a way that, when the political pressures come, we will not do a short-sighted thing.

Mr. President, this committee began oversight hearings on this bill a year ago. We heard from the Fish and Wildlife Service. We heard from the General Accounting Office. We heard from conservation and environmental interests and development interests as to the successes and as to the problems with this legislation.

It has been said that we have some 4,500 cases, and only 3 proved to be irreconcilable; one of those is the celebrated Tellico Dam case. It has been suggested that that is a case that never should have been brought, and that, in fact, the public works project should never have been built in the first place.

In all candor, the committee was not responding to that issue at the time of our initial consideration and concern. Rather, we were responding to the fact that this bill had never had oversight hearings since its enactment in 1973.

What were we told on the occasion of those hearings by the Fish and Wildlife Service? What were we told on the occasion of those hearings by the General Accounting Office, which right now is in the process, after a year, of a very thorough examination of the implementation of this act?

We were told several things. We were told, as is true, that they had an incredibly large number of cases that were unresolved, but they also said to us, "It now looks like we have some 12 cases that" in their words "are likely to present irreconcilable conflicts in the short term, in the immediate months ahead."

The Senator has mentioned that 3 of those 12 have been somewhat successfully resolved. One of them I am sure he has in mind is Dickey Lincoln. As recently as this afternoon, we do not have assurances that that, in fact, is the case.

What we did hear from GAO was this: They said that the inflexibility of this act was having the consequence, in the administration of the act, of the Fish and Wildlife Service not withholding species from the endangered species list, for political reasons—that it was so rigid and so inflexible that, when push came to shove politically, the agency itself was intimidated by the political question. So they would negotiate, and decide if the heat was too bad, and then decide, "If so, we will not even put that species on the endangered species list."

Certainly the character and integrity of the act is not furthered under those circumstances. Quite the contrary.

We also heard from GAO that the scarcity of Fish and Wildlife Service records precluded them from even accurately estimating the number of consultations. Out of that number of 4,500 the Senator is talking about being handled around, apparently all but 200 of them were phone calls. They were not substantive consultations.

Second, we heard from them that the Interior Department has attempted to down play evidence of present or future conflicts. This is information from the GAO.

They have been playing games, according to GAO, with the designation of critical habitats, because of the inflexibility of the act. They

have also, according to the GAO, been involved in making political judgments even with regard to the presentation of biological opinions, because of the inflexibility of the act.

Mr. President, anyone who is committed, as I am, to the fundamental purposes, the objectives, and the goals of this legislation can fairly be accused of panicking or being interested in gutting this act. What is a cheaper vote than to stand here in the Senate Chamber and say "Nothing needs to be done?" I do not have any projects to answer for. I do not have any projects in my State, yet.

What we are trying to do is get out ahead of that problem, because we see now, when we are talking about the increase in the number of listings on the endangered and threatened species list, that there are 1,800 plants going on that list in the near future—1,800 more. There has been a 450-percent increase, over the total for the previous 4 years, in the number of species that are going on the list.

We also know that the Fish and Wildlife Service says that next year they are going to have 20,000 consultations, as opposed to 4,500 in the last 4 years. You do not have to be Jimmy the Greek to know that that spells trouble politically.

We already have trouble. If we do not move responsibly—and there is no political constituency for commonsense; there is no political constituency for standing in the middle of the crossfire and getting it from the right and getting it from the left—but I will tell you what we are going to get if we do not have the wisdom to adopt this amendment today. There is no question about what we are going to get here, what they are going to get in the House, what we are going to get in both places. That is an amendment that will come, not in the form of a responsible, balanced committee that we have carefully constructed. It will not come in the form of a strengthening of the consultative process where, under the provisions of our bill, we actually strengthen the assurances that there will be good faith efforts to cooperate. We are saying that when you designate an endangered species, you have to quit pouring the concrete at that very moment. We do not have that leverage under the current law. That was the problem with the old law: they said "endangered species," and started working overtime, to go from 30 percent completed up to \$100 million, so no one could come in and say this 3-inch snail darter could stop that \$117 million project.

We say further you cannot even get your foot in the door of this committee unless the Fish and Wildlife Service itself specifies that you have tried in good faith to work out an acceptable agreement to preserve the species.

Mr. President, if these cases come up—and they just passed a billion dollar public works program by unanimous consent in the House about 2 weeks ago—I will say to the Senate I do not want to be sitting as judge and jury in the future. Week after week, month after month, these projects will come in where we are supposed to decide the merits of these disputes, where we are supposed to decide which endangered species should be weighed and balanced in the national interest. I will tell you how they will be resolved: they will be resolved, in each and every case, with an effort to have an ad hoc singular exemption. And they will get those exemptions more often than not because of the politics and economics of the political process.

Or they will come in and say, "I have a better idea: let us let the Governor decide." We had one amendment of that kind. Or "let the agency decide," or "let the President decide," or "let some other forum decide."

Mr. President, I will take my chances with this bill, which I think is carefully drafted. Mr. Lynn Greenwalt, the Director of the U.S. Fish and Wildlife Service, testified that he thought this proposal provided—I quote the testimony of the Director of the Fish and Wildlife Service at our hearings:

This proposal provided a practical mechanism for resolving otherwise irresolvable confrontations so long as the consultation process remains strong.

He also said that the committee's decisions, "would likely be good ones because the members have full understanding of the implications of their actions."

So, Mr. President, it seems to me that the Senate should approve the bill, which was unanimously approved by the Committee on Environment and Public Works after the most careful consideration on a bipartisan basis, in recognition of the need to provide a mechanism to introduce some flexibility, some flexibility so that we do not have the Fish and Wildlife Service playing games because of their own political fear about the consequences of doing their job under this law that currently has no flexibility. At the same time it would provide an opportunity to examine a case on its merits. This would be done by a carefully crafted group of individuals best equipped to bring informed, detached, objective judgment that is knowledgeable and relevant insulated from the political pressures and the whims of the moment and the day.

Finally we are saying, "In those cases where you exempt, those very rare cases where we are calling upon you to play God the second time around, you can do it only if you satisfy yourselves that the consultation process has been totally exhausted; you can only do it when you satisfy yourselves that these explicit criteria of national interest are met, and you can only do it if five out of seven of the members vote to exempt a project."

Mr. President, finally I would speak to someone who is really interested in the preservation and the integrity of this act and not just the issue—not just the issue of his act. We have had a number of environmental groups privately come in and whisper and wink and nod that this is what they want, "We think this will be very helpful," but they know if they are going to get their dues every year they have to keep demagoging to their constituency. Well, I do not care how the votes fall on this one, but I say one thing, I hope they get the message. I am sick and tired of that kind of politics. I am sick and tired of it. I would like them, if they are worthy of representing these outstanding groups, to have the integrity to tell them the same thing they tell me. Unless and until they do I am not interested in what they tell me, very much.

Mr. President, finally, let me just say that we do have some letters that have come in today from the National Audubon Society, for one, praising the statesmanship of this committee. That is one group that has put their money where their mouth is. They put their mouths where their constituency's money is. They have been honest and re-

sponsive, and they follow the political climate. I think they know what is in their best interests.

How long do they think we should walk the plank? How long should we have people who can possibly survive trying to do the right thing, if they know we are doing the right thing, and they speak out against us?

I am reminded of a quote by John Dewey while listening to the presentation of the Senator from Wisconsin. He said, "A man who prides himself upon acting upon principle is likely to be a man who insists on having his own way without learning from experience what is the better way."

It seems to me, Mr. President, that that is really the choice before the Congress this afternoon and for the Senate today.

Mr. President, I ask unanimous consent that the two letters referred to in the colloquy between the Senator from Wisconsin and myself from the Fish and Wildlife Service be printed at this point in the Record.

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

U. S. DEPARTMENT OF THE INTERIOR,  
Washington, D. C.

Hon. GAYLORD NELSON,  
U. S. Senate, Washington, D. C.

DEAR SENATOR NELSON: Earlier this year a list of 12 Federal projects (attached) that may pose "potential consultation problems" was prepared for the Senate Subcommittee on the Environment at the request of key subcommittee aides. It was not intended then nor is it accurate now to state that these potential consultation problems represent insurmountable obstacles that will result in "Tetco-like" situations after the consultations are completed. In fact, consultations have now been completed on three of these projects (Miami Jetport—Florida, Dickey Lincoln—Maine, and Osceola phosphate mining—Florida) and no jeopardies are taken as outlined in the Biological Opinions concerned.

We are confident and hopeful that no major controversy will develop with the other projects either so long as the consultation is conducted by open-minded people with an honest desire to accomplish the concerned project, while minimizing adverse effects on the critical habitats of endangered or threatened species. We can assure the U. S. Congress that the Department of the Interior will always approach the consultation table with this point of view.

Sincerely yours,

BOB HERRST,  
Assistant Secretary for Fish and Wildlife and Parks.

U. S. DEPARTMENT OF THE INTERIOR,  
Washington, D. C., July 14, 1978.

Hon. JOHN C. CUTLER,  
U. S. Senate, Washington, D. C.

DEAR SENATOR CUTLER: At your request, this letter has been prepared to further clarify my letter to Senator Nelson dated July 12, 1978 (copy attached). Our projects that might pose potential consultation problems. My letter to Senator Nelson does not repudiate the list of 12 projects submitted to your subcommittee earlier this year at the request of key subcommittee aides. My letter simply states what that list of Federal projects was intended to convey to your subcommittee, inasmuch as there is apparent confusion on this issue.

We cannot say that one or more of the remaining nine projects on which consultation has not taken place will not result in an impasse or a conflict. That possibility always exists. We can say and we do sincerely believe that no major

controversy will develop with the nine remaining projects so long as the consultation is conducted in good faith by both parties and so long as an honest attempt is made on both sides of the consultation table to permit Federal projects that Congress has approved to be developed while doing what is necessary to protect endangered and threatened species and their critical habitats.

Our list of projects that might pose problems is based upon our ability to anticipate these kinds of problems. Our experience to date reveals that the problems that often are most vexing are those that cannot be anticipated readily. We have dealt with these effectively in the past, but it is obvious that the potential for greater complexity and a resultant increased difficulty in resolving problems is real and growing.

We remain confident that good-faith consultation is the key to the successful resolution of conflicts between projects or programs and the Endangered Species Act. Let me make it clear that I would hope and expect that most consultations will lead to a resolution satisfactory to the needs of both the species and the project. However, this is not to say that impasses will not occur.

I am pleased to reiterate that this Department will do its utmost to carry out its responsibilities under the Act and that we will always approach the resolution of conflicts in good faith.

Sincerely yours,

ROBERT L. HERBERT,

Assistant Secretary for Fish and Wildlife and Parks.

THE TELlico DAM

Mr. KENNEDY. Mr. President, throughout the well-publicized debate on the fate of the Tellico Dam, one vital fact has somehow escaped public attention. While we may have been amused by pictures of the small darter on the front pages of major newspapers across the country, we have ignored a much more serious issue involving this project. The fact is that completion of this project will destroy the ancestral home and heritage of the Overhill Cherokee Indians.

More than 100 archaeological sites have been located in the Tellico project area, including the Cherokee towns of Tanasi, which gave its name to the State of Tennessee, and Chota, the ancient capital of the Cherokee Nation. The Cherokees have continually protested the Government's complete lack of sensitivity to the privacy of their sacred grounds. The treatment of these Indians throughout the archeological investigations has been disgraceful. I understand that the investigations involved the removal of bones and other skeletal material from the graves of ancestors of Cherokees who are living today in western North Carolina and elsewhere. Yet, TVA never received the permission of the Cherokees to examine or remove material from these grave sites, although the Cherokees have publicly protested that these actions amount to "grave robbing."

The Supreme Court decision only addressed the question of protecting an endangered species, but fortunately, it has prompted a comprehensive evaluation of the options now available to the TVA with respect to this project. S. David Freeman, TVA board chairman, has assured us that the Authority will report to the Congress and the public by August 10, 1978. I have asked the TVA to explore the possibility of recreating Indian villages that once flourished in the Little Tennessee River Valley as historical and cultural resource for all Americans.

Of course, other important issues will be addressed in the report, including whether it might be possible to move the small darter to

another, more safer habitat. Protection of a scenic river and prime farmland will also be explored.

Mr. President, I believe it would be imprudent for the Senate to act to exempt the Tellico Dam from the provisions of the Endangered Species Act before the TVA has had an opportunity to issue its report. The project may be continued in a manner which best serves the interests of the taxpayers, as well as being consistent with our efforts to protect endangered species. I therefore urge my colleagues to oppose this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

Mr. CURVER. Mr. President, I ask unanimous consent to withdraw my amendment.

The PRESIDING OFFICER. The Senator has the right to withdraw his amendment.

The question is on agreeing to the amendment of the Senator from Wisconsin.

Mr. CURVER. Does the Senator want the yeas and nays?

Mr. NELSON. I did not intend to ask for the yeas and nays and I will not. I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. GARN. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GARN. Does the sponsor of the amendment have to have the concurrence of his cosponsors in order to withdraw an amendment?

The PRESIDING OFFICER. No, he does not. The bill is open to further amendment.

AMENDMENT NO. 1421

Mr. WEICKER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Connecticut (Mr. WEICKER) proposes an unprinted amendment No. 1421:

On page 12, immediately after subsection (e) (2) (C), add the following:

"(1) no more than one endangered species will be affected; and  
 "(B) no additional species that are biologically dependent on an affected species will become threatened, endangered or extinct through such action."

Mr. WEICKER. Mr. President, S. 2899 establishes—

Mr. CURVER. Mr. President, I do not know that we have a copy of the amendment of the Senator. Are copies available?

Mr. WEICKER. I certainly want the chairman of the committee to have a copy.

Mr. President, S. 2899 establishes an Interagency Committee with the power to grant exemptions to the Endangered Species Act. The committee will have the authority to grant an exemption after weighing the benefits of a Federal agency project against the value of preserving an endangered species.

It is entirely possible, however, that action by a Federal agency could affect more than one endangered species. First, a project could

threaten two unrelated species separately. Second, a project could, by endangering the future of one species, subsequently destroy another species which has a biological dependence on the first.

Biologically dependent species could be one that is part of the food chain in which the affected species belongs. By further endangering or causing the extinction of that species, the chain may be broken. Several species could, therefore, be also endangered.

Other species are dependent symbiotically in which each species give the other some essential part of its livelihood.

The Culver-Baker proposal does not address the possibility of a conflict between a Federal agency project and more than one endangered species. I suggest that, since it will be a difficult enough decision to grant an exemption for a Federal agency when it causes the extinction of one species, we rule out any possibility of an exemption when two or more species are involved. I, therefore, propose an amendment to add to section 7 (e) (2) two further limitations on the granting of an exemption by the Interagency Committee, as follows:

(D) no more than one endangered species will be affected; and  
(E) no additional species that are biologically dependent on an affected species will become threatened, endangered or extinct through such action.

Mr. President, I hope the committee and the managers of the bill will be able to accept this amendment. I feel it in no wise affects the point which they attempt to make in the legislation, but does take into consideration a matter which I do not believe has been thought of, either in the committee or by anyone else associated with the bill.

Mr. WALDRON. Mr. President, as much as we might like to do, I do not think the committee can accept the amendment. Partly, it puts us into a posture of absurdly creating boundaries through a rational decision-making process that has been designed in the Culver-Baker amendment and the committee amendments thereto. Let me see if I can explain why.

The problem that comes about with limiting it to one is that the committee would not even be able to consider some projects for the existence of an irresolvable conflict. Having failed to allow the projects affected by this amendment into the consultation process, you will find that even though balancing of alternatives is badly needed the committee will not have jurisdiction to review the particular conflict.

Second, the fact that "no additional species that are biologically dependent on an affected species will become threatened, endangered, or extinct through such action" is effectively embodied in the Culver amendment as it is now. That is, "the benefits of such action clearly outweigh the benefits alternative courses of action consistent with conserving the species or its critical habitat, and that such action is in the public interest", and "there has been a reasonable and responsible effort to resolve the conflicts which are known to exist, and the Federal agency requesting such exemption has made, subsequent to the initiation of the consultation under subsection (a) of this section, no irreversible or irretrievable commitment of resources which forecloses the consideration of modification or alternatives to such action."

I do not see how anybody could begin to come to the conclusion that you are going to find in favor of the elimination of the species only to create another endangered species in the act. I mean it is an inconceivable result the way it is.

I say to the Senator, with regard to the first, that it does nothing to limit it to a single species under the process of design. There is no cumulative value. The process is the same for 1 or for 20. The finding in each instance has to be precisely the same. So I do not see that the committee, as the Senator says, failed to consider it. I think we considered, in every instance, the problems that the Senator brings up.

Mr. WEICKER. Mr. President, I should like to establish, then, some form of legislative record with the distinguished Senator from Wyoming. Is what the Senator from Wyoming says that the points made in this amendment are already embodied in the legislation?

Mr. WALDRON. The points made in the second part of the amendment are already embodied in the legislation. The point made in the first one is an irretrievably binding restriction on the process that has been tried to be devised. What I am saying is that here is a process—if you have an irresolvable conflict, for example, one could not consider if such came to the point, the Tennessee-Tombigbee Dam or the Columbia Dam, under this section. You just could not consider them at all if it came to an irresolvable conflict on more than one species.

The consideration for each species is exactly the same and the critical decisions that the Endangered Species Committee will have to make are the same for 1 species or 20. But they have to make similar findings for each species.

Mr. WEICKER. In their consideration, in other words, the commission would have to take where there is more than one species involved?

Mr. WALDRON. Where there is more than one species involved, the Endangered Species Committee would have to find precisely the same set of determinant factors in each instance.

Mr. WEICKER. That satisfies the first point.

The second point is also the consideration of the agency in the matter of biologically dependent species will be taken into consideration. Is that what the Senator means?

Mr. WALDRON. Especially, I might add, since the amendment of the Senator from Wisconsin requires an environmental impact statement in each instance, prior to even being able to be brought in front of the commission. Nobody can conceive of a moment in time where you would create an endangered species by the determination that you are going to eliminate an endangered species.

Mr. WEICKER. I am satisfied, on the basis of the responses given to me by the Senator from Wyoming, that the points established in the amendment are, as a matter of substance, encompassed in the bill itself. I want to make it clearly understood, however, that our dialog will be part of that legislative history, should the legislation pass, the points mentioned in the amendment are points for consideration.

Mr. WALDRON. They sure are. I would not want to mislead the Senator that our committee bill does not contemplate that an irresolvable conflict on more than one species could not be presented to the Commission for decision, but their finding with regard to each species would have to be the same.

Mr. WEICKER. And, where the situation exists in the case of biologically dependent species, this is a matter that would have to be taken into consideration, with the exact result that the Senator from Wyoming correctly stated—of, in effect, creating another endangered species by breaking the food chain?

Mr. WALLOR. That is exactly right, and that would be covered, under any set of circumstances, in an environmental impact statement with regard to the habitat and species involved.

Mr. WEICKER. Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The Senator has the right to withdraw the amendment.

The amendment was withdrawn.

Mr. SASSER. Mr. President, I compliment my friend and colleague (Mr. Baker) and also compliment the distinguished Senator from Iowa (Mr. Culver) and the members of the Environment and Public Works Committee for developing an amendment to the Endangered Species Act which I am pleased to support.

The recent Supreme Court decision in Hill against TVA has demonstrated that the intent of Congress in passing the Endangered Species Act needs further definition.

The Court interpretation of the act is inflexible.

It is rigid.

It leaves no latitude to provide for balancing the potential benefits resulting from completion of a public works project with the value of species preservation. That is assuming that a project would endanger some species.

The thing that complicates this whole issue is the fact that some projects have been partially—or even substantially—completed.

What do we do about those situations?

How do we resolve that issue?

Is it right for this act to be applied to projects underway or even substantially completed when it is enacted?

Is it right to halt summarily these projects, as Tellico Dam in east Tennessee was halted, because of the now-famous snail darter?

So I say we have to use some commonsense and find some way to reconcile the act with the obvious need to consider the fact that some projects were underway when the act was passed.

We do not need a string of half-completed projects strung out across the country as a monument to our lack of legislative foresight. There should be legislation to help us over this hurdle.

And that is what it is hoped the Baker-Culver amendment will do. This committee recommendation would establish a mechanism for mediating such disputes.

This approach appeals to me as an equitable solution to this dilemma.

The case of Tellico Dam points up the need for this type of mediation.

This dam is virtually completed—and yet, because of the Endangered Species Act, it cannot be completed.

Columbia Dam is the second half of the Duck River project in Tennessee which is 70 percent completed overall. Columbia Dam itself is 30 percent complete.

I suggest that the Mediation Committee look at two scales, two yardsticks.

One is the degree of completion of the project.

The other concerns the options available that will preserve an endangered species.

Obviously, when a project is still on the drawing board, a number of adjustments can be made—project modifications, alternative proposals, other options.

But once a project is underway, then the options may become more limited.

Then the committee should bring into play, along with all other matters, consideration of the financial investment, the commitment of local government and resources and its relationship to overall area planning.

However, the time is late—very late—for abandonment of the Tellico project since the project is virtually completed.

Costs are important.

Options suggested for Tellico include removal of part or all of the structure.

Such alternatives could cost as much as \$16 to \$40 million—on top of the \$100 million already spent on the project.

This should be compared with \$2 million required to complete the project as planned and perhaps an additional several million to mitigate damages to the species.

Another consideration is the fact that Tellico was the result of a three-county planning effort over a period of years.

The project evolved in response to specific needs in the area—the need for employment, the need to reduce outmigration of young people, and similar economic factors. The area had high rates of unemployment and outmigration.

TVA, working with the people in the area, led to development of a project design which responds to these specific needs.

So the instant issue is: Do we discard all the ground rules, all of this planning and the result of the planning—Tellico Dam—and shift to a new approach?

Do we shift from expanded industrial development to emphasis on agriculture and park development?

Does that make sense after all the time, effort, and funds expended to plan for and construct the dam?

I do not think it does.

I favor a commonsense approach.

As a Senator from an affected State, I hope that we can accept this moderate amendment to the act as the best solution.

I believe this will set in motion the machinery that will solve our double dilemma in Tennessee.

Mr. President, this concludes my statement on the bill. I wonder if the managers of the bill agree with my views on this matter.

Mr. BAKER. Mr. President, will the Senator yield to me at this moment?

Mr. WALLOR. Mr. President, I yield to the Senator from Tennessee so much time as he requires.

Mr. BAKER. Mr. President, I take this opportunity to thank my colleague from Tennessee for his remarks and the important colloquy that he has engaged in. It will be materially important in the interpretation of this act if this act is, indeed, passed with the amendments that have been added in committee. I think it is a good approach and I am particularly pleased that both of us are in accord on the importance and the effectiveness of this approach to this problem.

I thank my colleague.

Mr. CURRY. Mr. President, on this one point, I wish to comment on Mr. Sasser's concerns, then I shall be delighted to take up the amendment of the Senator from Pennsylvania.

I thank the gentleman from Tennessee for his generous remarks about the committee bill, S. 2899. He is correct in stating that among the issues considered by the Endangered Species Committee in reviewing a project are the physical state of the area affected by the action at the time of review, the range of alternatives reasonably available to the action and, of course, many other relevant factors involved. Obviously, the action itself might already have resulted in drastic changes in the physical environment of the area, making more difficult certain alternatives which might have been present at an earlier stage of construction.

If Tellico should be appealed to the Endangered Species Committee, it would have the same right to review and consideration of all relevant issues as any other project. The decision of the committee should be based on the merits of the case taking into consideration the benefits of alternatives to the project consistent with preserving the species. I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 3232

(Purpose: To prohibit representatives of members of the Committee from casting votes or being considered for purposes of a quorum at any voting session of the Committee.)

Mr. HEINZ. Mr. President, I call up my amendment No. 3232 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Pennsylvania (Mr. Heinz) proposes an amendment numbered 3232.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 8, between lines 16 and 17, insert the following new paragraph:

"(14) Except in the case of a member designated pursuant to paragraph (3) of this subsection, no member shall designate any person to serve as his or her representative unless that person is, at the time of such designation, holding a Federal office the appointment to which is subject to the advice and consent of the United States Senate. In no case shall any representative, including a representative of a member designated pursuant to paragraph (3) (G) of this subsection, be eligible to cast a vote on behalf of any member."

On page 5, line 6, immediately before the period insert a comma and the following: "except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee."

Mr. HEINZ. Mr. President, this amendment to S. 2899 is a very simple and straightforward amendment.

The amendment simply seeks to require two things. First, that with respect to the six Federal members of the seven-member Endangered

Species Committee, that any representative to be named by a member of the committee to sit for him when he, the statutorily designated member, cannot be present be a Federal official serving subject to the advice and consent of the Senate.

The second requirement of the amendment is that it would preclude any proxy representation of a statutorily authorized member from sitting in at a meeting where an actual vote of the Endangered Species Committee would take place.

That is to say, only the members themselves as we designate by statute could be present when a decision to exempt or not exempt is being made.

I think in both instances, Mr. President, the decisions of this committee are so important to our country and to posterity that we do not want any nameless, bureaucrats sitting in at discursive meetings of this committee.

Equally important, we do not want any second line people sitting in when the real decisions are going to be made.

Mr. President, my amendment to S. 2899, a bill to amend the Endangered Species Act of 1973, S. 2899, would establish an Endangered Species Committee composed of the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Secretary of the Interior (where appropriate, the Secretary of the Interior in concurrence with the Secretary of Commerce), the Secretary of the Smithsonian Institution, and the Governor of the State in which the conflict exists. The committee would have the responsibility of granting or denying exemptions from section 7 of the Endangered Species Act which directs Federal agencies to assure that their actions will not harm an endangered species or habitat as determined by the Secretary of the Interior, and, for marine species, the Secretary of Commerce.

I wish to commend my colleagues on the Committee on Environment and Public Works for their attempt to preserve the integrity of the consultation process specified under section 7 of the Endangered Species Act. I commend them also for their foresight in understanding the need for a balancing of viewpoints concerning all of the alternatives to be considered. The establishment of an Endangered Species Committee to intervene in those instances where the consultation process between a project agency and the Fish and Wildlife Service has been exhausted, but conflict still exists, is indeed a logical and pragmatic approach to the fulfillment of the goal of the act.

The amendment which I offer today concerns section 7(b) (5) of the act which states:

Seven members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee.

My amendment would require, first, that any representative to be named by a member of the committee, with the exception of the Governor, be a Federal official serving subject to the advice and consent of the Senate. Further and second, my amendment would preclude any representative of a statutorily authorized member from sitting in a meeting at which an actual vote will take place. That is, only members themselves must be present whenever the decision to exempt or not to exempt is made.

Mr. President, the bottom line presented by S. 2899 is simply that the Endangered Species Committee will be called upon to make the sensitive and critical decision to exempt a species from the protection of the act. I believe that such a decision, which may result in the elimination of a species of life from the face of the Earth, demands the attention of those serving at the highest levels of authority. Americans should expect, and accept, no less. Such decisions must be made after all of the evidence has been carefully considered by those who have demonstrated the leadership and judgment and the experience and the expertise to qualify them for high office. Such decisions must not be left to an unreachable, unaccountable bureaucratic designee of the Endangered Species Committee member.

In his discussion of the Senate confirmation process, my distinguished colleague, Senator Eagleton, described this—the confirmation procedure—“essential to safeguard against incompetency or conflicts of interest in high office.” There are many competent, experienced people serving in high office today who have been confirmed by the Senate in their present positions, and I believe we ought specifically to call upon this resource of talented officials to serve as representatives, when necessary, on behalf of any member of the Endangered Species Committee who for some reason is unable to attend a meeting personally. Of course, I fully expect that every member will strive to be in attendance each time a meeting of this important body is called. Nevertheless, I understand that occasionally a conflict in schedule will necessitate a designee, and I want to be sure that that designee is the best person available and accountable to perform the job. I believe that those serving subject to the advice and consent of the Senate meet that criteria. And when any decision is to be made, because of its effect on posterity, we can do no less than to require that the statutorily authorized members of the committee, and they alone, make the final or fateful judgment.

I recognize that there are times when legitimate economic priorities collide with our environmental sensitivities. I appreciate and share the concern of my colleagues who believe that new legislation should not threaten our ability to protect endangered species.

The importance of this issue is well articulated by Phillip Shabecoff, an outstanding journalist, who recently wrote:

The most devastating impact on wild animals and plants comes from the destruction of their natural habitats by human activity. As forests are leveled, wetlands drained, water tables lowered, and natural ecosystems paved over for roads, dams, shopping centers, and suburbs, the elbow room and nutrients required by a broad range of species are rapidly diminishing. . . . So bleak is the picture, in fact, that the bulldozer and not the atomic bomb may turn out to be the most destructive invention of the 20th century.

Mr. President, we have a responsibility to be sure that the mechanism we put in place to make those difficult decisions be of the highest quality possible. It is for that reason that my amendment would limit the representatives for the members of the Endangered Species Committee to those individuals serving subject to the advice and consent of the Senate.

Mr. President, it is my understanding that the committee has carefully studied this amendment and it is my understanding that there is no objection.

Mr. Wallop addressed the Chair.

The PRESIDING OFFICER (Mr. Melcher). The Senator from Wyoming.

Mr. WALLOP. Mr. President, the Senator is correct. I do not think there is any objection, but I want to clarify one point on page 2 of the Senator's amendment. That is that in no case shall any representative, including a representative of a member designated pursuant to paragraph (3) (G) of this subsection, be eligible to cast a vote on behalf of any member.

Would the Senator contemplate that a member of the commission be able to cast a vote in writing?

Mr. HEINZ. Does the Senator mean, would a proxy vote—

Mr. WALLOP. No, by a specific, written vote. When the question has been discussed and the decision has been made. Not the kind of situation where a member would say, “I give my proxy to you, cast it whatever way you will,” but a proxy that has been designed and tailored to answer the question before the committee.

Mr. HEINZ. It is customary, I say to my good friend, that such rules are usually made by the committee themselves.

Here in the Senate we make our own rules and, as long as their rules are consistent with ours, the committees make their rules.

I do not wish to tell the committee how to operate there. But I do not think it would be inconsistent with the spirit of my amendment for the statutorily authorized member to set forth in writing with great specificity the particular issues, how he intended to vote on it, should he for some fairly extraordinary reason not be able to be there. I would also want to see for the record, because I think it is important, a sufficient explanation with that vote so we could be sure that the vote was thoroughly thought through and sufficiently justified. It would not be my intent to preclude that, either.

Mr. WALLOP. Nor would it be mine.

Mr. HEINZ. Although I think it has the final decision. Whether voting is going to take place in the absence of members is up to the committee. That is their final decision.

Mr. WALLOP. I would say this. The Senator has done a service by insisting we do not have some low-level bureaucrat who just acts on his own making these critical national and historical decisions.

I would suggest we would not want to encourage any loose use of proxies in this commission, so somebody cannot say, “Are you going to Chicago for that vote? I really do not feel like it, so make up my mind for me.”

Mr. HEINZ. I would say to the Senator that he is precisely correct. Indeed, the intent of my amendment is to prohibit the use of any kind of blanket proxy.

Mr. WALLOP. That is good.

I think in light of that the Senator from Pennsylvania has provided an amendment which strikes a good balance. I do not see any objection.

Mr. President, I compliment the Senator for tying this down to the more important people in the Cabinet and executive branch of the U.S. Government.

Mr. HEINZ. I thank my good friend.

The PRESIDING OFFICER. Is all time yielded back?

Mr. HEINZ. I yield back the remainder of my time.

Mr. WALLON. I yield back the remainder of my time.  
The PRESIDING OFFICER. The question recurs on the amendment offered by the Senator from Pennsylvania.

The amendment (No. 3232) was agreed to.  
The PRESIDING OFFICER. The Senator from Virginia.

## AMENDMENT NO. 3115

(Purpose: To revise the purposes of the Endangered Species Act)

Mr. SCOTT. Mr. President, I call up my amendment No. 3115.

The legislative clerk read as follows:

The Senator from Virginia (Mr. Scott) proposes an amendment numbered 3115.

Mr. SCOTT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert the following new section:

Sec.—Section 2(b) of the Endangered Species Act of 1973 (16 U.S.C. 1531(b)) is amended by inserting before the period at the end thereof the following: “consistent with the welfare and national goals of the people of the United States”.

Mr. SCOTT. Mr. President, This is one of a series of amendments which would revise the bill before us to include terminology that differs somewhat in the various amendments but in each instance has the effect of providing that the welfare of the human species be considered.

As indicated in some detail on Monday, it appears that the 1973 Endangered Species Act attempted in a most successful manner to concentrate on the protection of fish, wildlife and plants but neglected to give sufficient emphasis to our own welfare, to the fact that mankind is superior to animal and plant life and both are under the dominion of man.

This particular amendment, 3115, would revise section 2(b) of the 1973 Endangered Species Act to add the words “consistent with the welfare and national goals of the people of the United States.” In other words, as set forth in the paragraph (b) of title 16, section 1532 of the United States Code would then read as follows:

The purposes of the chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section, consistent with the welfare and national goals of the people of the United States.

My amendment merely adds the last few words: “consistent with the welfare and national goals of the people of the United States.”

Mr. President, I hope the floor leaders will accept this amendment. I believe it is in the public interest.

Mr. President, in its opinion dated June 15, 1978 in TVA against Hill, the Supreme Court indicated Congress had commanded all Federal agencies to do nothing that would jeopardize the continued existence of an endangered species or result in the destruction or modifica-

tion of the habitat of such species. It added that the language admits of no exceptions, and elsewhere indicated Congressmen uniformly deplored the irreplaceable loss to aesthetic, science and ecology and the national heritage should more species disappear.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SCOTT. Mr. President, on page 25 of the opinion it is stated, “as it was finally passed, the Endangered Species Act of 1973 represented the most comprehensive legislation for the preservation of endangered species ever enacted by any Nation.” And on page 29 the Court stated, “the plain intent of Congress in enacting this statute was to halt and reverse the trend toward species’ extinction, whatever the cost. This is reflected not only in the stated policies of the act but in literally every section of the statute.” Then on page 38 the Court says, “our system of Government is after all a tripartite one with each branch having certain defined functions delegated to it by the Constitution.” Later, on page 39, “it is equally and—emphatically—the exclusive province of the Congress not only to formulate legislative policies, mandate programs and projects but to also establish their relative priority for the Nation.” Further along the opinion states, “we do not sit as a committee of review, nor are we vested with a power of veto.”

Therefore, Mr. President, if any action is to be taken to relieve the rigidity of this act, it must be done by the Congress. In the TVA case we are told in a footnote in the dissenting opinion by Mr. Justice Powell quoting from the record in the trial court that new species of darters are discovered in Tennessee at the rate of about one a year; that 8 to 10 have been discovered in the last 5 years; that all told, there are approximately 130 species of darters; that 85 to 90 of them are found in Tennessee, 40 to 45 in the Tennessee River system and 11 in the Little Tennessee itself. Nevertheless, this one subspecies of perch, the snail darter, one out of 130 species of darters, has halted a project costing many millions of dollars.

Mr. President, the more important part of my remarks are the remainder.

In my own State of Virginia, the clean-up of the aftermath of three disastrous floods in the southwestern part of our State has at least been halted temporarily because there, too, another species of darters has been found along with a freshwater clam. I spoke with the Congressman representing this area with regard to the clam, and he told me that no one made any use of the clams, that if anyone ate them, it may have been the Indians, some centuries ago. But four people lost their lives in these floods, 16 counties were declared a disaster area, and property damage approximated \$275 million. Yet, the work necessary to re-establish human habitats has been halted. This has been done under the Endangered Species Act, even though we are told that the human species is the highest type of animal life; that this is a Government of the people, by the people, and for the people. We are told that human life is important in our country, that we attempt to export human rights.

I hope, Mr. President, that the managers of the bill will accept the addition of the words “consistent with the welfare and national goals

of the people of the United States." It would otherwise put the welfare of fish above human welfare. This is a rural and a mountainous section of Virginia; but I believe there is nothing more precious in our State and in all other States than human life. It must be protected.

I reserve the remainder of my time.

Mr. CURVER. Mr. President, I reluctantly oppose the amendment that has been proposed by the distinguished Senator from Virginia.

I believe that Congress and the U.S. Supreme Court have stated that the protection of endangered species is consistent with the welfare of the American people and, for that matter, the people of the entire world. Our ultimate view, I think, may well depend upon this and the responsibilities we carry toward our own children for the proper stewardship of this obligation.

The goals of the American people, on the other hand, are variable with time, and they often are not the same from person to person or either from Senator to Senator. What constitutes a proper goal for the welfare of the American people is a matter of constant debate. We have certain protections, of course, embedded in our Constitution and Bill of Rights that are rather generally recognized and respected. But the importance of protecting the world that we live in is in fact a timeless responsibility. Mistakes that will be made in that regard are frankly irreversible, and I think it is far better to leave the purpose of the act strong as we have presented it. S. 2989 does provide a mechanism for evaluating specific cases. It does provide us a mechanism for evaluating specific cases where welfare and goals of the people are always considered responsibly within context of the review process itself. So it is not an either/or proposition. But I do think that I will find it necessary to oppose the amendment. I believe it is unnecessary and possibly could be misunderstood.

Mr. SCOTT. Mr. President, as I understand the committee would be established by the bill before us it would be a cabinet level committee that would consider only national and regional projects, not local, not State projects. It would require that all seven members of the committee be present to constitute a quorum. If I am wrong I am glad to hear from the manager of the bill. I have read the bill, however.

Mr. CURVER. In order to exempt a project it is necessary for endangered species five of the seven committee members to have satisfied themselves with regard to three explicit criteria, one of which is that the project is of either national or regional significance. But one cannot make that ultimate finding until he has completed the review process. The threshold question of what constitutes local, regional, national, or indeed international would not be made until that process is fully completed.

It is possible that you can have a local project walk in the front door, but no one would know the color of its clothes until someone makes that decision during the period that it is under review. That has to be completed under a time frame of 180 days.

Mr. SCOTT. My understanding is that that—

Mr. CURVER. Excuse me. As to the quorum question, the Senator is correct. It does require seven.

Mr. SCOTT. It is my understanding that there can be designees representing the principals, but if one individual chose not to be present

or not to designate a designee to act on his behalf, there could be no meeting of that committee because there would not be a quorum. Is this correct?

Mr. CURVER. I believe that under the Heinz amendment that the Senate just accepted it would provide for the Cabinet level officer to designate a substitute. That designated substitute would have to, however, be of sufficient rank to have required Senate confirmation. Perhaps the Senator from Pennsylvania, who I see on his feet, would like to elaborate on that if any additional elaboration is necessary.

Mr. SCOTT. I might ask my friend from Pennsylvania, could the designee vote? As provided in the bill that is before us, the designee could not vote, unless it be changed.

Mr. HEINZ. Under the Heinz amendment, the designee of the statutorily authorized member of the committee could not vote.

Mr. SCOTT. Then under the bill, you have five principals who must be present and voting. Everyone must be present. You have to have seven present to constitute a quorum. Does the Senator's amendment change that?

Mr. HEINZ. No, my amendment does not change that.

Mr. SCOTT. I thank the distinguished Senator. But what I am saying is that one individual, the head of the Environmental Protection Agency, the Secretary of the Interior, the head of the Smithsonian Institute, or any one of the individuals, could keep this committee from functioning. To me this just does not make sense.

Mr. HEINZ. Mr. President, will the Senator from Virginia yield?

Mr. SCOTT. If I might continue, because I am concerned about the welfare of the people of Virginia, I am concerned about the four Virginians who lost their lives in a flood in the southwestern part of Virginia. I will not yield.

Mr. HEINZ. The Senator asked about the Heinz amendment.

Mr. SCOTT. Mr. President, I will not yield.

Mr. HEINZ. I was hopeful that I could respond to the Senator.

The PRESIDING OFFICER. The Senator from Virginia is recognized. Mr. SCOTT. Mr. President, I am concerned about human life. To me human life takes priority over that of any fish, of any wildlife, of any species of plants. In Virginia we had three floods in 2 years. The flood reached an elevation several feet above the 100-year mark, several feet above the mark that the authorities determined that water would rise once in 100 years' time. We had several hundred million dollars worth of property destroyed. That is animal habitat, that is human habitat, and yet we are trying to protect fish.

The PRESIDING OFFICER. The time of the Senator from Virginia has expired.

The Senator from Iowa.

Mr. CURVER. Mr. President, I wish to commend the Senator from Virginia not on the amendment but on the question that he has raised with regard to the procedures for quorum calls and terms of quorum to do business.

I wish to review that, I believe we are going to carry this bill over until tomorrow.

Mr. SCOTT. I do have an amendment that will change that.

Mr. CURVER. If the Senator does have an amendment on that, perhaps we can take a look at it and discuss it.

Mr. SCOTT. I thank the Senator.  
Mr. CURVER. I know this is a matter that he has some concern about, and I think frankly that we could perhaps be receptive to some changes in this regard, and I wish to express appreciation to the Senator from Virginia for having brought that to the committee's attention.

Mr. SCOTT. I appreciate the Senator's comments.  
Does the Senator yield back his time?  
Mr. CURVER. Yes. I yield back the remainder of my time.  
The PRESIDING OFFICER. All time has been yielded back.  
The question is on agreeing to the amendment of the Senator from Virginia. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.  
Mr. CLAYTON. I announce that the Senator from South Dakota (Mr. Abourezk) and the Senator from Hawaii (Mr. Inouye) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Texas (Mr. Tower) is necessarily absent.

I also announce that the Senator from Maryland (Mr. Mathias) is absent on official business.

I further announce that, if present and voting, the Senator from Texas (Mr. Tower) would vote "nay."

The result was announced—yeas 10, nays 86, as follows:

[Rollcall Vote No. 221 Leg.]

YEAS—10

Gannon  
Curtis  
Long  
Garn  
Hatch

Helms  
Laxalt  
Long  
Scott  
NAYS—86

Stennis  
Young

Allen  
Anderson  
Baker  
Bartlett  
Bayh  
Bellmon  
Beitson  
Biden  
Brooke  
Bumpers  
Burdick  
Byrd  
Harry F., Jr.  
Byrd, Robert C.  
Case  
Chafee  
Chiles  
Church  
Clark  
Oranston  
Chatter  
Dartforth  
DeConcini  
Dole  
Domenici  
Durkin  
Eagleton  
Eastland  
Ford

Glenn  
Goldwater  
Gravel  
Griffen  
Hansen  
Hart  
Hart  
Haskell  
Hatfield, Mark O.  
Hatfield, Paul G.  
Hathaway  
Hayakawa  
Heinz  
Hodges  
Hollins  
Huddleston  
Humphrey  
Jackson  
Javits  
Johnston  
Kennedy  
Leahy  
Lugar  
Magnuson  
Matsunaga  
McClure  
McGovern  
McIntyre  
Melcher  
Metzenbaum

Morhan  
Moyrhan  
Muskie  
Nelson  
Nunn  
Packwood  
Pearson  
Pell  
Percy  
Proxmire  
Randolph  
Roth  
Riegle  
Ripke  
Roth  
Santanas  
Sasser  
Schmitt  
Schweiker  
Sparkman  
Stafford  
Stevens  
Stevenson  
Stone  
Talmadge  
Thurmond  
Wallop  
Waker  
Williams  
Zoritsky

NOT VOTING—4

Abourezk  
Mathias

Inouye

Tower

AMENDMENT NO. 1422

(Purpose: To define "critical habitat")

Mr. McClure. Mr. President, I have an amendment at the desk. I ask that it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McClure) proposes an unprinted amendment numbered 1422. On page 2, line 3—

Mr. McClure. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 3, insert the following:  
Sec. 2, Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended:

(1) by inserting after paragraph (5) thereof the following new paragraph:

"(6) the term 'critical habitat' for a threatened or endangered species means: "(A) the specific areas within the geographical area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (1) essential to the conservation of the species and (2) which require special management considerations or protection;

"(B) 'critical habitat' for a threatened or endangered species may include specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this act, into which the species can be expected to expand naturally upon a determination by the Secretary at the time it is listed, that such areas are essential for the conservation of the species.

"(C) critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subsection (A) and (B) of this section; "(D) except in those circumstances determined by the Secretary, critical habitat will not include the entire geographical area which can be occupied by the threatened or endangered species."

(2) by renumbering the paragraphs thereof, including any references thereto, as paragraphs (1) through (20) respectively.

Mr. CURVER. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will come to order. The Senator from Idaho is presenting an amendment. It would help the process of the Senate this evening if we might have more order and less discussion on the floor.

The Senator from Idaho may proceed.

Mr. McClure. I yield to the Senator from Indiana for a unanimous consent request.

Mr. BAYR. I thank my friend from Idaho.

Mr. President, I ask unanimous consent that Eve Lubalin and Ann Church of my staff be granted the privileges of the floor during all debate and votes on S. 2899, the Endangered Species Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McClure. Mr. President, the amendment which I have offered deals with the establishment of a critical habitat, the manner in which that is to be done, and primarily and most importantly, the extension of the area of the critical habitat once established.

It allows the Secretary of the Interior to establish not only the area where the endangered or threatened species is then present but that area in which they might be expected to expand. However, the designation must be made at the time they are placed on the list. For the species which are now on the list and for which no critical habitat has been established, it would permit the designation of the critical habitat area of such species and, again, the area in which they might be expected to naturally expand, if necessary, for the conservation of that species.

Mr. President, this is in response to the difficulty of how large an area should there be established and if that species then expands beyond that area must human beings that be displaced in that area.

It has become a critical problem for those of us who live near Yellowstone National Park as the grizzly bear, which is on the endangered species list, ranges outside the park and human beings must then be displaced, even though human beings have lived there for a long while, because the bear chooses to change its place of residence.

Mr. President, I understand that the language, which we have worked out rather arduously throughout discussions all afternoon, is acceptable to the managers of the bill.

Mr. WALSH. Mr. President, the Senator is correct. I compliment the Senator from Idaho for his genuine persistence and willingness to work out the real problems we perceived in this matter.

The Senator is quite correct. One of the things that the hearings brought out was that the Fish and Wildlife Service was having a difficult time in its own mind distinguishing between critical habitat and range. It seems to me that the Senator from Idaho has taken a definition which was operative for them and given it statutory authority, the slightly more specific nature of statutory language than is in the regulation. I compliment the Senator.

The managers on both sides accept the language. I yield back the remainder of my time.

Mr. McCORMACK. I yield back the remainder of my time. The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 3113

(Purpose: To limit the definition of threatened species to those which are of substantial benefit to mankind)

Mr. SCOTT. Mr. President, I call up my amendment numbered 3113, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Virginia proposes an amendment numbered 3113.

Mr. SCOTT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert the following new section:

Sec. . . Section 3(15) of the Endangered Species Act of 1973 (16 U.S.C. 1582 (15) is amended by inserting before the period at the end thereof the following: "and which the Secretary has determined is of a substantial benefit to mankind."

Mr. SCOTT. Mr. President, this amendment would change the definition of the term endangered species by adding the words "and which the Secretary has determined is of substantial benefit to mankind." That is all it does. So paragraph 15 would read:

The term endangered species means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, and which the Secretary has determined is of a substantial benefit to mankind.

Mr. President, this amendment is merely another in a series that would tend to relieve the inflexibility of the act and would complement the provisions of the bill which provide for a review committee of cabinet level known as the Endangered Species Interagency Committee.

I believe that protected, endangered, or threatened species should be those of substantial benefit to mankind. Our Government at all levels exists for the benefit of serving people. People should have dominion over fish, wildlife, and plants. Only where the lower species are of benefit to mankind are they important. That, in my judgment, does not take away from their value but, in fact, adds to their value by the concept of serving mankind.

I would hope that through a series of amendments the provisions for a cabinet-level committee can be complemented so that provision can be made to reduce the inflexibility at the local and State level as well as the regional and national level.

The Supreme Court has unequivocally said that the only recourse a citizen has for relief under this act is from the Congress, the elected representatives of the people. We want to protect our fish, wildlife, and plants which are beneficial to mankind, but when we learned of the 1.4 million species of wildlife, the 600,000 species of plants, and the 3 to 5 times those numbers when we consider the subspecies, we should segregate those which are beneficial to mankind from those which do not serve any known beneficial purpose. This would not suggest—

(Disturbance in the gallery.)

The PRESIDING OFFICER. The Senator will suspend until the Sergeant at Arms has restored order in the gallery.

Has the Sergeant at Arms restored order in the gallery?

The Senator from Virginia may proceed.

Mr. SCOTT. Mr. President, we want to protect our fish, wildlife, and plants which are beneficial to mankind, but when we learned of the 1.4 million species of wildlife and the 600,000 species of plants and the 3 to 5 times those numbers when we consider subspecies, we should segregate those which are beneficial to mankind from those which do not serve any beneficial purpose. This would not suggest the destruction of any fish, any wildlife, or plants, but would segregate those of benefit to mankind, those entitled to special protection, from those which have no known benefit.

I would hope, Mr. President, that the floor managers would accept this amendment and others to be offered later. I reserve the remainder of my time.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. CUIVIER. Mr. President, the hour is obviously late. I will just state my opposition to rise in opposition to the amendment.

The amendment would add to the current definition of the term "threatened species" the requirement that the Secretary of the Interior determine the species to be of substantial benefit to mankind. This assumes, of course, that species are all valueless unless a specific use or a particular benefit for humans can be found.

It seems to me that we can never know, Mr. President, at any given point in time what the particular value a species may or may not have for humans.

As I mentioned earlier in the day, the horseshoe crab has existed for 200 million years, and it was just 3 years ago, Mr. President, that it was determined that the blood of that animal is a detector of toxins in intravenous fluids, a very significant breakthrough in medical science. Finally, Mr. President, I think it is safe to assume that the loss of a species is harmful, and even threatening, to mankind because we are fundamentally reliant on an ecosystem which we frankly do not fully understand.

I urge the Senate to vote in opposition to the amendment.

Mr. WALTON. Mr. President, there is just one other point that I should like to make to the Senate before voting on the amendment of the distinguished Senator from Virginia. I understand what it is that he is trying to do, and would like to note that the committee has already looked into the problem that he states.

He seeks to give the decision as to the benefits to mankind of a given species, a given "critter" on this Earth, to one person. We have given that decision to the whole Commission after the consultation process, after the whole series of other benefits that might or might not exist in a relative nature to a given project have been considered. To require a judgment on the part of one person that one species, one "critter," anywhere on this Earth, is or is not of benefit to mankind is to require that person to step into the shoes of God. I suspect that person would be most loath to do it and we would have more, not less, endangered species.

Mr. SCOTT. Mr. President, I shall be very brief. I am going to repeat something I said when my last amendment was defeated and only received 10 affirmative votes because we had less than 10 people on the floor. One of the reasons I am offering this series of amendments is that, in southwest Virginia, in a rural area, there were disastrous floods. Sixteen counties were declared a disaster area. Four people lost their lives, \$275 million in property damage. The habitats of the human beings were wiped out in that area. Yet the Corps of Engineers was stopped from doing repair work because of another small darter fish, 1 of 130 darters in the species—130 of them, and they found another small darter in southwest Virginia. Four people lost their lives and we cannot do any repair work.

People are more important than fish. That is what I am asking you to vote for.

I am glad to yield back the remainder of my time.

Mr. CUIVIER. I yield back my time and request a vote on the pending amendment.

The PRESIDING OFFICER (Mr. Paul G. Hatfield). The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CHANSTRON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Florida (Mr. Chiles), the Senator from Mississippi (Mr. Eastland), the Senator from Hawaii (Mr. Inouye), the Senator from Connecticut (Mr. Ribicoff), and the Senator from Mississippi (Mr. Sennis) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Nebraska (Mr. Curtis), the Senator from Vermont (Mr. Stafford), the Senator from Texas (Mr. Tower), and the Senator from North Dakota (Mr. Young) are necessarily absent.

I also announced that the Senator from Maryland (Mr. Mathias) is absent on official business.

I further announce that, if present and voting, the Senator from Texas (Mr. Tower) would vote "nay."

The result was announced—yeas 2, nays 87, as follows:

[Rollcall Vote No. 222 Leg 1

YEAS—2

Scott

NAYS—87

Allen	Goldwater	Melcher
Anderson	Gravel	Meizenbaum
Baker	Grieff	Morgan
Bartlett	Hansen	Moylhan
Bayh	Hart	Muskie
Bellmon	Haskell	Nelson
Benjamin	Hatch	Nunn
Biden	Hatfield, Mark O.	Packwood
Brooke	Hatfield, Paul G.	Pearson
Bumpers	Hathaway	Pell
Burdick	Hayakawa	Percy
Byrd, Harry F., Jr.	Heinz	Proxmire
Case	Helms	Randolph
Cannon	Hodges	Riegle
Case	Hollings	Roth
Chafee	Huddleston	Sarbanes
Church	Humphrey	Sasser
Clark	Jackson	Schmitt
Cranston	Javits	Schwelker
Culver	Johnston	Sparkman
Danforth	Kennedy	Stevens
DeConcini	Leahy	Stevenson
Dole	Long	Stone
Donnell	Lugar	Talmadge
Durkin	Magnuson	Thurmond
Earleton	Matsumaga	Wallop
Ford	McClure	Weicker
Garn	McGovern	Williams
Glenn	McIntyre	Zorinsky

NOT VOTING—11

Abourezk	Inouye	Stennis
Chiles	Mathias	Tower
Curtis	Ribicoff	Young
Eastland	Stafford	

So Mr. Scott's amendment (No. 3113) was rejected.

### RED WOLF ENDANGERED SPECIES PROJECT, CAPE ROMAIN, S.C.

Mr. THURMOND. Mr. President, besides the many other worthy programs which have grown out of the Endangered Species Act of 1973, I wish to speak up in behalf of one particular project within my own State.

I have reference to the red wolf project which is currently being conducted on Bulls Island, S.C., within the Cape Romain Fish and Wildlife Refuge.

In the fall of 1976, two red wolves were placed on Bulls Island and released in early 1977. Unfortunately, the female developed an infection and the effort failed.

However, last year, the experiment was repeated and, following release of the pair early this year, there is reason to believe the wolves have a den of pups on nearby Capers Island.

This is an important development in our endangered species program, as the red wolf is down to an estimated 50 animals in a wild state.

This species was established along the eastern coastal plains when our country was first settled but, as towns and cities developed and the population grew, the species was driven west until nearly wiped out.

It is my understanding that the fiscal year budget contains \$24,000 to continue this program at Cape Romain, where employees of the Fish and Wildlife Service have given much effort to the project.

Mr. President, the red wolf project in South Carolina has met with excellent cooperation from the State Wildlife and Marine Resource Department. The managers of the project also advise that this effort has been well received by the people of our State.

The Fish and Wildlife Service has been accomplishing a great deal to help save and restore our endangered species by virtue of the 1973 act. It is unfortunate that the Government did not pay more attention to the Audubon Society and other groups earlier in order that other species might have been saved.

Two of our great ornithologists, John James Audubon and Alexander Wilson, wrote for us interesting reports on the carolina parrot, the passenger pigeon, and other birds which are now extinct. Today, South Carolina is rarely visited by the long-billed curlew, which Audubon so beautifully depicted with the city of Charleston in the background. Even today our citizens are fighting to preserve the environment to protect birds such as Bachman's warbler, a species discovered by Audubon's friend, Dr. John Bachman, of Charleston, in the early 1800's.

Mr. President, I commend the leaders in the Fish and Wildlife Service for the red wolf and other projects aimed at protecting our endangered species. We need to do more in this area, and I think the American public will gladly support such an effort.

Mr. MCGOVERN. Mr. President, the Senate is today discussing the merits of the 1973 Endangered Species Act in the context of determining what its future will be during the next 3 fiscal years. As my colleagues are aware, our options today are to leave the act as is, weaken it, or alter the way it is applied in an effort to remedy what are perceived as problems with the act.

Much of the public discussion and perception of what this act is all about centers upon the U.S. Supreme Court's recent ruling on the Tennessee Valley Authority's Tellico Dam and the effect it would have upon the snail darter's critical habitat. Those who dislike the Endangered Species Act contend this case is an example of how unwieldy and unworkable the act is; how its "inflexibility" can hold up "progress." Those favoring the act and the way in which it has worked over the last 5 years use this same example claiming that out of some 4,500 consultations which occurred between agencies as a result of the act's provisions that this is the single example of where a compromise could not be reached. They argue this is insufficient reason to weaken the act.

I feel that this celebrated case and others which have attracted public attention because certain species complicated their development do not really make the best case for either side in this debate. What is really in question here today is the day-to-day working of the act and the stories behind the 4,500 endangered species consultations which have taken place since enactment of the legislation.

I do not think our concentration upon the end result of the act, insofar as whether or not consultations were successful, adequately addresses the questions which have been raised about the act. What I sense is that there is a frustration abroad in the "development community" because of what they sense is an "environmental tilt" at work today. The reauthorization of the Endangered Species Act has become the focal point of their frustration which is more broad-based than this, the centerpiece, of environmental legislation.

The concerns which have been expressed to me have less to do with the Endangered Species Act than they do with how it, in conjunction with other environmental legislation and regulations, has opened up an incredibly complex array of environmental hurdles which must be cleared in order for development plans to advance. This act, the snail darter and Furbish's housewort have become the symbols of frustration with environmental regulation.

The roots of this frustration are easy enough to see. Environmental laws dictate that concern for environmental impacts be taken into account in developing any project utilizing Federal funds or conceivably violating environmental standards. This has come to be accepted as a matter of course. However, the frustration comes about when after making what they perceive as "good faith" efforts to comply with the law, those same laws and regulations can be used further with the threat of environmentally-based litigation to block or stymie developments which for other than environmental reasons may be perceived as objectionable. This is regarded as harassment by those seeking to initiate developments.

In this context, fulfillment of all Federal and State requirements is not enough today. If environmental litigation is to be avoided, a development entity must also be accountable to a host of environmental groups who review environmental statements in the public interest.

An organization attempting to build a coal-fired electric generation plant to meet increasing consumer demands can believe it is acting in the public interest in seeking to build that type of plant instead of a

nuclear one and by not relying upon petroleum as a fuel. But in attempting to do so they are confronted with arguments that the coal should not be mined because it disrupts land-based ecosystems, it should not be burned because it degrades air quality, it should not consume water because it depletes streams which adversely affects aquatic ecosystems and stream-bank habitat, and that it should not adversely affect wetlands. They are also reminded that if the plant is to be erected in an area where an endangered species might be affected that endangered species consultations are required.

If after attempting to answer all of those questions and explain the trade offs involved they are still threatened with environmental litigation because someone believes they have not adequately addressed these issues they feel frustrated. If what they were doing was simply an engineering exercise they might relish the challenge of how to meet all of these requirements, but this is not the case. They are attempting to meet customer demands and in the process of answering all of these concerns the price-tag of the planned project is increasing and will be passed-on to the consumer. In the final analysis what they are asking is: If we cannot use nuclear energy because of safety questions and cannot use petroleum because of national policy and the technology is not available for use of solar, wind and geothermal energy, how are we to meet increasingly critical demands for energy? This is the context in which the wisdom of the Endangered Species Act is questioned. This is really the bottom line of the debate confronting us.

This view is perhaps best illustrated by a letter I recently received from the Basin Electric Power Cooperative which did not address itself to the act per se, but does express the frustration which is being felt:

It has always been the position of Basin Electric that we should try to accommodate all legitimate environmental concerns. However, the law enabes the (National Wildlife) Federation to raise endless questions about matters already covered in the environmental studies, to raise questions not necessarily related to the environmental acceptability of the project, to associate the whooping crane with projects having little or no relationship to this species, and to file lawsuits to delay meritorious projects. We need relief from this harassment or we cannot fulfill our responsibilities to our consumers (over one million people living in rural South Dakota, North Dakota, Montana, and Wyoming and parts of four other states).

I do not think it was the intent of Congress that in passing the Endangered Species Act in 1973 that we wanted no development to take place in the Mississippi and Central Flyways encompassing the entire Missouri River Basin because the whooping crane is annually sited in the area. We did not intend to prevent development in the North-west because it is the range of the grizzly bear. We did not intend to make prairie dog towns inviolate because a black-ferret would make a prairie dog town its home. Yet, every time a project is proposed which admittedly could affect these endangered species an extreme case is made and litigation threatened on the assumption the whooping crane will have no room to land, the grizzly bear no room to roam and the black-footed ferret no place to call home. The intent of environmental law is that these species and their habitats be taken into account and that regionally the cumulative impact on them be taken into account if a large area is their habitat, and that their

critical habitat not be ruined if it is site-specific. If that is the requirement of the law and it has been met, then that should be the end of it, but too often it is not.

I think this is the reason relief is being sought from the Endangered Species Act and others.

Our action here today cannot address itself to the full spectrum and nature of this frustration as expressed by the development community, but it can relieve some of their anxieties. We can reaffirm our commitment to clean air, clean water, and protection of endangered species, yet at the same time affirm that we are not advocating no growth because of these concerns. Rather, we are committed to the best possible environment in which man and animal can coexist while providing for the needs of man.

[From the Congressional Record, July 19, 1978]

SENATE CONSIDERATION AND PASSAGE OF S. 2899, WITH AMENDMENTS (Continued)

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

Mr. CURVER. Madam President, what is the pending business?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will not resume consideration of S. 2899, which the clerk will state.

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 Senate resumed the consideration of the bill.

The ACTING PRESIDENT pro tempore. The time for debate on this bill is under control. Who yields time?

Mr. CURVER. Madam President, I yield such time as may be desired to the distinguished Senator from California.

The ACTING PRESIDENT pro tempore. The Senator from Iowa has 8 minutes remaining.

Mr. CURVER. Madam President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. CURVER. It is my understanding that the distinguished Senator from California, who has just been recognized, has an amendment pending at the desk. I ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. Will the Senator from California please send his amendment to the desk?

AMENDMENT NO. 1423

(Purpose: To provide for cooperative agreements with respect to plants)

Mr. HAYAKAWA. Madam President, I submit an amendment and ask for its consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated. The legislative clerk read as follows: