

[From the Congressional Record, Sept. 20, 1979]

HOUSE COMMITTEE ON RULES CLEARED H.R. 2218; REFERRED TO THE HOUSE CALENDAR

Mr. Frost, Committee on Rules, House Resolution 417, Resolution providing for the consideration of H.R. 2218. A bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982 (Rept. No. 96-456). Referred to the House Calendar.

PROPOSED AMENDMENT TO H.R. 2218 SUBMITTED BY MR. BRAVUX

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

By Mr. BRAVUX.

—Page 3, after line 2 insert the following:

Sec. 3. Section 8(11) of the Endangered Species Act of 1973 (16 U.S.C. 1532 (11)) is amended by striking out "(A)" and all that follows thereafter and inserting in lieu thereof "violate section 7(a) (2)".

Sec. 4. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by amending subsection (f) (2) (B) (1) to read as follows:

"(1) not less than 60 days before the effective date of the regulation, publish—

"(I) the text of the proposed regulation in the Federal Register, and

"(II) if the proposed regulation specifies any critical habitat, general notice of the regulation (including a summary of the text) in a newspaper of general circulation within or adjacent to such habitat:";

(2) by amending subsection (f) (2) (C) (ii) —

(A) by striking out "subsection (b) (A), (B), and (C)" and inserting in lieu thereof "subsection (b) (1) (A), (B), and (C)";

(B) by striking out "120-day period" each place it appears therein and inserting in lieu thereof "225-day period"; and

(C) by inserting at the end thereof the following new sentence: "If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best scientific and commercial data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it."

(3) by adding at the end thereof the following new subsection:

"(h) GUIDELINES AND PROCEDURES.—The Secretary shall develop and implement guidelines and procedures to ensure that the purposes of this section are achieved efficiently and effectively. Such guidelines and procedures shall include, but are not limited to—

"(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (c) (2) of this section;

"(2) criteria for making the findings required under such subsection with respect to petitions;

"(3) a ranking system to ensure that species facing a high degree of threat receive priority review for listing; and

"(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (g) of this section."

Sec. 5. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is further amended—

(1) by amending subsection (a) —

(A) by striking out "(a) CONSULTATION.—" and inserting in lieu thereof "(a) FEDERAL AGENCY ACTORS AND CONSULTATIONS.—(1)";

(B) by striking out the third sentence thereof; and

(C) by adding at the end thereof the following:

"(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an agency action) is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

"(3) For the purposes of paragraph (2) the term 'endangered species and threatened species' includes every species of fish or wildlife or plant that is listed or proposed to be listed under section 4; except that paragraph (2) shall cease to apply for purposes of an agency action to any species so proposed for listing unless, within 90 days after consultation regarding the agency action is concluded, the Secretary publishes in the Federal Register a final regulation listing such species."

(2) by amending each of subsections (b), (c), (d), (e) (2), (f), (g) (1) and (5), (h) (1), and (m) by striking out "subsection (a)" wherever it appears therein and inserting in lieu thereof "subsection (a) (2)".

(3) by further amending subsection (c) —

(A) by inserting "(1)" immediately after "BIOLOGICAL ASSESSMENT.—", and

(B) by adding at the end thereof the following new paragraph:

"(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in consultation with the Secretary and under the supervision of the appropriate Federal agency."

(4) by further amending subsection (g) (1) by striking out "may jeopardize" and all that follows thereafter in the first sentence thereof and inserting in lieu thereof "would violate subsection (a) (2)";

(5) by amending subsection (g) (3) (A) by striking out "process," and inserting in lieu thereof "process; or, in the case of an agency action involving a permit or license applicant, not later than 90 days after the date on which the Federal agency concerned takes final agency action, for purposes of chapter 7 of title 5, United States Code, with respect to the issuance of the permit or license";

(6) by amending subsection (g) (3) by redesignating subparagraph (B) as subparagraph (C), and by inserting immediately after subparagraph (A) the following new subparagraph:

"(B) If more than one application for exemption is filed for the same agency action, the same review board shall be convened for each application and shall consider each such application in the manner set forth in paragraph (5).";

(7) by amending subsection (g) (5) —

(A) by redesignating clause (1) and (2) as clauses (A) and (B), respectively;

(B) by striking out "such exemption applicant" in clause (B) (as to redesignated) and inserting in lieu thereof "the Federal agency or exemption applicant, as the case may be"; and

(C) by redesignating subclasses (A), (B), and (C) as subclasses (1), (II), and (III), respectively; and

(8) by amending subsection (h) —

(A) by amending paragraph (2) (A) to read as follows:

"(2) (A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute, but only if a biological assessment has been conducted under subsection (c) with respect to such agency action, a permanent exemption with respect to all endangered or threatened species for the purposes of completing

such agency action, regardless whether the species was identified in the biological assessment"; and

(B) by amending the first sentence of paragraph (2) (B) to read as follows: "An exemption shall not be permanent under subparagraph (A) if the Secretary finds, on the basis of the best scientific and commercial data available to him, that the exemption will result in the extinction of a species that was not the subject of the consultation under subsection (a) (2) relating to the agency action concerned or was not identified in any biological assessment that was prepared under subsection (c) before, or in conjunction with, the Committee consideration relating to the exemption."

Sec. 6. The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) is further amended—

- (1) by striking out subsection (e) of section 8;
- (2) by adding immediately after section 8 the following new section:

"CONVENTION IMPLEMENTATION"

"Sec. 8A. (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the Secretary) is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

"(b) MANAGEMENT AUTHORITY FUNCTIONS.—For purposes of the Convention, the Management Authority shall carry out, but is not limited to carrying out, the following functions:

"(1) Issue permits and certificates as required by the Convention.

"(2) Apply to each permit or certificate that authorizes the importation, exportation, or introduction from the sea of a specimen of any species included in Appendix I of the Convention appropriate conditions and restrictions so that—

"(A) the importation will be for purposes that are not detrimental to the survival of the species of which the specimen is a member;

"(B) the exportation or introduction from the sea will not be detrimental to the survival of such species; and

"(C) in the case of importation or introduction from the sea, the specimen will not be used primarily for commercial purposes.

"(3) Apply to each permit or certificate that authorizes the exportation or introduction from the sea of a specimen of any species included in Appendix II of the Convention appropriate conditions and restrictions so that trade in other species listed in either—

"(A) Appendix I of the Convention; or

"(B) Appendix II of the Convention pursuant to paragraph 2(a) of Article II thereto; will be brought under effective control.

"(4) Apply to each permit or certificate that authorizes the exportation or introduction from the sea of a specimen of any species included in Appendix II of the Convention pursuant to paragraph 2(a) of Article II thereto appropriate conditions and restrictions so that the exportation or introduction from the sea will not be detrimental to the survival of the species of which the specimen is a member.

"(c) SCIENTIFIC AUTHORITY FUNCTIONS.—For purposes of the Convention, the Scientific Authority shall carry out only the following functions:

"(1) Advise the Management Authority—

"(A) whether the importation of a specimen of any species included in Appendix I of the Convention will be for purposes that are not detrimental to the survival of the species of which the specimen is a member; and

"(B) if such specimen is a living specimen, whether the proposed recipient of the specimen is suitably equipped to house and care for the specimen.

"(2) Advise the Management Authority whether the exportation or introduction from the sea of a specimen of any species included in Appendix I or II of the Convention (except species included pursuant to paragraph 2(b) of Article II thereto) will not be detrimental to the survival of the species of which the specimen is a member.

"(3) Recommend to the Management Authority conditions and resolutions appropriate and reduction appropriate to carry out paragraphs (3) and (4) of subsection (b).

"(4) Monitor export permits referred to in paragraphs (3) and (4) of subsection (b) and the actual exports of specimens made under the authority of such permits and, if the Scientific Authority determines that the exportation of any species included in Appendix II of the Convention should be limited in order to maintain such species at a level well above the level at which the species might become eligible for inclusion in Appendix I, recommend to the Management Authority suitable measures that should be considered in the granting of export permits for specimens of any such species.

The Scientific Authority shall base the advice and recommendations required of it under this subsection on the best available scientific and commercial data. Advice given by the Scientific Authority under paragraphs (1) or (2) may not be conditioned upon the acceptance of recommendations made by it under paragraph (3) with respect to the species concerned.

"(d) ADVISORY PANEL.—(1) There is established the Endangered Species Advisory Panel (hereinafter in this subsection referred to as the Panel).

"(2) The Panel shall be composed of the Director of the United States Fish and Wildlife Service, who shall also serve as the chairman of the Panel, and an even number (but not more than 8) of other members appointed by, and who serve at the pleasure of, the Secretary. No individual is eligible for appointment as a member of the Panel unless that individual is knowledgeable or experienced in the conservation of wild fauna or flora.

"(3) The Panel shall meet at the call of the chairman.

"(4) The Secretary shall provide to the Panel necessary staff and administrative support.

"(5) The members of the Panel, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-15 of the General Schedule when engaged in the actual performance of duties of the Panel. Each member of the Panel shall be reimbursed for actual expenses incurred in the performance of such duties.

"(6) The Panel shall provide technical advice to the Management Authority and to the Scientific Authority on matters arising in the administration of their respective functions under the Convention.

"(7) The Federal Advisory Committee Act does not apply to the activities of the Panel.

"(e) WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—The President shall designate those agencies of the Federal Government that shall act on behalf of, and represent the United States in all regards as required by the Convention on Nature Protection and Wilderness Preservation in the Western Hemisphere; and

"(3) by amending the table of contents by inserting immediately after the section title for section 8 the following:

"Sec. 8A. Convention Implementation."

Sec. 7. Section 10(f) of the Endangered Species Act of 1973 (16 U.S.C. 1539 (f)) is amended—

(1) by inserting "unless such exemption is renewed under paragraph (8)" after "certificate" in subparagraph (C); and

(2) by adding at the end thereof the following new paragraphs:

(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."

[From the Congressional Record, Oct. 19, 1979]

HOUSE CONSIDERATION AND APPROVAL OF H. RES. 417, PROVIDING FOR CONSIDERATION OF H.R. 2218, ENDANGERED SPECIES ACT AMENDMENTS, 1980-82

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 417 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 417

*Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2218) to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and amendment made in order by this resolution and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries, the bill shall be read for amendment under the five-minute rule. In lieu of the amendment recommended by the Committee on Merchant Marine and Fisheries now printed on page 3, line 3 through page 4, line 2 of the bill, it shall be in order to consider an amendment printed in the Congressional Record of September 20, 1979, by Representative Breaux, and all points of order against said amendment for failure to comply with the provisions of clause 7, rule XVI, are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the one motion to recommit. After the passage of H.R. 2218, it shall be in order in the House to move to take from the Speaker's table the bill S. 1143 and to move to strike out all after the enacting clause of the said Senate bill and insert in lieu thereof the provisions contained in H.R. 2218 as passed by the House.

The SPEAKER pro tempore. The gentleman from Texas (Mr. Frost) is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Maryland (Mr. Bauman), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 417 is an open rule providing for the consideration of H.R. 2218 which authorizes appropriations for the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982.

The rule provides for 1 hour of general debate with the time to be equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries. The resolution also makes in order, in lieu of the amendment recommended by the Merchant Marine Committee now printed in the bill, an amendment which was printed in the Congressional Record of September 20 by Mr. Breaux, the chairman of the Fisheries and Wildlife Subcommittee. As introduced, H.R. 2218 was a simple authorization for fiscal years 1980 through 1982. However, the proposed amendments amend several provisions of the Endangered Species Act, and as such, are not germane to the bill as introduced. The resolution provides a waiver of clause 7, rule XVI, the germaneness clause, to allow consideration of these amendments.

Should the House pass H.R. 2218, the resolution will allow the House to consider S. 1143, the Senate's Endangered Species Act authorization. The rule will allow the House to strike all after the enacting clause of the Senate bill and to substitute the language of the House passed bill.

H.R. 2218 authorizes \$28.3 million for the activities of the Department of Interior and Commerce under the Endangered Species Act. Included in the authorization is \$600,000 for the activities of the Endangered Species Committee and Review Boards which were created by the 1978 amendments to the act.

Mr. Speaker, House Resolution 417 is a simple open rule which will allow for amendments to the authorization amounts as well as amendments to the amendments proposed by Mr. Breaux. I would urge my colleagues to adopt this rule so that we may proceed to the consideration of H.R. 2218.

Mr. BAUMAN. Mr. Speaker, the gentleman from Texas has done an adequate job of describing the rule we have before us. I would therefore like to take a few moments to draw to the attention of my colleagues several of the provisions of H.R. 2218 and the Endangered Species Act in general.

First, the bill authorizes appropriations of \$25.6 million to the Department of the Interior and \$3 million to the Department of Commerce in each of the next 3 fiscal years to carry out their responsibilities under the Endangered Species Act of 1973. This results in a total authorization of \$85.8 million over the next 3 years. This is an exceptionally large sum especially when one calls to mind the endless stories of questionable actions taken by the Endangered Species Committee concerning the supposed destruction of the habitat of so-called endangered species.

Furthermore, Mr. Speaker, the Members of this body should be aware of the findings of the GAO in their report of July 2, 1979 entitled, "Endangered Species—A Controversial Issue Needing Resolution." The report first states that the cornerstone of effective implementation of the Endangered Species Act is the process used by the Fish and Wildlife Service to determine which species should be listed as endangered or threatened and which species should be reclassified or removed from the lists. Unfortunately GAO found that FWS had not consistently applied existing policies, procedures, and practices used to list species, nor had they periodically reviewed listed species or established criteria to determine if their status had changed.

To continue, the Endangered Species Act provides that Federal agencies which determine that their projects and programs may affect endangered or threatened species must consult with the Fish and Wildlife Service to resolve any potential conflicts. GAO found that FWS has continually improved the consultation process; however, conflicts involving ongoing and planned projects and programs had not always been identified or resolved promptly. The onerous bureaucracy of the Department of the Interior has again thwarted the attempts and intention of the Congress to serve the best interests of the American people.

Finally, GAO found that further legislative changes to the Endangered Species Act are needed to better balance species protection and

economic growth and development. Currently the Endangered Species Act permits the Fish and Wildlife Service to continue to list geographically limited populations of species as endangered or threatened even though they may not be endangered or threatened throughout all or a significant portion of their existing ranges or their overall status are not known. Furthermore, the present act does not make clear whether permanent exemptions are available for all Federal projects and programs. For some projects and programs the lengthy consultation process may have to be initiated and the project stopped each time the affected species is listed and a potential conflict is identified. Currently our Nation is faced with rampant inflation existing side by side with a growing recession. Now is not the time to hinder economic growth and development with poorly drafted and poorly implemented legislation.

It should be noted, Mr. Speaker, that the Committee on Merchant Marine and Fisheries has conducted oversight on the Endangered Species Act using the GAO report as a guide. The chairman of the full committee, Mr. Murphy, and the chairman of the Subcommittee on Fisheries and Wildlife Conservation, Mr. Breaux, have stated that amendments will be offered to correct the deficiencies I have mentioned. I anxiously await those amendments and urge my colleagues to support them.

In conclusion, Mr. Speaker, I would like to reiterate to the Members of this body the high cost of this legislation and the mismanagement of the act by the bureaucracy. Without doubt the Endangered Species Act is a prime candidate for sunset and legislative veto provisions.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from Louisiana (Mr. Breaux).

Mr. BREAUX. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, just by way of explanation for the members of the committee on this rule, let me say first that I, of course, support the rule.

One might say that the procedures under which this legislation is brought to the floor are somewhat unusual. Considering the time restraints under which the House is acting, I think we handled this in a proper manner.

I would like to point out to the Members of the House that the Endangered Species Act has, of course, had a great deal of controversy in years past. In the last Congress the legislation was reauthorized only for a period of something like 18 months, rather than the normal 3-year authorization period.

When our subcommittee began hearings on the Endangered Species Act this year, we started off with the attitude of having some very detailed oversight hearings on the legislation to see if amendments that had been adopted in the last Congress were working in the manner in which this Congress intended them to work. Of course, with a May 15 deadline, it was impossible for our subcommittee and the full committee to adequately have oversight committee hearings and at the same time meet that deadline.

So we made a commitment to the Members of the House that we would go ahead and report out a normal 3-year reauthorization bill

with this legislation and then follow that up with extensive oversight hearings. The amendments that are in order under this rule today are a result of those oversight hearings which were 3 days in length and which I think focused in on some of the real concerns that had previously been expressed by Members of the House, including bringing in the General Accounting Office to present to our committee its findings that had been adopted in the last Congress were working in the manner after an extensive study on the workings of the Endangered Species Act.

These amendments which I will be offering are, I think—and the gentleman from New Jersey (Mr. Forsythe) can speak for this—supported by the ranking minority member of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, and they are also strongly supported by the chairman of the full committee. They, of course, were not voted on by our committee because we had to report out the reauthorization bill prior to the time we were in a position to write the amendments which we are now recommending and which will be offered at an appropriate time when this legislation is brought up.

I think the amendments are good. We needed a waiver of points of order merely because of the fact that they would normally be non-germane in a routine 3-year authorization bill.

Mr. Speaker, this is an open rule. I strongly support the rule, and I urge the Members to support the rule and the legislation.

Mr. DUNCAN of Tennessee. Mr. Speaker, I have not had a chance to read the proposed amendments, but I understand that none of the amendments change in any way the present authorization for projects that are now exempt from the Endangered Species Act. Is that correct?

Mr. BREAUX. Mr. Speaker, I would assure the gentleman that is correct. I would further assure the gentleman that none of the amendments affect Tellico Dam in Tennessee.

Mr. DUNCAN of Tennessee. Mr. Speaker, I thank the gentleman. Mr. Frost. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MORTT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 4, rule XI and the Chair's prior announcement, further proceedings on this vote will be postponed.

The point of no quorum is considered withdrawn.

The SPEAKER pro tempore. The unfinished business is agreeing to the resolution, House Resolution 417.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the resolution.

Mr. MORTT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make a point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present. The Sergeant at Arms will notify absent Members. The vote was taken by electronic device, and there were—yeas 320, nays 9, not voting 104, as follows:

[Roll No. 586]

YEAS—320

Abdnor	Collins, Tex.	Gaydos
Albosta	Conte	Gephardt
Albro	Corcoran	Ghaino
Anderson, Calif.	Corman	Gilman
Andrews, N.C.	Coughlin	Gingrich
Annunzio	Courter	Ginn
Anthony	Crane, Daniel	Glckman
Applegate	D'Amours	Goldwater
Archer	Daniel, Dan	Gonzalez
Ashbrook	Daniel, R. W.	Goodling
Aspin	Danielson	Gore
Atkinson	Dannemeyer	Gradison
Baflis	Daschle	Gramm
Baldus	Davis, Mich.	Grassley
Barnard	de la Garza	Gray
Barnes	Deckard	Green
Bauman	Dellums	Grieham
Beard, R. I.	Derrick	Guarini
Bedell	Derwinski	Gundger
Benjamin	Dingell	Guyet
Bennett	Dixon	Hall, Ohio
Bereuter	Dodd	Hall, Tex.
Bethune	Donnelly	Hamilton
Beverly	Dornan	Hammer Schmidt
Bevill	Duncan, Tenn.	Hance
Bingham	Eckhardt	Hanley
Bianchard	Edwards, Ala.	Hansen
Boner	Edwards, Calif.	Harkin
Bowen	Edwards, Okla.	Harris
Brademas	Emery	Hawkins
Breaux	English	Heckler
Brinkley	Erdahl	Heffel
Brodhead	Erlenborn	Hightower
Brooks	Ertel	Hillis
Broomfield	Evans, Del.	Hillis
Broyhill	Evans, Ga.	Hinson
Buchanan	Evans, Ind.	Holt
Burison	Fary	Hopkins
Burton, Phillip	Fascell	Howard
Butler	Fenwick	Hubbard
Byron	Ferraro	Hughes
Campanell	Findley	Hutto
Carter	Fisher	Hyde
Cavanaugh	Fithian	Ichord
Chappell	Foley	Jacobs
Clausen	Ford, Mich.	Jeffords
Clinger	Ford, Tenn.	Jeffries
Coelho	Forsythe	Jenkins
Colman	Fountain	Jeanette
	Fowler	Johnson, Calif.
	Frenzel	Jones, Okla.
	Frost	Jones, Tenn.
		Kastenmeier

YEAS—Continued

Kazen	Murtha	Snowe
Kelly	Myers, Ind.	Snyder
Kemp	Myers, Pa.	Solarz
Kildee	Natcher	Solomon
Klindess	Neal	Spellman
Kramer	Nelson	Spence
LaFalce	Nichols	St Germain
Lagomarsino	Nowak	Stagers
Latta	O'Brien	Stangeland
Leach, Iowa	Oberslar	Stanton
Leath, Tex.	Obey	Stark
Lederer	Otinger	Stenholm
Iae	Panetta	Stewart
Lehman	Pashayan	Stockman
Lehard	Patten	Stokes
Levitas	Patterson	Stratton
Lewis	Paul	Stump
Livingston	Pease	Swift
Lloyd	Perkins	Symms
Loeffer	Petri	Synar
Long, La.	Peyster	Tauke
Lott	Preyer	Taylor
Lukens	Pribe	Thomas
Luken	Pursell	Traxler
Luken	Rangel	Trible
McClory	Ratcliff	Udall
McCluskey	Ratcliff	Ullman
McCormack	Regula	Vander Jagt
McHugh	Reuss	Vandenberg
McKay	Rhodes	Vanik
McKinney	Rhodes	Vento
Madigan	Rinaldo	Volkmer
Maguire	Ritter	Walgren
Markey	Robinson	Walker
Marks	Roe	Wampler
Marlenee	Rose	Warman
Martlett	Roth	Weaver
Martin	Royer	Wells
Mathis	Rudd	White
Matsui	Russo	Whitehurst
Mattox	Sabo	Whitely
Mavroules	Sattenfeld	Whittaker
Mezzoli	Sawyer	Williams, Mont.
Mica	Schroeder	Wolf
Mikulski	Schulze	Wolpe
Miller, Ohio	Sebelius	Wright
Mineta	Sensenbrenner	Wyatt
Minish	Shannon	Wyatt
Mitchell, Md.	Sharp	Wydler
Mitchell, N. Y.	Shelby	Wylie
Montgomery	Shumway	Yates
Moore	Shuster	Yatron
Moorehead, Calif.	Simon	Young, Alaska
Mohr	Slmon	Young, Mo.
Murphy, N. Y.	Stack	Zablocki
Murphy, Pa.	Stack	
	Smith, Nebr.	

NAYS—9

Burton, John  
Hollenbeck  
Lowry

McDonald  
Stack  
Studds

Abbado	Fazio
Alexander	Fish
Anderson, Ill.	Filippo
Ashley	Flood
AutCoin	Florida
Badham	Fuqua
Beard, Tenn.	Fugate
Blagel	Garcia
Boggs	Gibbons
Bolling	Hagedorn
Bouquard	Harsna
Brown, Calif.	Helmer
Brown, Ohio	Holland
Burgener	Holtzman
Carr	Horton
Cheney	Huckaby
Chisholm	Ireland
Clay	Johnson, Colo.
Cleveland	Jones, N.C.
Collins, Ill.	Kogovsek
Conable	Kostmayer
Conyers	Leach, Ia.
Cotter	Lent
Crane, Philip	Long, Md.
Davis, S. C.	Lujan
Devine	Lundine
Dicks	McDade
Dickinson	McGwen
Diggs	Michel
Dougherty	Miller, Calif.
Downey	Moakley
Drinan	Moffett
Duncan, Oreg.	Moltonan
Early	Moorhead, Pa.
Edgar	Murphy, Ill.
	Nedzi

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Winn.	Mr. Fazio with Mr. Young of Florida.
Mr. Garcia with Mr. Horton.	Mr. Long of Maryland with Mr. McDade.
Mr. Moffett with Mr. Pritchard.	Mr. Charles H. Wilson of California with Mr. Quayle.
Mr. Van Deerlin with Mr. Rallsback.	Mr. Thompson with Mr. Williams of Ohio.
Mr. Steed with Mr. Roussetot.	Mr. Pepper with Mr. Bob Wilson.
Mr. Rodino with Mr. Fish.	Mr. Walkins with Mr. Harsha.
Mr. Rostenkowski with Mr. Burgener.	Mr. Santini with Mr. Devine.
Mr. Filipo with Mr. Beard of Tennessee.	Mr. Downey with Mr. Anderson of Illinois.
Mr. Downey with Mr. Badham.	Mr. Roybal with Mr. Brown of Ohio.
Mr. Zereteli with Mr. Lent.	Mr. Charles Wilson of Texas with Mr. Quillen.
Mr. Moakley with Mr. Lujan.	Mr. Kostmayer with Mr. Dickinson.
Mr. Holtzman with Mr. McGwen.	Mr. Kogovsek with Mr. Hagedorn.
Mr. Kogovsek with Mr. Hagedorn.	Mr. Gibbons with Mr. Conable.

Nolan	Robertson
Oakar	Pepper
Phillips	Pickle
Pritchard	Quayle
Quillen	Rahall
Rahall	Rallsback
Richmond	Richmond
Roberts	Rodino
Rosenthal	Rosenkowi
Roussetot	Roybal
Schauer	Sandall
Smith, Iowa	Steed
Thompson	Treen
Van Deerlin	Walkins
Williams, Ohio	Wilson, Bob
Wilson, C. H.	Wirth
Young, Fla.	Zereteli

Mr. Beher with Mr. Dougherty.  
 Mr. Lundine with Mr. Cheney.  
 Mr. Miller of California with Mr. Roberts.  
 Mr. Ireland with Mr. Cleveland.  
 Mr. Jones of North Carolina with Mr. Pickle.  
 Mr. Holland with Mr. Philip M. Crane.  
 Mr. Dicks with Mr. Rahall.  
 Mr. Drinan with Mr. Rosenthal.  
 Mrs. Collins of Illinois with Mr. Richmond.  
 Mr. Carr with Ms. Oakar.  
 Mrs. Bouquard with Mr. Florio.  
 Mrs. Boggs with Mr. Florio.  
 Mr. Cotter with Mr. Davis of South Carolina.  
 Mr. Boland with Mr. Edgar.  
 Mr. Huckaby with Mr. Fugate.  
 Mr. Clay with Mr. Duncan of Oregon.  
 Mrs. Chisholm with Mr. Brown of California.  
 Mr. Blagel with Mr. AutCoin.  
 Mr. Ashley with Mr. Alexander.  
 Mr. Conyers with Mr. Moltonan.  
 Mr. Moorhead of Pennsylvania with Mr. Schauer.  
 Mr. Nedzi with Mr. Wirth.  
 Mr. Murphy of Illinois with Mr. Smith of Iowa.

So the resolution was agreed to.  
 The result of the vote was announced as above recorded.  
 A motion to reconsider was laid on the table.

PROPOSED AMENDMENT BY Mr. BREAUX TO THE AMENDMENT TO H.R. 2218 OFFERED BY Mr. BREAUX

H.R. 2218

BY Mr. BREAUX:  
 (Amendment to H.R. 2218 offered by Mr. Breaux)  
 —Page 7, strike out line 12 and all that follows down through and including line 24 on page 11, and insert the following:

“CONVENTION IMPLICATION

“Sec. 8A. (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the ‘Secretary’) is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

“(b) MANAGEMENT AUTHORITY FUNCTIONS.—The Secretary is authorized and directed to do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

“(c) SCIENTIFIC AUTHORITY FUNCTIONS.—The Secretary is authorized and directed to do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

“(d) ENDANGERED SPECIES SCIENTIFIC AUTHORITY COMMISSION.—(1) There is hereby established within the U.S. Fish and Wildlife Service the Endangered Species Scientific Authority Commission (hereinafter in this section referred to as the ‘Commission’).

“(2) The Commission shall be composed of scientifically qualified agency representatives. Each of the following shall designate one such representative from his agency:

“(A) The Secretary of the Interior, whose representative shall be the Chairman.

“(B) The Secretary of Agriculture.

“(C) The Secretary of Commerce.

“(D) The Secretary of Health, Education, and Welfare.

“(E) The Director of the National Science Foundation.

“(F) The Chairman of the Council on Environmental Quality.

"(G) The Secretary of the Smithsonian Institution is invited to designate a representative.

"(3) The Commission shall make recommendations to the Director of the U.S. Fish and Wildlife Service on all matters pertaining to the responsibilities of the Scientific Authority under the terms of the Convention.

"(4) In the discharge of its responsibilities, the Commission shall, to the extent practicable ascertain the views of, and utilize the expertise of, the governmental and nongovernmental scientific communities, State agencies responsible for the conservation of wild fauna or flora, humane groups, zoological and botanical institutions, recreational and commercial interests, the conservation community and others as appropriate.

"(5) The Secretary shall designate an Executive Secretary for the Commission, and shall provide the necessary staff and administrative support for the Commission.

[From the Congressional Record, Oct. 22, 1979]  
HOUSE CONSIDERATION OF H.R. 2218

#### ENDANGERED SPECIES ACT AUTHORIZATIONS

Mr. BOWEN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2218) to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. Bowen).

#### IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2218, with Mr. FASCELL, Chairman pro tempore, in the chair. The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Mississippi (Mr. Bowen) will be recognized for 30 minutes, and the gentleman from New Jersey (Mr. FORTSYTHE) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. Bowen). Mr. BOWEN. Mr. Chairman, I rise in support of H.R. 2218. This bill authorizes appropriations to carry out the Endangered Species Act through fiscal year 1982. The bill authorizes \$25.6 million to the Department of the Interior and \$3 million to the Department of Commerce in each of the next 3 years. This authorization level is identical to that approved last year.

The Endangered Species Act has just completed a difficult 3 years. The act has been subjected to considerable disrepute since the January 1977 decision of the Sixth Circuit Court of Appeals in the snail darter case. To some extent the act warranted the public attention that it received. As originally constructed, the act was inflexible—it did not adequately provide for a mechanism to balance economic and environmental interests.

The 1978 Amendments to the Endangered Species Act changed all of this, however. The 1978 amendments significantly altered the struc-

ture of the act by establishing a procedure to balance the interest in conserving endangered species against other legitimate national concerns. The amendments created a seven-member committee, composed of Federal and State representatives, to resolve conflicts between endangered species and development activities. The membership of this committee was carefully balanced to insure that both environmental and developmental concerns are adequately represented. The committee includes the Secretary of Army, the Secretary of Agriculture, the Chairman of the Council of Economic Advisors, the Administrator of the Environmental Protection Agency, the Secretary of the Interior, the Administrator of the National Oceanic and Atmospheric Administration, and a representative of the Governor of the affected State.

To date this committee has considered two exemption applications. Their record is one and one. It granted an exemption to the Grayrocks Reservoir project in Wyoming which will provide cooling water to a coal-fired electric generating facility, and it voted unanimously to deny an exemption for the Tellico project in Tennessee. Both Houses of Congress, however, recently passed an amendment to the water appropriations bill which essentially negates the decision of the committee in the case of Tellico. A third application is currently proceeding through the exemption process.

All of the evidence thus far indicates that the exemption process is working—that it does insure that economic and environmental concerns are adequately balanced under the Endangered Species Act. I am committed to following the implementation of the 1978 amendments closely to insure that they do work. If further modifications in the act are necessary, we will propose them to the House.

I should point out that in most instances of conflict between an endangered species and some development activity a solution can be developed without ever resorting to the exemption process. The conclusive evidence developed during the course of our oversight hearings this year and last year indicates that the vast majority of the conflicts have been successfully resolved in the consultation process. The consultation process simply involves formal and informal discussions between the developing agency and the wildlife agency to moderate or eliminate the adverse effects of the project.

In some cases minor adjustments to the project can avoid the adverse impact, in other instances, the combination of transplant efforts and active conservation measures effectively eliminates any danger to the species.

Despite the success of the consultation process thus far, we know that it cannot succeed in resolving all problems. That is why the creation of a "safety valve" in the act through the exemption process was such an important addition to the statute.

The 1978 amendments accomplished much more, however, than just creating a safety valve in the act. The amendments also required a number of other important changes in the endangered species program which are designed to insure that the program is run in the manner that Congress intended. The act now requires the preparation of economic impact statements on proposed critical habitat designations, the regular review of the status of all species on the list, and improved notice to all individuals and communities potentially affected by a proposed listing.

Congress has taken a long, hard, and sometime painful look at the Endangered Species Act. The Subcommittee on Fisheries and Wildlife Conservation and the Environment conducted 8 days of oversight hearings on the act last year.

We held 3 more days of hearings this year. The General Accounting Office investigated the operation of the endangered species program. The committee has evaluated the GAO report. In short, the administration of the endangered species program has been analyzed in excruciating detail. I dare say that the endangered species program has received more scrutiny over the last 3 years than any other Federal program.

There have been problems. We are all aware of them. The General Accounting Office has documented some serious management deficiencies. The failure to prioritize listing and recovery actions, inadequate attention to delisting or reclassifying species, and the failure to utilize the best scientific evidence available. I believe that the Department of the Interior has already made real progress in addressing these deficiencies. The amendments that I intend to offer to the bill will make sure that the Department does correct those portions of the program criticized by the GAO.

All of the Members of the House are painfully aware of the so-called failures of the Endangered Species Act—the seemingly never-ending conflict between the small darter and the Tellico Dam. What most Members are not aware of are the successes of the program.

The endangered species program is barely 10 years old. And yet in that time this country has made real progress toward reversing the alarming rate of species extinction in this country and around the world. The American alligator in my district probably typifies better than any other example, the real environmental and yes, economic value of the Endangered Species Act.

The American alligator was listed as an endangered species several years ago. Frankly, it was listed because no one governmental entity had paid sufficient attention to the species to insure that the populations did not suffer from overutilization and loss of habitat. Before long, the alligator, which is a considerable economic resource in parts of my district, began to be reduced to low levels.

The State of Louisiana recognized what was happening to the alligator and supported placing the alligator on the list. That action, combined with a sophisticated recovery program conducted by the State of Louisiana, has brought the alligator back to a point where it is no longer not only endangered—it is not even threatened in many portions of its range.

The State and the Department now predict that there may be as many as 1 million alligators in the Southeastern United States. There are so many alligators in my district that we have considered registering them to vote.

Now alligators may not be a particularly lovely creature but they do play an important role in the ecology of the Louisiana marsh. Aside from man himself, alligators are the top predator in the marsh. More importantly, alligators are an important economic resource in parts of my district. Assuming we can convince the Federal Government to allow us to export alligator hides, trappers in my district will be

able to receive \$20 per foot for top quality alligator hides. These alligators will be harvested under one of the most stringently regulated wildlife conservation programs in the country. These regulations will insure that the alligator population remain at very high levels.

I have gone on at length about the American alligator to emphasize the positive side of the Endangered Species Act. There is a very real and legitimate need for this program. There is a continuing problem of a loss of habitat for wildlife in this country. The Endangered Species Act attempts to slow this loss or at least moderate it.

As I have indicated, I have an amendment which I intend to offer to H.R. 2218. This amendment proposes a number of technical and clarifying amendments to the bill to resolve some of the concerns raised by the General Accounting Office and others since the enactment of the 1978 amendments.

The most significant portion of this amendment is intended to restore some semblance of order and accountability to U.S. trade policy in endangered and threatened wildlife. There is no order and accountability under the existing legal framework.

My amendment addresses an issue entirely separate and apart from the domestic controversies, such as Tellico Dam. The amendment is necessary because the system for carrying out our obligations under the Convention on International Trade in Endangered Flora and Fauna has completely broken down and needs to be restored to working order. The situation is so acute that earlier this year the two Government agencies responsible for implementing the Endangered Species Convention published mutually exclusive and contradictory regulations.

My amendment simply makes the agency which is partly responsible for carrying out obligations under the convention accountable to the Secretary of the Interior. This agency, the Endangered Species Scientific Authority, is currently composed of representatives of seven different agencies. They are accountable to no one—not even the President. In fact, the agency representatives are not even accountable to the agency that they have been presumably appointed to represent.

Some of the Members may have heard allegations that the Breaux amendment abolishes the Scientific Authority, or violates the Endangered Species Convention. Nothing could be more false. I intend to describe this amendment in more detail at the time that it is offered.

The Endangered Species Act is a good, sound conservation program. The act needed amendments last year to make it more flexible and reasonable. It is now time to give the 1978 amendments a chance to work. I urge your support for the authorization of appropriations for this program.

Mr. FONSRYTTE. Mr. Chairman, with the adoption of the Endangered Species Act of 1973, this Nation embarked upon a national policy of conserving and restoring those species of fish and wildlife which have moved to the brink of extinction. Since the enactment of this legislation, 199 species of U.S. Wildlife and 467 foreign species have been listed as endangered. The act requires that the Secretary of the Interior or the Secretary of Commerce, as appropriate, establish a program to insure the recovery of listed species and, therefore, their eventual removal from the endangered list.

Since 1973, considerable progress has been made in protecting threatened and endangered species. In 1973, there were 49 whooping cranes in the wild—there are now 84. In the same period the Aleutian Canada Goose population has increased from 700 to 1,500. The populations of many species which were declining, such as the bald eagle and the peregrine falcon, have now been stabilized.

We have also had a number of disappointments. Despite the best efforts of the Federal agencies involved and of the concerned public, the California condor population continues its slow decline, decreasing from 40 in 1973 to less than 30 today. The red wolf is now probably extinct in the wild, although initial experiments at reintroduction have given some reason for optimism.

In the last few years, substantial questions have been raised regarding the need to balance endangered species conservation with man's demands for increased food, energy, and housing. These concerns led to the passage, in 1978, of a series of amendments which established an Endangered Species Committee to resolve conflicts which arise when a proposed project threatens the habitat or the continued existence of an endangered species.

In the last year, however, we have found several problems associated with the way the 1978 amendments are working. For example, the rights of a permit or license applicant to seek an exemption under the act are not fully protected under the 1978 amendments. There is some confusion in the legislative history as to whether a project exemption is permanent when newly listed species are found in the project area. Also, the emergency rulemaking period is too short to permit compliance with the act's procedural safeguards in the listing of species. To remedy these and other issues, Chairman Breaux will be offering a series of amendments.

The legislation before you today provides funds to the Department of Commerce and the Department of the Interior for their endangered species conservation program and to the Endangered Species Committee. Because of the progress which had been made in the conservation of endangered species and the balance which has been, and which will be, introduced into the act, I urge the adoption of H.R. 2218 with the amendments which will be offered by the chairman of the subcommittee.

Mr. Breaux. Mr. Chairman, the Endangered Species Act we bring to the floor today is a result of 3 days of extensive oversight given in this Congress to determine whether the Endangered Species Act was operating in the manner and under the way in which this Congress intended it to. As the previous speakers have indicated, we made extensive changes to the Endangered Species Act in the last Congress. This committee felt that the first thing we should do in this Congress was to pay particular attention to determine whether the bill and the amendments we passed in the last Congress were operating in the proper manner.

As a result, we reported a bill out of our committee, both the subcommittee and the full committee, as a straight reauthorization bill for 3 years. We then followed that report out with 3 days of oversight hearings, bringing in the General Accounting Office, bringing in others who had particular expertise in the Endangered Species Act. They pointed out some defects in the Endangered Species Act, and as

a result of those hearings the committee felt that it was proper that we should make what I would call minor and technical changes.

As the gentleman from New Jersey (Mr. Forsythe) indicated, I will be offering on the floor a series of amendments en bloc which we feel do address the defects that were pointed out as a result of our oversight hearings.

One of the amendments in particular is a little more controversial than the others, but I think that we have struck a balance and reached a compromise with all of those who are concerned about the matter in which the endangered species scientific authority was operating. I think it is a good and a balanced amendment. Basically that amendment brings the scientific authority in the Department of the Interior as the imagined authority in the Endangered Species Act.

We felt as a committee—I feel as chairman of the subcommittee in particular—that that type of operation is absolutely essential and correct because we found after our oversight hearings the scientific authority really was responsible and answerable to no one within our government. It was not in the Department of the Interior; it was not in the executive branch; it was not under the authority of Congress. It was out by itself in a manner in which no other agency in our government is operating. This amendment, along with others, will bring the scientific authority under the Department of the Interior and allow the Department of the Interior to supervise its actions while at the same time preserving the integrity of the scientific authority and allowing them to do the job that they are guaranteed to do under the Endangered Species International Covenants, to which the United States is a signatory. It gives them no more authority nor any less authority than they receive under the International Treaty on Endangered Species.

Mr. Chairman, I think that this is a balanced bill. I think we have addressed the concerns of some of the Members of Congress who have appeared before our committee who spoke very eloquently on the matter, in which they thought we could improve on the 1973 act. I think this bill is that product and merits the support of all of our colleagues.

Mr. Chairman, I reserve the remainder of my time.

Mr. Sorokov. Mr. Chairman, I want to commend and concur in the remarks of the gentleman from Louisiana (Mr. Breaux) and the gentleman from New Jersey (Mr. Forsythe), but I would also like to point out, Mr. Chairman, that there may be another endangered species that we might consider adding to this list. I spoke earlier in this morning's session about rampant inflation which is breaking the backs of the American people, inflation caused by irresponsible spending by the U.S. Congress. Maybe the time has come when we ought to consider the human animal as an endangered species and particularly those human animals that are known as the American taxpayers. Every year there are more and more people who, in one form or another, are financially dependent on the Federal Government, while at the same time the number of taxpayers is becoming less and less. Perhaps if we added the "American taxpayer" to the endangered species list, it might make the Congress just a little more fiscally responsible when spending the taxpayers' money.

Mr. Oberstar. Mr. Chairman, I commend our chairman for his splendid work, devoting countless hours to the hearings in great depth

which this committee has held both in the 95th Congress and in the 96th Congress, exploring all of the many complicated aspects of the Endangered Species Act. I believe that this legislation should be supported because this committee has acted responsibly last year and again this year in curing some of the defects of the Endangered Species Act which resulted in apparently irreconcilable controversies over the years. We now have a mechanism in place by which controversy can be resolved early in the process of developing our major water resources and other public works projects. That is a monumental advance. It will preserve the integrity of the Endangered Species Act. It will help preserve the species to which this legislation is committed, to preserve those whose existence is endangered by a change in habitat brought about by the Nation's economic advance. The legislation that we have authored in this bill will continue the Endangered Species Act for another 3 years, thereby keeping it under constant control of the Congress, under the watchful eye of the committees charged with the responsibility for this legislation. It is a responsible way to approach this matter. There is now a forum for the Endangered Species Act, a forum for the resolution of conflict, which has not been available in the past. It will preserve the future of those wildlife whose very existence has been threatened, some of which have come close to extinction; and it will also make it possible for the Congress, for the Department of the Interior and other agencies of government to address themselves in a responsible fashion to the basic human, socio-economic needs of this country. I urge the passage of this legislation.

Mr. FORSTNER. Mr. Chairman, I have no further requests for time, and I yield back the remainder of my time.

Mr. BREAVOX. I would just like as a final comment to commend and thank the chairman of the full Committee on Merchant Marine and Fisheries, the gentleman from New York (Mr. Murphy), for his work and cooperation and assistance to the subcommittee as we moved forward with our oversight hearings and reporting this bill to the floor.

Mr. MURPHY of New York. Mr. Chairman, H.R. 2218 would authorize appropriations to carry out the Endangered Species Act through fiscal year 1982. The bill authorizes \$28.6 million per year to the Department of the Interior and Commerce over the next 3 fiscal years to operate the endangered species program.

The endangered species program has been enveloped in controversy over the recent past. We believe that a large part of that controversy is now behind us. Last year the Merchant Marine and Fisheries Committee drafted an amendment to the act which added much-needed flexibility to the statute. Under these amendments any project can be considered for an exemption from the requirements of the act by a seven-member committee. This committee is composed of representatives of several Federal agencies as well as a representative of the State involved. The membership of this committee has been carefully balanced to represent both environmental and developmental concerns.

Although the 1978 amendments were developed after extensive hearings and markup sessions in the Merchant Marine and Fisheries Committee, several Members of the House expressed concerns last year that the House be given an opportunity to review the Endangered Species Act again in the 96th Congress after the General Accounting Office completed their review of the administration of the act.

We have kept the pledge that we made to these members and the House last year. The General Accounting Office report has been completed and oversight hearings on that report have been conducted. The Department of the Interior has initiated steps to correct nearly all of the deficiencies cited by the GAO report.

The GAO and the administration have also suggested several legislative changes to clarify some of the provisions in the 1978 amendments. We have developed several amendments incorporating many of these suggestions.

We believe that the amendments adopted last year are working. The committee is following their implementation closely to make sure that they do work. The amendments addressed the chief deficiency of the act—the absence of any mechanism to balance the legitimate interest in conserving endangered species and the equally important national interest in continued economic growth.

As I have indicated, the 1978 amendments addressed this problem by the creation of a special high-level committee to resolve disputes when they do occur. The amendments did several other important things as well.

The 1978 amendments, for the first time, require the consideration of the economic impact of designating critical habitat. This represents a significant change in the statute, and is aimed at informing local communities of the potential impact of a critical habitat designation.

The 1978 amendments also required several important changes in the notice procedures in the act. The committee discovered last year that all too often the listing of endangered species occurred in a regulatory vacuum. Regulatory proposals were published in the Federal Register and seldom anywhere else. Obviously, notice in the Federal Register does not constitute sufficient notice to individuals and communities that could be potentially impacted by an endangered species listing.

The 1978 amendments addressed this problem by requiring actual notice of critical habitat proposals to units of local government as well as publication in the local newspapers. The amendments also mandate public meetings in the local area on proposals to designate critical habitat.

We believe that all of these changes will serve to provide more local input into the endangered species decisionmaking process. We also believe that these changes will also enhance better understanding of the endangered species program throughout the country. Although the conflicts that have developed under the program are well known and have been widely publicized, these conflicts represent the exception rather than the rule. The undisputed evidence presented to the committee in our oversight hearings suggests that the vast majority of endangered species conflicts can be effectively resolved in the consultation process—without resorting to the courts or to the newly created exemption process. As this fact becomes more understood and acknowledged the fear of the endangered species program will diminish.

The Endangered Species Act is good, sound, and very necessary environmental legislation. I do not believe that any of us here would like to see the bald eagle, the grizzly bear, or the gray wolf vanish. The Endangered Species Act is, in many instances, the only thing that stands between many of these species and extinction. Obviously,

the act as originally written failed to recognize that all too often this Nation is forced to make difficult choices—and the survival of endangered species is one of those difficult choices that has to be made. The amendments adopted last year kept the basic strength and structure of the act, but established a system within which the difficult conflict between habitat preservation and development can be resolved. Mr. Beard of Tennessee, Mr. Chairman, I use in support of the entire package of committee amendments, and wish to compliment the subcommittee chairman, Mr. Breaux, for the close attention to detail in these particular amendments.

On balance, I feel that the Congress passed reasonable, workable amendments to the act last year. It is, of course, too early to determine whether the exemption procedures of the Endangered Species Committee will operate as the Congress intended. However, other changes in the 1978 amendments are certainly improvements. These include increased public participation in the listing process, the consideration of economic impact in determination of critical habitat, and the performance of biological assessments prior to new construction starts.

From my point of view, with the addition of a few changes to the act, as proposed by the committee, I think we can all afford to allow the endangered species program to operate for a few more years before we would need to consider any further amendments.

As Members of the House will recall, one of my amendments adopted last year called for an 18-month reauthorization of the act, so that the Congress would be assured an opportunity to examine a then-promised General Accounting Office report on the endangered species program before passing a 3-year reauthorization.

As GAO witnesses pointed out in recent hearings before Mr. Breaux's subcommittee, the Fish and Wildlife Service's administration of the act has left substantial room for improvement. Recently, after examining the GAO report myself, I introduced H.R. 4841, a bill which I think would correct most of the problems addressed by GAO. Virtually all of this bill is contained within the committee amendments to this reauthorization.

Those provisions of my bill which were adopted by the committee include, first, instructions to the Secretary to establish procedures to insure efficient and effective management of resources available for administration of the act. GAO found that the Fish and Wildlife Service had never developed guidelines to insure that the most basic of functions are carried out. For instance, GAO found that the Service had received 154 petitions to list or delist species, through June 30, 1978. Yet, only 59 percent of these had ever been recorded as received. The New Melones cave harvestmen listing petition was one of those apparently not logged in as "received." The Service told GAO they did not want to act on this petition, for fear of creating another "Tollito incident." The development of guidelines would correct this situation, as well as insure that the Service develops specific criteria for judging the "substantiality" of petitions to list or delist species.

Guidelines would also be created for a priority ranking system to insure that species facing a high degree of threat receive expeditious review for listing. The Service recognizes the need for a priority system to select species for review and listing, and to allocate its limited staff and funds. In spite of this awareness, the Service has developed

six priority systems through fiscal year 1978, but Service officials were not able to agree until recently on implementation of any particular system.

A priority system for the development and implementation of recovery plans is also needed. Service funds have not been allocated toward recovery of species based on the degree of threat to the species. There are numerous instances where the Service has purchased land for recovery of low priority species. Furthermore, the Service cannot determine the effectiveness of recovery plans because they are not adequately monitored or evaluated. The Service recently announced the approval of a revised set of guidelines, which includes a priority system. I understand the Service has also implemented systems for ranking priorities of species for listing and logging petitions. However, I believe that the Congress should mandate these systems under law, to insure that the operation continues.

The second major concern that I had was over clarifying the intent of my "one-time permanent exemption" amendment, which the Congress adopted last year. My intent in offering the amendment was to insure that once a project has undergone a biological assessment and has received an exemption, it would be impossible to halt the project by finding any additional "endangered species."

I think that everyone would agree that projects begun before enactment of the 1978 amendments should be eligible for permanent exemptions if biological assessments are done first. However, opinions differ over what constitutes a "one-time permanent exemption." My intent was to apply the permanent exemption to the project in question. The Senate, on the other hand, in its reauthorization this year has chosen to apply the exemption to individual listed species that are in conflict with a project. Frankly, I think that the Senate's interpretation is illogical. Under the 1978 amendments, projects receive exemptions. There is no process for exempting species from anything.

I think that the amendment adopted by the committee this year with regard to the "one-time permanent exemption" issue serves to provide additional assurances both to developers and environmentalists, although I do not feel that the committee goes far enough in this area. Any exemption for completion of a project would be based upon a biological assessment which would include listed and proposed species, alike.

Environmentalists would be assured that exemptions are granted only after the most thorough of biological assessments is completed, and that all listed or proposed endangered life forms are considered in the exemption process. On the other hand, project managers should be assured that once a project goes through the exemption process, it could not be halted by future listing under the Endangered Species Act. Although the committee does not go this far, the committee amendment should serve to minimize the potential for conflict, to the extent that biological assessments are conducted in a thorough fashion before any exemptions are granted.

Finally, I had expressed concern during the committee's reauthorization hearings that a Senate reauthorization provision that extends the Secretary's "emergency listing" authority from 120 days, under present law, to 1 year is unnecessary and presents potential for further abuse of this law. Fish and Wildlife Service officials have testified that

they intend to use this provision extensively in the future. Therefore, I believe that we should approach this issue with caution. The Senate's position on this is not well founded, and I would hope that the House conferees will take these observations into serious consideration during the conference.

Mr. Chairman, because of the high degree of controversy surrounding last year's debate, I believe that continued congressional oversight, and the adoption of the committee's amendments to perfect the act will serve to protect it.

Mr. BREAVUX. Mr. Chairman, I have no further requests for time, and I yield back the remainder of my time.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore, Mr. Zablocki, having assumed the chair, Mr. Filippo, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 9218) to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, had come to no resolution thereon.

[From the Congressional Record, Oct. 25, 1979]

STATEMENT OF MR. YOUNG IN SUPPORT OF HIS PROPOSED AMENDMENT  
TO H.R. 2218, OCTOBER 24, 1979

ENDANGERED SPECIES ACT AUTHORIZATION

Mr. Young of Alaska. Mr. Chairman, the amendment that I am offering today will remove from the definition of "fish and wildlife" under the Endangered Species Act all invertebrate animals, such as snails, insects, spiders, clams, et cetera. This will conform the act with the original intent of Congress.

I first entered the Congress when the Endangered Species Act was being debated. At that time, our goals were clear, to prevent extinction of those birds and animals which were truly endangered by man's activities. The intent was not to save every last beetle and butterfly on Earth that was disappearing through natural processes of evolution; and it certainly was not our intent to call a halt to every activity in which man could engage.

Unfortunately, the interpretation of this act by well-meaning but misguided individuals has come to the point where man may be endangered if the act is fully enforced. In fact, as I look at the list of criteria for determining endangerment, I note that Alaskans meet 3 of the 5: our range is curtailed, we suffer under inadequate regulatory mechanisms, and other manmade factors affect our continued existence. Perhaps this Congress will agree to declare Alaska as critical habitat and get the Federal Government off our backs.

Finally, in Hawaii, the cave wolf spider is found only in one cave, which is listed as a civil defense shelter. If the shelter is ever needed, anyone who takes refuge there will be violating the Endangered Species Act.

Mr. Chairman, I could continue this for quite some time but I think I have made my point. The United States is in trouble, partially due to natural causes but mostly due to our own stupidity and short-sight-

edness. Our country needs energy and it needs transportation if we are to survive. We cannot continue to regulate and preserve ourselves out of existence. We can have a clean environment, a healthy, balanced population of fish and wildlife and plants, and still produce enough energy and enough minerals to keep us going. All I am saying is: Give us a chance to do so. Do not hamper us with laws and regulations that prevent us from continuing our lives. My amendment may not be the best solution, but it is a start.

In regard to my amendment, however, let me point out some of the problems that have been caused by invertebrates alone:

On the Duck River in Tennessee, completion of the Columbia dam was halted due to the listing of seven species of mussels, including the Cumberland monkeyface and the tan riffleshell. Only after the hard work of our colleague from that State—Robin Beard—did the Fish and Wildlife Service examine the area and discover that the mussels involved had been extinct in the Duck River for many years, thus allowing the dam to be finished.

On the Little Tennessee River, we are all aware of the conflict between Tellico dam and the snail darter. However, even if the snail darter did not exist, the project still would have been halted by the Anthony's river snail.

In Florida, the Florida tree snail threatens construction of a needed airport. In California, the El Segundo blue butterfly is hampering expansion of the Los Angeles airport.

Again in California, the New Melones dam was halted by the discovery of the cave harvestman spider. Only after further searches found other healthy populations was the dam completed.

At this time, Mr. Chairman, I would like to request that the chairman of the subcommittee, who has done so well on this bill, engage in a little colloquy with me.

Mr. Chairman, my main intent in offering this amendment is to make sure that those who enforce the Endangered Species Act do not enforce it to the detriment of people but that they enforce the act as it was intended by Congress.

If the gentleman wishes to ask me any questions, I would be glad to answer them.

Mr. BREAVUX. Mr. Chairman, if the gentleman will yield, I appreciate the gentleman's purpose in offering the amendment, and I thank him for his comments and for making his suggestions.

As the gentleman full well knows, we did make some changes last year in the 1978 amendments which prohibited the listing of endangered species individually, and now we have to look at them as a whole class of invertebrates.

We cannot pick out one and say, "Now, this particular invertebrate species is going to be in the endangered species classification," but we have now to look at the whole class of the species that fall in that category and make that determination.

I know the gentleman is trying to come up with a reasonable approach. I just want to say to the gentleman that the committee has not had an opportunity to hold hearings or to look into any of the problems we are having with invertebrate species.

Mr. Chairman, if the gentleman will yield further, I am very hesitant to support his amendment, and I will have to say that I oppose the gentleman's amendment.