

- 1 expiration date of the certificate of renewal of such exemption
 2 issued under this paragraph."

4

Amend the title so as to read: "A bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and for other purposes."

96TH CONGRESS } HOUSE OF REPRESENTATIVES } REPORT
 1st Session } } No. 96-167

ENDANGERED SPECIES ACT OF 1973 AUTHORIZATION

MAY 15, 1979.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MURPHY of New York, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 2218]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 2218) to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 2, after line 19, insert the following:

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

- (1) in paragraph (4), by inserting "unless such exemption is renewed under paragraph (8)" after "certificate" in paragraph (C); and
- (2) by adding at the end thereof the following new paragraph:

"(8) (A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

"(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and

other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

"(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph."

Amended the title so as to read: "A bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and for other purposes."

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to increase the funding for the Department of the Interior and the Department of Commerce for carrying out a higher level of program activities under the Endangered Species Act for an additional three years. To accomplish this purpose, the legislation would authorize to be appropriated \$25 million per year for the Department of the Interior under section 15(1), and \$3 million per year for the Department of Commerce under Section 15(2). Also, the legislation would authorize to be appropriated \$600,000 per year for the Endangered Species Committee and Review Boards to carry out the exemption procedure authorized by the act. In addition, the legislation would authorize owners of certain whale parts who are presently exempted under the Act to apply for an additional three-year exemption.

LEGISLATIVE BACKGROUND

H.R. 2218 was introduced on February 15, 1979 by Mr. Murphy of New York, Mr. Breaux, Mr. McCloskey, Mr. Forsythe, Mr. Bowen, Mr. AuCoin, Mr. Emery, Mr. Akaka, Mr. Studds, Mr. Dingell, Mr. Pritchard, and Mr. Dornan. Additional cosponsors of H.R. 2218 are Mr. Stack, Mr. Hutto, Mr. Hughes, Mr. Oberstar, Mr. Lowry, Mr. de la Garza, and Mr. Bonker.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on H.R. 2218 on April 6, 1979. The witnesses for the Department of the Interior testified in strong support of extending the funding authorization under the Act, but in favor of more moderate authorization levels than provided by H.R. 2218. The witnesses for the Department of Commerce testified in strong support of the extension and of authorizing such sums as may be necessary to carry out the program.

Testifying in strong support of the legislation and for increasing funding for enforcement purposes were Mr. Craig Van Note (on behalf of the Monitor Consortium), Mr. John Borneman (on behalf of the Audubon Society), Dr. Shirley McGrath (on behalf of the Primate Protection League), and Ms. Christine Stevens (on behalf of the Society for Animal Protective Legislation).

On April 30, 1979, the subcommittee ordered reported to the full Committee H.R. 2218, with amendments. On May 3, 1979, the full committee ordered reported H.R. 2218, as amended by the subcommittee.

THE AMENDMENTS

Under section 10(f) of the Act, persons owning any whale parts or products lawfully held within the United States in December 28, 1973, in the course of a commercial activity are authorized to apply for a three-year exemption to certain prohibitions listed in the act. An amendment offered by Mr. Studds would allow these owners to apply for an additional three-year exemption under the original conditions of the certificate. The committee believes the additional three-year extension will allow sufficient time for scrimshaw artists to complete work on preact scrimshaw products and dispose of such products.

The committee also adopted a technical amendment to the title of the bill.

BACKGROUND AND NEED FOR LEGISLATION

Congressional concern about rapidly deteriorating fish, wildlife and plant habitat, indiscriminate utilization of plants and animals and increasing numbers of species threatened with extinction resulted in a series of legislative actions culminating in the enactment of the Endangered Species Act of 1973. The Act repealed the Endangered Species Conservation Act of 1969, broadened Federal responsibilities to list species and increased the Federal authorization and programs for insuring the survival of species.

The primary purpose of the Endangered Species Act of 1973 is to prevent animal and plant species endangerment and extinction caused by man's influence on ecosystem, and to return the species to the point where they are viable components of their ecosystems. The Department of the Interior estimates that 20 species become extinct per decade in the United States, and an even greater number enter the endangered category. If this rate applies worldwide an estimated 300 extinctions could occur per decade. The endangered species program is implemented through three processes: listing, consultation and recovery.

A. LISTING OF ENDANGERED AND THREATENED SPECIES

The protections provided to animal and plant species threatened with extinction are activated by the listing of a species as "endangered" or "threatened." The endangered category refers to those species which are threatened with extinction through all or a significant portion of their range, while threatened species are those that are likely to become endangered within the foreseeable future. The various prohibitions provided in the act may vary depending on whether a species is listed as "endangered" or "threatened."

Species are added to the endangered and threatened species list in two different ways. A member of the public may petition the Secretary for a listing, or the listing process may be initiated by the Department of the Interior or Commerce on the basis of the best scientific and commercial data available. If a private citizen petitions the Secretary to list a species, and presents substantial evidence in support of the petition, the Secretary is required to conduct a review of the species. Although the Department of the Interior uses a priority system to determine which of the hundreds of unlisted endangered species should be acted on first, the petitioning process interrupts the Department's priority system by requiring immediate review.

The act provides five criteria for determining whether a species is endangered or threatened. These are:

1. The present or threatened destruction, modification, or curtailment of the species habitat or range;
2. Overutilization for commercial, sporting, scientific, or educational purposes;
3. Disease or predation;
4. The inadequacy of existing regulatory mechanism; or
5. Other natural or manmade factors affecting its continued existence.

Any proposed listing, delisting, or reclassification is published in the Federal Register. Amendments to the act adopted in 1978 added the additional requirements that proposals to designate critical habitat be published in newspapers of general circulation in the vicinity of the habitat, and that local governments receive actual notice of all regulatory proposals. More importantly, the 1978 amendments require the Secretary to evaluate the economic impact of designating critical habitat for listed species. Under the 1978 amendments, any person may request a public meeting on proposals to list species, and the Secretary is required to hold a public meeting on any regulation proposing to designate critical habitat.

Following the review of comments and an evaluation of the best available biological data the Department may publish a notice of final rulemaking in the Federal Register. Regulatory proposals generally become effective 30 days after publication of the final determination in the Federal Register.

As of February 28, 1979, the endangered and threatened species list contained 236 domestic and 497 foreign species. An additional 138 animal and 1,850 plant species have been formally proposed for listing. The Fish and Wildlife Service has announced that it has withdrawn proposed rulemakings to designate critical habitat for various animals listed in order to comply with the additional requirements imposed by the 1978 amendments. In addition, the Service announced that proposals to add some 1,700 plant species to the list, although they have not been withdrawn, may not be finalized until supplemented with additional information as required by the 1978 amendments.

Category	Number of endangered species			Number of threatened species		
	United States	Foreign	Total	United States	Foreign	Total
Mammals:						
Birds:	33	227	260	3	18	21
Reptiles:	11	21	32	3	3	6
Amphibians:	1	47	48	10	10	20
Fishes:	2	9	11	12	10	22
Clams:	2	10	12	5	12	17
Crustaceans:	23	2	25	2	12	14
Insects:	6	1	7	2	12	14
Plants:	28	1,820	1,848	2	12	14
Total:	197	440	637	39	18	57

Note: Number of species currently proposed, 138 animals, 1,850 plants (approximately); number of critical habitats proposed, 73; number of critical habitats listed, 37; number of recovery teams appointed, 66; number of recovery plans approved, 26; and number of cooperative agreements signed with States, 22.

Although most of the Department's actions under the Act have involved the listing of species, the act also authorizes the Secretary

to delist or reclassify species in much the same manner as the initial listing. Certain species that closely resemble listed endangered or threatened species can also be listed under the act if the Secretary finds that the listing of the physically similar species will facilitate enforcement of the act. The ultimate goal of the Endangered Species Act is to focus sufficient attention on listed species so that, in time, they can be returned to a healthy state and removed from the list.

Once an animal or plant species has been listed as endangered, the act prohibits a number of activities involving the listed species unless an exception applies or a permit is granted. These prohibitions include:

1. The taking of endangered animal species;
2. The importing or exporting of listed species;
3. The selling or delivering any species which are illegally taken; or
4. The sale of listed species in interstate or foreign commerce.

These prohibitions apply to live or dead species; to their parts or products; to all progeny of animals born on or after December 28, 1973; and to animals held at that time for sale or barter.

All of these prohibitions apply automatically in the case of a species which is listed as endangered. In contrast, when a species is listed as threatened, the Secretary has the discretion to proscribe actions as he deems necessary to provide for the conservation of the species.

B. SECTION 7 AND THE CONSULTATION PROCESS

Section 7 of the Endangered Species Act, as amended in 1978, requires Federal agencies to insure that any action authorized, funded, or carried out by them does not jeopardize the continued existence of listed species or destroy or adversely modify the critical habitat of any endangered or threatened species. This section also requires Federal agencies to consult with the Departments of Interior and Commerce (in the case of marine species) when any of their actions may affect listed species. This consultation process is central to the resolution of conflicts under the act.

Typically the consultation process will be initiated by a Federal agency when it discovers that it may be taking an action that will have an impact on an endangered species. The agency contacts the Fish and Wildlife Service or the National Marine Fisheries Service, depending on the species involved, and requests assistance to determine whether there is a potential violation of section 7. The Service initially conducts a threshold examination in an attempt to determine the nature of any impact on a listed species. At the conclusion of the threshold examination the Service issues a biological opinion indicating whether the action is likely to jeopardize the species or adversely modify the critical habitat, and suggesting possible modification which would avoid any adverse impact.

The mandate of section 7 applies once a species is listed or once "critical habitat" is designated for any listed species. The term "critical habitat" was not defined in the 1973 Act, but regulations promulgated pursuant to the Act defined it to include "air, land or water areas . . . the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. . . ." The amendments adopted during the

95th Congress significantly altered this definition. The Act now defines "critical habitat" as "specific areas . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management consideration or protection."

C. THE EXEMPTION PROCESS

Prior to the 1978 amendments, the Endangered Species Act did not provide any opportunity for exemptions from the requirements of section 7. The 1978 amendments significantly altered the structure of the Act by establishing a procedure through which Federal agencies can receive exemptions from the requirements of the act from a 7-member committee.

Any application for an exemption would initially be considered by a three member review board which would make recommendations to the seven member cabinet-level committee. The Committee can only grant an exemption if 5 of the 7 members find that there are no reasonable and prudent alternatives to the project and that the benefits of the project clearly outweigh the benefits of identified alternatives. The 7-member committee is composed of the following individuals:

- (A) Secretary of Agriculture;
- (B) Secretary of the Army;
- (C) Chairman, Council of Economic Advisors;
- (D) Administrator, Environmental Protection Agency;
- (E) Secretary of the Interior;
- (F) Administrator, National Oceanic and Atmospheric Administration; and
- (G) An individual from the affected State appointed by the President.

The Endangered Species Committee has considered two applications for exemptions to date involving the Tellico Dam and Reservoir in Tennessee and the Grayhocks Reservoir in Wyoming. The committee denied an exemption for the Tellico project and granted for Tellico on the grounds that there were reasonable alternatives to the Reservoir available which would avoid jeopardizing the continued existence of the snail darter.

A third application for exemption has been filed by the Pittston Oil Co. for their proposed refinery in Eastport, Maine. The U.S. Fish and Wildlife Service issued a biological opinion in December, 1978 which found that the refinery is likely to have an adverse impact on bald eagle populations in the area.

ENDANGERED SPECIES FUNDING

General authorizations of appropriations under the act for the Department to carry out their functions and responsibilities, other than certain financial assistance to the States under section 6, are provided by section 15 of the act. Section 15 authorizes to be appropriated to the Department of the Interior \$23 million for fiscal year 1979 and \$12,500,000 for the period beginning October 1, 1979 and ending March 31, 1980. To the Department of Commerce, section 15 authorizes to be appropriated not to exceed \$2.5 million for fiscal year 1979, and \$12.5 million for the period beginning October 1, 1979, and ending March 31,

In addition, under section 7 (g) of the Act, there is authorized to be appropriated to the Secretary of the Interior \$600,000 for fiscal year 1979 and \$300,000 for the period beginning October 1, 1979 and ending March 31, 1980, to assist the Review Boards and the Endangered Species Committee in carrying out their functions under the act. Information received from the Interior Department places the number of positions involved in administering the overall endangered species program at 205. The positions are specified according to program function as follows:

Program function:	Number of positions
Listing	15
Protection	99
Consultation and exemption process	14
Maintenance and recovery	74
Total	205

One of the changes made by the 1978 amendments and which the Interior Department will soon address in regulations is the requirement that economics and other factors be considered prior to designating critical habitat. As a result, on March 6, 1979 the Department withdrew all pending critical habitat proposals and delayed the addition of some 2,000 species, largely plants, until the procedural requirements have been complied with.

Also in accordance with the 1978 amendments, recovery plans must be prepared for all species that will benefit from recovery activities. To meet this goal, the Department's regional offices are formulating recommendations on recovery needs for individual species, methods of plan preparation, appropriate time frames, coordination of land acquisition and research. During fiscal year 1978, nine new recovery plans were approved, bringing the total to 19 completed plans. Another 51 plans are in various stages of development. In all, more than 60 recovery teams have been appointed to chart recovery plans for 75 listed species.

Since passage of the act in 1973, significant progress in protecting threatened and endangered species has been made. In 1973, there were 49 whooping cranes in the wild, now there are 84. In the same period, the Aleutian Canada goose population has gone from 700 to 1500; the Everglade kite population from 47 to 160 and the Puerto Rican parrot population from 12 to 18. The population of some species which were declining have stabilized. These include the bald eagle, peregrine falcon, Attwater prairie chicken, and Kirtland's warbler.

The following chart, prepared by the Department of the Interior, indicates how endangered species funds have been or will be utilized in fiscal years 1978 and 1979.

	In thousands of dollars	
	Fiscal year 1978	Fiscal year 1979
Listing	1,318	2,219
Protection	4,546	7,446
Consultation	4,822	4,822
Maintenance and recovery	3,920	2,940
Common support services	1,205	1,437
Total	16,538	18,659

The endangered species conservation program of the Department of Commerce, administered by the National Oceanic and Atmospheric Administration (NOAA), is responsible for most marine species of mammals, and marine species of fish, reptiles, and invertebrates. Under interagency agreements with the Department of the Interior, NOAA receives assistance in listing, protecting, and controlling the importation of endangered and threatened marine species. NOAA research activities are directed toward developing programs for assessment, protection and recovery of species currently listed as endangered, identifying any additional species which are threatened or endangered.

The need for this legislation arises due to the upcoming expiration on March 31, 1980 of the authorizations for appropriations under sections 7 and 15 of the act. Since the fiscal year 1980 authorizations are only for 6 months, the Budget Act requires the committee to complete action on full fiscal year 1980 authorizations by May 15, 1979.

CONCLUSIONS AND RECOMMENDATIONS ON FUNDING

The committee feels that a higher level of funding than previously authorized is necessary in view of the additional requirements imposed on the Secretary by Public Law 95-632, such as those for economic impact statements, newspaper notices, and increased recovery plan implementation. Further, testimony received by the subcommittee reflected a need for stepped up enforcement activities at designated ports of entry of wildlife products.

EXEMPTIONS

An amendment to the bill was adopted which would permit holders of an exemption to allow owners of certain whale parts and products which were held in stock prior to 1973 to continue trading such products for three additional years. Existing law allows this exemption to be in effect until October 1979.

This additional exemption under the Endangered Species Act for owners of whale parts and products was deemed necessary due to the large numbers of existing whale parts and products remaining in the domestic market. The Department of Commerce has presently certified 57 exemptions pursuant to the exemption language under existing law. Of these 57 exemption certificates, 48 have been issued for scrimshaw products, and 9 have been issued for sperm whale oil. At the time the certificates were issued there were 78,400 pounds of whale teeth and whale bone known to be in existence and held by persons within the United States. There were also 27,554,946 pounds of sperm whale oil in existence at the time certificates of exemption were issued for that product.

The bulk of the sperm whale oil has been disposed of during the last 3 years. A major portion of this oil (16 million pounds) was originally held by the General Services Administration and subsequently sold to a private company in Cleveland, Ohio. During the last three years, the company in Ohio has disposed of most of this sperm whale oil. Other companies in the mid-West, specifically pharmaceutical companies, are also holders of exemption certificates by the Commerce Department. These pharmaceutical companies use only small quantities of sperm

whale oil in cosmetics and pharmaceuticals and, therefore, their stocks have not diminished as significantly as the other holdings. In addition to the use of sperm whale oil for pharmaceuticals and cosmetics, this oil is used for the manufacture of candles and the lubrication of fine machinery. It has been determined by the Commerce Department that once a product is manufactured from the oil it is deemed to be consumed and disposed of, thereby not requiring a certificate of exemption. It is anticipated by the Department of Commerce that the bulk of the sperm whale oil can be disposed of within the additional three year period provided by the committee amendment.

During the past 3 years the Department of Commerce estimates that 25 percent of the finished scrimshaw products, the raw whale teeth, and the whale bone have been disposed of. The bulk of the stocks are held on the West Coast in Washington and Alaska, and the remaining quantities are generally found in the New England States. Since only 25 percent of the some 78,000 pounds of whale teeth and whale bone have been disposed of at the present time, the committee determined that an additional three-year exemption was necessary to allow the final disposition of the remaining stock.

WHAT THE BILL DOES—SECTION-BY-SECTION ANALYSIS

As indicated in the legislative background of this report, the committee ordered reported to the House H.R. 2218, with amendments. Following is a section by section summary of H.R. 2218, as amended.

Section 1

To assist the Endangered Species Committee and the Review Boards in carrying out their functions related to the exemptions process, the bill authorizes to be appropriated not to exceed \$600,000 for each of fiscal years 1980, 1981, and 1982.

Section 2

Section 15(1) of the act would authorize appropriations, except for Sections 6 and 7, at a level of \$25 million for each of fiscal years 1980, 1981, and 1982 for the Department of the Interior to carry out a higher level of endangered species protection. This represents a \$2 million increase over the fiscal year 1979 authorization level. Section 15(2) would provide the Department of Commerce with an authorization level of \$3 million for each of fiscal years 1980, 1981, and 1982, thereby increasing the funding level by \$500,000 over fiscal year 1979.

Section 3

Section 3 would allow owners of pre-Act endangered species parts, defined as sperm whale oil and scrimshaw, currently doing business under a three year exemption allowed by the 1976 amendments to the act to apply for an additional three year exemption. The conditions applicable to the original certificate of exemption would also apply to the extension of the exemptions.

COST OF LEGISLATION

In the event the legislation is enacted into law, the committee estimates the maximum cost to the Federal Government for the 3-year life

of the program from October 1, 1979, through September 30, 1982, would be \$85.8 million, broken down as follows:

Section	[in millions of dollars]		
	Fiscal Year 1980	Fiscal Year 1981	Fiscal Year 1982
190	0.6	0.6	1.1
191	23.0	25.0	11
192	3.0	3.0	11
Total	26.6	28.6	23

Note: Total 3-year cost, \$5.4.

INFLATIONARY IMPACTS STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the House of Representatives, the committee estimates that the enactment of H.R. 2218 would have no significant inflationary impact on the prices and cost in the national economy.

COMPLIANCE WITH CLAUSE 2(1)(3) OF RULE XI

With respect to the requirements of clause 2(1)(3) of rule XI of the House of Representatives:

(A) The Subcommittee on Fisheries and Wildlife Conservation and the Environment has not held oversight hearings on the Endangered Species Act during this Congress. However, the Subcommittee does intend to hold such hearings during the 96th Congress.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Government Operations has sent no report to the Committee on Merchant Marine and Fisheries pursuant to clause 4(c)(2) of rule X.

(D) A letter was received from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974 in reference to H.R. 2218 and follows here-with:

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 9, 1979.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, 1334 Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act, the Congressional Budget Office has prepared the attached cost estimate for H.R. 2218, a bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981 and 1982.

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

Robert D. Reischauer
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE
MAY 9, 1979.

1. Bill No.: H.R. 2218.
2. Bill title: A bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981 and 1982.
3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, May 3, 1979.

4. Bill purpose: The bill authorizes the appropriation of \$800,000 for the Endangered Species Committee for each of the fiscal years 1980, 1981 and 1982. This committee reviews applications from Federal agencies to determine whether to approve a Federal action that jeopardizes the continued existence of any endangered species or results in the destruction of the endangered species' habitat.

The bill also authorizes the appropriation of \$25 million for the U.S. Fish and Wildlife Service (USFWS) for each of the fiscal years 1980, 1981 and 1982 for the determination of endangered species, the development and implementation of plans for the survival of endangered species and the determination of whether a federal action jeopardizes the existence or habitat of an endangered species. The National Oceanic and Atmospheric Administration (NOAA) is also authorized \$3.0 million for each of the fiscal years 1980, 1981, and 1982 to carry out its responsibilities under the Endangered Species Act.

In fiscal year 1979, \$600,000 was authorized for the Endangered Species Committee, \$23 million for the USFWS and \$2.5 million for the NOAA activities covered by this bill.

5. Cost estimate:

Net additional authorization:	
Fiscal year:	Millions
1980	\$3.8
1981	28.60
1982	28.60
1983	28.60
1984	28.60
Estimated outlays:	
Fiscal year:	Millions
1980	2.97
1981	26.07
1982	28.60
1983	28.60
1984	2.83

The costs of this bill fall within budget function 300.
6. Basis of estimate: For fiscal year 1980, the net additional authorization represents the net change to authorizations already existing. The bill increases the 1980 authorization for the USFWS from \$12.3 million to \$25 million, and for the Endangered Species Committee from \$300,000 to \$600,000. The \$3.0 million authorized in this bill for NOAA in fiscal year 1980 represents a decrease from the existing authorization of \$12.5 million. (The 1979 NOAA appropriation for this purpose is \$2.3 million; the President's budget request for 1980 is \$2.4 million.)

For the purpose of this estimate, it is assumed that the full amounts authorized will be appropriated. Outlays are estimated by applying a

two-year spendout rate to the level of appropriations authorized for NOAA, USFWS and the expenses of the review committee. The two-year spendout is estimated to be 90 percent the first year and 10 percent the second year, based on consultation with NOAA and USFWS.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: James V. Manaro.
10. Estimate approved by:

C. G. NICKOLS,
(For James L. Blum,
Assistant Director, for Budget Analysis).

DEPARTMENTAL REPORTS

Reports were received on H.R. 2218 from the Department of the Interior and the Council on Environmental Quality. In addition, Executive Communications Nos. 1257 and 777 were received from the Secretaries of Commerce and Interior, respectively, and follow herewith:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 5, 1979.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, D.C.

Dear Mr. CHAIRMAN: This responds to your request for our comments in H.R. 2218, a bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982.

We recommend that this legislation be enacted, if amended as suggested herein.

H.R. 2218 would amend section 7(q) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536(g)) by authorizing not to exceed \$600,000 for each of fiscal years 1979, 1980, 1981 and 1982 for the Secretary of the Interior and the Endangered Species Committee. It would also amend section 15 to authorize not to exceed \$23 million for fiscal year 1979, and not to exceed \$25 million for each of fiscal years 1980, 1981 and 1982 for this Department to carry out its responsibilities under the act.

We recommend that the authorization level for section 15(1) be amended not to exceed \$19,332,000 for the fiscal year ending September 30, 1980, and such sums as may be necessary for the fiscal years ending September 30, 1981 and 1982. This will make the section 15(1) authorization consistent with the administration's 1980 budget.

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

RICHARD MYSHAK,
Acting Assistant Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
COUNCIL ON ENVIRONMENTAL QUALITY,
Washington, D.C., April 5, 1979.

Hon. JOHN M. MURPHY,
Chairman, Merchant Marine and Fisheries Committee, House of Representatives, Washington, D.C.

Dear Mr. CHAIRMAN: Thank you for your letter of February 21 inviting the Council on Environmental Quality to comment on H.R. 2218, a bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982. We appreciated the opportunity to review this proposed legislation. At this time, however, the Council has no comment.

JANE H. YARN,
Council Member.

[Executive Communication No. 1257]

THE SECRETARY OF COMMERCE,
Washington, D.C., April 5, 1979.

Hon. THOMAS P. O'NEILL, JR.,
Speaker of the House of Representatives, Washington, D.C.

Dear Mr. SPEAKER: Enclosed are six copies of a bill "To authorize appropriations to carry out the Endangered Species Act of 1973, as amended, through fiscal year 1982," together with a statement of purpose and need in support thereof.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this legislation to the Congress and further that its enactment would be in accord with the program of the President.

CHARLES L. HASLAM,
Acting Secretary of Commerce.

Enclosures.

A BILL To authorize appropriations to carry out the Endangered Species Act of 1973, as amended, through fiscal year 1982

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1542(2)) is further amended by deleting the words "not to exceed \$12,500,000 for the period beginning October 1, 1979 and ending March 31, 1980," after the date "September 30, 1979," and inserting in lieu thereof the following language:

"not to exceed \$2,420,000 for the period beginning October 1, 1979, and ending September 30, 1980, and such sums as may be necessary for each of fiscal years 1981, and 1982."

STATEMENT OF PURPOSE AND NEED

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), was passed in December 1973. Primary responsibility for

this legislation was placed with the Departments of Commerce and the Interior. General authorization of appropriations under the Act for the Departments to carry out functions and responsibilities, other than certain financial assistance to the States under section 6, is provided under section 15 of the Act. The authorization for appropriations by P.L. 95-632, authorized to the Department of Commerce not to exceed \$5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed \$2,500,000 for the period beginning October 1, 1979 and ending March 31, 1980. Under section 15 of the Act, funds in the approximate amount of \$2,420,000 will be required to carry out the program during fiscal year 1980. This figure represents the best estimate of our Department's FY 1980 budget request. With these funds we will continue the development and maintenance of conservation programs for fish, wildlife, and plant species of the marine environment. This draft legislation would extend section 15(2) for three years fiscal years, 1980, 1981, and 1982.

Executive Communication No. 7771

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,

Washington, D.C., February 28, 1979.

Hon. THOMAS P. O'NEILL,
Speaker, House of Representatives,
Washington, D.C.

Dear Mr. Speaker: Transmitted herewith is draft legislation to extend and increase the authorization of appropriations in section 15(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1542; 90 Stat. 724).

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

Section 15(1) of the Endangered Species Act authorizes appropriations to the Department of the Interior to carry out functions and responsibilities under the act other than grant-in-aid to States. The Act originally authorized an amount not to exceed \$4 million in fiscal year 1974, \$8 million in fiscal year 1975 and \$10 million in FY 1976. An amendment June 30, 1976 (Public Law 94-325) extended the authorization at an amount not to exceed \$1.8 million for the transition period, July 1, 1976, through September 30, 1976, and \$25 million per year for fiscal year 1977 and fiscal year 1978. An amendment November 10, 1978 (Public Law 95-632) extended the authorization an amount not to exceed \$23 million for 1979 and not to exceed \$12.5 million for the first 6 months of fiscal year 1980. Our proposal would extend the authorization at amounts not to exceed \$10,332,000 for the full 1980 fiscal year, and such sums as may be necessary for fiscal year 1981 and fiscal year 1982.

Congressional concern about rapidly deteriorating fish, wildlife and plant habitat, indiscriminate utilization of plants and animals and

increasing numbers of species threatened with extinction resulted in a series of legislative actions culminating in enactment of the Endangered Species Act of 1973, December 28, 1973 (16 U.S.C. 1531-1543; 87 Stat. 884). The act repealed the Endangered Species Conservation Act of 1969 (83 Stat. 275), broadened Federal responsibilities to list species and increased Federal authorizations and programs for insuring the survival of species.

The primary purpose of the endangered species program as directed by the 1973 Act is to prevent plant and animal species endangerment and extinctions caused by man's influence on ecosystems, and to return the species to the point where they are viable components of their ecosystem. Man's activities threaten a growing number of species with extinction, and it appears that the number of extinctions has increased at a rate paralleling human population growth. For the United States there appear to be some 200 species going extinct per decade and an even greater number entering the endangered category. If this rate applies worldwide, an estimated 3,000 extinctions will occur each decade.

Appropriations provided under the authority of section 15 are divided among four programs—Listing, Protection, Consultation and Exemptions, and Maintenance and Recovery.

Listing species of plants and animals as Endangered or Threatened is the most basic function of the Endangered Species Program. Species must be listed before they can receive the other benefits provided by the act. For some species, listing alone will provide adequate protection. Six hundred and ninety-four species have been listed through fiscal year 1978 of which 637 are endangered and 57 are threatened. During fiscal year 1978, 75 species surveys were initiated to obtain status information to support species listings. By the end of fiscal year 1982, 100 species surveys will be initiated annually. Although there was no formal review of the current status of listed species in fiscal year 1978, by the end of fiscal year 1982, 200 species per year will be reviewed in accordance with the five-year review requirement of the amendments to the act.

The protection program provides for the detection and prosecution of violations under the act and Convention on International Trade in Endangered Species of Wild Fauna and Flora. Surveillance of areas of concentration of native endangered species to prevent taking occurs through the use of law enforcement strategy plans. During fiscal year 1978, 27 strategy plans benefiting 13 species were implemented and by the end of fiscal year 1982, 45 plans benefiting 30 species will be implemented annually. In order to control the importation and exportation of listed and Convention species, special agents and inspectors are assigned to designated and non-designated ports of entry. During fiscal year 1978 approximately 47,000 wildlife shipments were inspected to detect possible act and Convention violations. By the end of 1982, approximately 60,000 wildlife shipments will be inspected per year. In addition to detection and prosecution of violations, the protection program also involves the issuance and investigation of permits. These permits exempt certain activities for scientific purposes or for enhancing the propagation or survival of listed species from complying with the act. In fiscal year 1978, 5,463 permit appli-

cations were reviewed. By fiscal year 1982, we project that 7,000 permit applications will be reviewed annually.

The consultation and exemption program provides both informal and formal assistance to other Federal agencies to help them insure that the actions do not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of its critical habitat. During fiscal year 1978, approximately 400 formal and 1,000 informal consultations were conducted. By the end of fiscal year 1982, 800 formal and 4,200 informal consultations will be conducted per year. As the provision allowing for exemptions to section 7 has only recently been enacted, we have not been able to estimate the number of exemption applications that will be submitted.

The Maintenance and Recovery program promotes the conservation and survival of endangered and threatened species through the development and implementation of recovery plans or programs identifying species management and research needs. During fiscal year 1978, development was initiated on nine new recovery plans bringing the total number of plans completed or under development to 70. Implementation of recovery plans currently benefit 75 species. By the end of fiscal year 1982 development will be initiated on 100 new recovery plans per year and more than 250 plans will be completed or under development. Implementation of recovery plans in fiscal year 1982 will benefit 125 species.

We urge enactment of this proposed legislation in order that we may continue in our efforts to preserve our living natural resources. The Office of Management and Budget has advised that enactment of this legislation would be in accord with the President's program. Sincerely,

ROBERT HERRST,
Assistant Secretary.

Enclosure.

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

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That section 15(1) of the Endangered Species Act of 1973, (16 U.S.C. 1542) as amended is further amended by striking all that follows the words "September 30, 1979," and inserting in lieu thereof the following: "not to exceed \$19,332,000 for the fiscal year ending September 30, 1980, and such sums as may be necessary for the fiscal year ending September 30, 1981, and the fiscal year ending September 30, 1982."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):
Secs. 7(q), 10(f), and 15 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536(q), 1539(f), 1542).

Sec. 7. * * *
(q) AUTHORIZATION.—[There is authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e) (f), (g), and (h) of this section not to exceed \$600,000 for fiscal year 1979, and not to exceed \$300,000 for the period beginning October 1, 1979, and ending March 31, 1980.] *There are authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g), and (h) of this section not to exceed \$600,000 for each of fiscal years 1979, 1980, 1981, and 1982.* The Chairman of the Committee shall report to the Congress before the end of fiscal year 1979 with respect to the adequacy of the budget authority contained in this subsection.

Sec. 10. * * *
(f) (1) As used in this subsection—

- (A) The term "pre-Act endangered species part" means—
- (i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or
 - (ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.
- (B) The term "scrimshaw product" means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.
- (2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

- (A) The prohibition on exportation from the United States set forth in section 9(a) (1) (A) of this Act.
- (B) Any prohibition set forth in section 9(a) (1) (E) or (F) of this Act.
- (3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—
 - (A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;
 - (B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;
 - (C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product is in fact such a part; and
 - (D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

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

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

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

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); and

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

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

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

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

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

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

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

(7) Nothing in this subsection shall be construed to—
(A) exonerate any person from any act committed in violation of paragraphs (1) (A), (1) (E), or (1) (F) of section 9(a) prior to the date of enactment of this subsection; or

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

(8) (A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

AUTHORIZATION OF APPROPRIATIONS

Sec. 15. Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

(1) not to exceed \$25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed \$23,000,000 for the fiscal year ending September 30, 1979, and not to exceed \$12,500,000 for the period beginning October 1, 1979, and ending March 31, 1980.

(2) not to exceed \$5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed \$2,500,000 for the fiscal year ending September 30, 1979, and to exceed \$12,500,000 for the period beginning October 1, 1979 and ending March 31, 1980, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

AUTHORIZATION OF APPROPRIATIONS

Sec. 15. Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

(1) not to exceed \$23,000,000 for fiscal year 1979, and not to exceed \$25,000,000 for each of fiscal years 1980, 1981, and 1982, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

(2) not to exceed \$2,500,000 for fiscal year 1979, and not to exceed \$3,000,000 for each of fiscal years 1980, 1981, and 1982, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.