

in Endangered Species of Wild Fauna and Flora. April 7, 1980. Serial No. 96-D. Washington, U.S. Govt. Print. Off., 1980. 28 p.

This Committee Print reports on the conclusions and recommendations of the Subcommittee on Fisheries and Wildlife Conservation and the Environment as a result of the oversight hearings it conducted in July 1979 in review of the GAO report on the Endangered Species Act and of implementation of the 1978 Amendments to the Act, and also of its review of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). With respect to the ESA, the Subcommittee noted: "The Committee believes that the administration of the Endangered Species Act has been thoroughly and extensively reviewed in the 95th and 96th Congresses. The Act has been substantially amended to introduce a greater degree of flexibility into its administration. The Committee does not believe that further amendments of the Endangered Species Act are necessary to equitably balance economic and environmental concerns." With respect to CITES, the Subcommittee noted a number of institutional and procedural problems with respect to U.S. trade policy in endangered and threatened species. The Committee noted the changes made in the ESA regarding U.S. management and scientific authorities vis-a-vis CITES and expressed its hope the increased accountability addressed by the 1979 amendments to the Act would enable the Secretary of the Interior to "restore order to the program for regulating trade in endangered and threatened wildlife."

PART VII

UNOFFICIAL CODIFIED VERSION OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED THROUGH DECEMBER 31, 1980¹

¹ Source: Environmental Law Reporter, April 1980: 41823-41833. Reprinted with permission. N.B. 16 USC § 1533(h)(1) (2) and (3) [ESA § 6(b) (1) (2) and (3)] was amended subsequent to publication of this EIR version, by Public Law 96-246. That additional amendment was incorporated in this EIR text by CRS, in order to provide a completely up-to-date codified version of the Act through the end of the 96th Congress.

18 USC 1535 - ESA 18

ever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purpose of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property. The amount which will be determined by the Secretary, whose decision shall be final.

Review of State programs

(2) Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

Conflicts between Federal and State laws

(1) Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this chapter or by any regulation which implements this chapter, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any regulation which implements this chapter. This chapter shall not otherwise be construed to void any State or interstate law which is valid or to compel or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this chapter or in any regulation which implements this chapter but not less restrictive than the prohibitions so defined.

Penalties

(3)(1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on December 28, 1973, and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjustment of the first regular session of the State legislature on the date of the close of the 18-month period following September 28, 1973; (B) the date of the close of the 18-month period following September 28, 1973; (C) the date of the close of the 18-month period following September 28, 1973; (D) the date of the close of the 18-month period following September 28, 1973.

(2) The prohibitions set forth in or authorized pursuant to sections 1532(c) and 1532(d) shall apply to all listed endangered species or threatened species other than species listed in Appendix 1 to the Convention or otherwise specifically covered by any other treaty or Federal law within any State.

(A) which is then a party to a cooperative agreement with the Secretary pursuant to subsection (c) of this section (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when—

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his findings, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 606 of Title 5 or any other provision of this chapter; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

Regulations

(4) The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

Anticipation of cooperation

(1) For the purposes of this section, there are authorized to be appropriated for the period beginning October 1, 1977, and ending September 30, 1982, \$10,000,000 for the period beginning October 1, 1980, and ending September 30, 1982.

Pub. L. 93-203, § 4, Dec. 9, 1973, § 2 (491, 889; Pub. L. 93-212, § 1, Nov. 10, 1974, § 1 (912, 822, 110; Nov. 10, 1974, § 2 (912, 822, 110; Nov. 10, 1974, § 3 (912, 822, 110; Nov. 10, 1974, § 4 (912, 822, 110; Nov. 10, 1974, § 5 (912, 822, 110; Nov. 10, 1974, § 6 (912, 822, 110; Nov. 10, 1974, § 7 (912, 822, 110; Nov. 10, 1974, § 8 (912, 822, 110; Nov. 10, 1974, § 9 (912, 822, 110; Nov. 10, 1974, § 10 (912, 822, 110; Nov. 10, 1974, § 11 (912, 822, 110; Nov. 10, 1974, § 12 (912, 822, 110; Nov. 10, 1974, § 13 (912, 822, 110; Nov. 10, 1974, § 14 (912, 822, 110; Nov. 10, 1974, § 15 (912, 822, 110; Nov. 10, 1974, § 16 (912, 822, 110; Nov. 10, 1974, § 17 (912, 822, 110; Nov. 10, 1974, § 18 (912, 822, 110; Nov. 10, 1974, § 19 (912, 822, 110; Nov. 10, 1974, § 20 (912, 822, 110; Nov. 10, 1974, § 21 (912, 822, 110; Nov. 10, 1974, § 22 (912, 822, 110; Nov. 10, 1974, § 23 (912, 822, 110; Nov. 10, 1974, § 24 (912, 822, 110; Nov. 10, 1974, § 25 (912, 822, 110; Nov. 10, 1974, § 26 (912, 822, 110; Nov. 10, 1974, § 27 (912, 822, 110; Nov. 10, 1974, § 28 (912, 822, 110; 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porting of any fish or wildlife or plants in violation of this chapter, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to subsection (b)(1) of this section.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this chapter, be exercised or performed by the Secretary or by such persons as he may designate.

Regulations

(f) The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this chapter, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this chapter including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this chapter. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

Citizen suits

(g)(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 1535(g)(2)(B)(ii) of this title, the prohibitions set forth in or authorized pursuant to section 1533(d) or 1538(a)(1)(B) of this title with respect to the taking of any resident endangered species or threatened species within any State.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 1535(g)(2)(B)(ii) of this title to determine whether any such emergency exists.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

Coordination with other laws

(h) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this chapter with the administration of the animal quarantine laws (sections 101 to 105, 111 to 135b, and 612 to 614 of Title 21) and section 1306 of Title 19. Nothing in this chapter or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this chapter shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this chapter shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 1527 of Title 19, relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

Pub. L. 93-205, § 11, Dec. 28, 1973, 87 Stat. 897; Pub. L. 94-359, § 4, July 12, 1976, 90 Stat. 913; Pub. L. 95-632, §§ 6, 7, 8, Nov. 10, 1978, 92 Stat. 3761, 3762.

References in Text. The amendments or sections 136 of Title 7 and repeated sections 606a to 606c-6 of this title made by this Act, referred to in subsection (h), refer to the amendments made by Pub. L. 93-205 which amended sections 606-1, 606-6, 606d, 135, 715-1362, 1371, 1372 and 1402 of this title and The Tariff Act of 1930, referred to in subsection (h), is classified to section 1306 of title 19, Customs Duties.

§ 1541. [ESA §12]

Endangered plants

The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after December 28, 1973, the results of such review including recommendations for new legislation or the amendment of existing legislation.

Pub. L. 93-205, § 12, Dec. 28, 1973, 87 Stat. 900.

§ 1542. [ESA §15]

Authorization of appropriations

Except as authorized in sections 1538 and 1539 of this title, there are authorized to be appropriated—

(1) not to exceed \$23,000,000 for each of fiscal years 1979 and 1980, not to exceed \$25,000,000 for fiscal year 1981, and not to exceed \$27,000,000 for fiscal year 1982 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this chapter;

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

(3) not to exceed \$1,500,000 for fiscal year 1980, not to exceed \$1,750,000 for fiscal year 1981, and not to exceed \$1,850,000 for fiscal year 1982 to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this chapter and the Convention which pertains to the importation or exportation of terrestrial plants.

Pub. L. 93-205, § 15, Dec. 18, 1973, 87 Stat. 903; Pub. L. 94-325, June 30, 1976, 90 Stat. 724; Pub. L. 95-632, § 9, Nov. 10, 1978, 92 Stat. 3762; Pub. L. 96-159, § 8, Dec. 28, 1979, 93 Stat. 1230.

§ 1543. [ESA §17]

Construction with Marine Mammal Protection Act of 1972

Except as otherwise provided in this chapter, no provision of this chapter shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

Pub. L. 93-205, § 17, Dec. 28, 1973, 87 Stat. 903.

References in Text. The Marine Mammal Protection Act of 1972, referred to in text, is Pub. L. 92-502, Oct. 21, 1972, 86 Stat. 1007, which is classified to section 1361 et seq. of this title.