

[From the Congressional Record, July 24, 1973]

SENATE CONSIDERATION AND PASSAGE OF S. 1983, WITH AMENDMENTS
ENDANGERED SPECIES ACT OF 1973

The ACTING PRESIDENT pro tempore (Mr. Nunn). Under the previous order the Senate will proceed to the consideration of S. 1983, which will be stated by title.

The bill was stated by title as follows:

A bill (S. 1983) to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "Endangered Species Act of 1973".

DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

- (1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;
 - (2) other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction;
 - (3) these species of fish, wildlife and plants are of educational, historical, recreational, and scientific value to the Nation and its people;
 - (4) the United States has pledged itself as a sovereign state in the international community to conserve and protect to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—
 - (A) migratory bird treaties with Canada and Mexico;
 - (B) the Migratory and Endangered Bird Treaty with Japan;
 - (C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;
 - (D) the International Convention for the Northwest Atlantic Fisheries;
 - (E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;
 - (F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and
 - (G) other international agreements.
 - (5) encouraging the States, through Federal financial assistance and a system of incentives, to develop and maintain conservation, protection, restoration, and propagation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.
- (b) PURPOSES.—The Congress hereby declares that the purposes and policy of this Act are to—
- (1) provide an effective means to conserve, protect, and restore the ecosystems upon which endangered and threatened species of fish or wildlife depend;
 - (2) provide a viable program for the conservation, protection, restoration, and propagation of endangered and threatened species;
 - (3) take all appropriate steps to implement the Nation's international commitments with respect to endangered and threatened fish or wildlife; and
 - (4) insure that all departments, agencies, and instrumentalities of the United States seek, within the scope of their authority and administrative jurisdiction, to protect endangered and threatened species.

DEFINITIONS

SEC. 3. As used in this Act—

- (1) "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.
 - (2) "Endangered species" means any species of fish or wildlife which is in danger of extinction throughout all or a significant portion of its range.
 - (3) "Fish or wildlife" means any living member of the animal kingdom and the remains of any dead member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate or any part, egg, or offspring of any such member, or any product produced from any part or parts of the remains of any such member.
 - (4) "Foreign commerce" includes any transaction—
 - (A) between persons within one foreign country;
 - (B) between persons in two or more foreign countries;
 - (C) between a person within the United States and a person in a foreign country; or
 - (D) between persons within the United States, where the fish or wildlife involved are moving in any country or countries outside the United States.
 - (5) "Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.
 - (6) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.
 - (7) "Plant" means any member of the plant kingdom, including seeds, roots, or other parts of any such member.
 - (8) "Secretary" means, except as otherwise provided, the Secretary of the Interior or the Secretary of Commerce in the same manner in which program responsibilities are vested under Reorganization Plan Numbered 4 of 1970, with respect to enforcement of the provisions of this Act and of the Convention, which pertain to the importation of terrestrial plants, the term means the Secretary of Agriculture.
 - (9) "Species" includes any subspecies or other group of fish or wildlife of the same species or lesser taxa in common spatial arrangement that interbreed when mature.
 - (10) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.
 - (11) "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish and wildlife resources within a State.
 - (12) "Take" means to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.
 - (13) "Threatened species" means any species of fish or wildlife which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.
 - (14) "United States", when used in a geographical sense, includes all States.
- DETERMINATION OF ENDANGERED OR THREATENED SPECIES
- SEC. 4. (a) GENERAL.—The Secretary shall by regulation determine whether any fish or wildlife is an endangered or threatened species as a result of any of the following factors:
- (1) the present or threatened destruction, modification, or curtailment of its habitat or range;
 - (2) overutilization for commercial, sporting, scientific, or educational purposes;
 - (3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b) **Basis for DETERMINATIONS.**—(1) The determinations required by this section shall be made on the basis of the best scientific and commercial data available to the Secretary, including any recommendations that have been made by the Advisory Committee established under subsection (d) of this section and after consultation, as appropriate, with all interested persons and organizations, including affected or knowledgeable Federal, State, and foreign government agencies. In any case in which such determinations involve an indigenous species, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which determinations involve a species which is normally found on the high seas, in lakes, or other waters off the coast of a State of which it is customarily harvested by citizens of such a State, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which such determinations involve a species which is normally found in a foreign country or countries, the Secretary shall (where practicable) with the assistance of the Secretary of State, consult with and consider the recommendations of such country or countries.

(2) In determining whether or not any fish or wildlife is an endangered or threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect within any area under its jurisdiction such fish or wildlife, whether by predator control, protection of habitat and food supply, or other conservation or management practices.

(3) Fish or wildlife which have been designated as requiring protection from unrestricted commerce by any foreign country or pursuant to any international agreement, shall receive special and full consideration by the Secretary to determine whether each is an endangered or a threatened species.

(c) **LISTS.**—(1) The Secretary shall publish in the Federal Register a list of all fish or wildlife determined by him by regulation to be endangered species and a list of all fish or wildlife determined by him by regulation to be threatened species. Such lists may be amended, modified, or revised periodically by regulation. Each list shall refer to each species of fish or wildlife named therein by scientific name and common name or names and shall specify the portion of its range over which it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553 (e) of title 5, United States Code, conduct a review of any listed or unlisted species of fish or wildlife proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list of species of fish or wildlife determined to be threatened with extinction, by the Secretary of the Interior pursuant to the Endangered Species Conservation Act of 1969, which is in effect the day before the date of enactment of this Act shall be republished to conform to the appropriate classifications under this Act. Pending reclassification as endangered species or threatened species and a republication, any species listed pursuant to the Act of 1969 shall be deemed an endangered species within the meaning of this Act. Such reclassification and republication shall not require a public hearing or comment under section 553 of title 5, United States Code.

(d) **ADVISORY COMMITTEE.**—(1) The Secretary shall establish an Advisory Committee on Endangered and Threatened Species to consult with, advise, and make recommendations to him and to the States. The Advisory Committee shall consist of not more than eleven members including a Chairman who shall be appointed by the Secretary from lists of qualified individuals submitted by State fish and wildlife agency administrators, universities, nongovernmental organizations and concerned with conservation, and scientific societies. Five of the members shall be regularly employed by State governments or political subdivisions thereof. The terms of office shall be so arranged by the Secretary that each year at least three new members shall be appointed to fill vacancies caused by the expiration of terms of office.

(2) The Advisory Committee shall periodically, but not less than one each year, make recommendations to the Secretary with respect to removal from, addition to, or reclassification within the lists maintained pursuant to subsection (a) of

this section, and may with the approval of the Secretary, perform other functions in furtherance of the purposes of this Act. A member of the Advisory Committee who is not otherwise a Government employee may, in the discretion of the Secretary, receive not more than \$150 per diem when engaged in the actual performance of his duties. Each member may receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

(e) **PROTECTIVE REGULATIONS.**—Whenever the Secretary lists a species of fish or wildlife as a threatened species, pursuant to subsection (a) of this section, he shall issue such regulations as he deems necessary and advisable to provide for the conservation, protection, restoration, or propagation of such species. With respect to any endangered or threatened species, the Secretary may by regulation prohibit any act prohibited with respect to an endangered species under section 10(a) of this Act.

LAND ACQUISITION

Sec. 5. The Secretary shall establish and implement a program to conserve, protect, restore, and propagate fish or wildlife which are listed as endangered or threatened species pursuant to section 4 of this Act. To carry out such programs, the Secretary—

(a) shall utilize as appropriate the land acquisition and other authorities conferred upon him under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act;

(b) may acquire by purchase, donation, or otherwise any lands, waters, or interests therein necessary for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species. Such authority shall be in addition to any other land acquisition authority vested in him; and

(c) may use funds made available under the Land and Water Conservation Fund Act of 1965 or under this Act to acquire such lands, waters, or interests therein.

COOPERATION WITH THE STATES

Sec. 6. (a) **GENERAL.**—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. In addition to all other obligations, the Secretary shall consult with the States before the acquisition of any lands, waters, or interests therein for the purpose of conserving, protecting, restoring, propagating any endangered or threatened species.

(b) **MANAGEMENT AGREEMENTS.**—The Secretary may enter into an agreement or agreements with any State for the administration and management of any area established for the conservation, protection, restoration or propagation of an endangered or a threatened species. Any revenues derived from the administration of such areas under such agreements shall be subject to section 401 of the Act of June 15, 1935 (16 U.S.C. 715a).

(c) **FINANCIAL ASSISTANCE.**—The Secretary is authorized to enter into a cooperative agreement in accordance with this subsection to provide financial assistance to any State which establishes and maintains an adequate and active program for the management, conservation, protection, and restoration of endangered and threatened species. Before the Secretary may enter into or renew such a cooperative agreement to provide financial assistance to a State, he shall make a finding, and publish in the Federal Register a finding that such agreement would justify, and publish in the Federal Register a finding that such State has a program under which further the policy of this Act and that such State has administrative jurisdiction to (1) the State agency has authority and administrative jurisdiction to manage and protect any species of fish or wildlife which is threatened;

(2) the State has established a State plan, including a management program under the State agency, for all species of resident fish or wildlife which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency during the first year of the existence of such agreement—

(A) will issue protective regulations;

(B) will employ sufficient trained and qualified personnel; and

(C) will maintain investigation, enforcement, and public education programs.

which are adequate, in the Secretary's judgment, for the conservation, protection, restoration, and propagation of species of fish or wildlife facing extinction;

(4) the State agency is authorized and plans to conduct studies to determine the status and requirements for survival of species of resident fish or wildlife and agrees to transmit a copy of the findings of such studies to the Secretary;

(5) the State agency is authorized and plans to establish programs, including the acquisition of lands, waters, or interests therein, for the conservation, protection, restoration, and propagation of endangered and threatened species; and

(6) provision is made for public participation in designating species of threatened species; and

(d) ALLOCATION OF FUNDS.—(1) Funds appropriated for financial assistance resident fish or wildlife as endangered or threatened.

(c) of this section shall be available to the Secretary pursuant to subsection (c) of this section shall be available to the Secretary for allocation to the States under cooperative agreements. The purposes for which such funds may be used include, but are not limited to, research, censusing, law enforcement, and habitat acquisition or improvement. The Secretary shall allocate appropriated funds to such States upon the basis of—

(A) the international commitments of the United States to protect endangered or threatened species;

(B) the national significance of a species found to be endangered or threatened within a State; and

(C) the potential for preventing extinction of a species or for restoring a species to nonendangered or nonthreatened status.

(2) Each cooperative agreement between a State and the Secretary shall provide for—

(A) the actions to be taken by the Secretary and the State;

(B) the benefits that are expected to be derived in connection with preservation and restoration of endangered or threatened species;

(C) the estimated cost of these actions; and

(D) the share of such costs to be borne by the Federal Government and by the States except that—

(1) the Federal share of such program costs shall not exceed 50 per centum of the estimated program costs stated in the agreement; and

(H) the Federal share may be increased to 66% per centum whenever two or more States, having a common interest in a program that the Secretary deems to meet the criteria of paragraph (1) of this subsection, 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.

(3) The Secretary is authorized to issue such regulations as may be appropriate to carry out the provisions of this section with respect to financial assistance to States.

(4) For the purposes of this section, there is authorized to be appropriated not to exceed \$10,000,000.

(e) PARODIC REVIEW.—The finding made under subsection (c) of this section and any action taken by the Secretary under this section shall be subject to his periodic review, including the consideration of comment from interested persons, at no greater than annual intervals. Upon ninety days notice in writing to the affected State, the Secretary may terminate in his discretion any cooperative agreement entered into under this section.

(1) STATE AGENCY PERSONNEL.—Nothing in this Act shall be construed as superseding or limiting the power of any State or political subdivision thereof to enact legislation or regulations more restrictive than or consistent with the provisions of this Act with respect to an endangered or a threatened species: *Provided*, That any State law or regulation of the import or export of or the interstate or foreign commerce in an endangered species listed pursuant to section 4 of this Act is void to the extent that it may effectively permit what is prohibited by this Act or its implementing regulations, or prohibit what is authorized pursuant to an exemption or permit provided for in this Act or its

implementing regulations. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife.

INTERNATIONAL COOPERATION

Sec. 7. The Secretary shall review all programs administered by him and utilize such programs in furtherance of the policy of this Act. All other departments, agencies, and instrumentalities of the Federal Government shall, in consultation with and with the assistance of the Secretary—

(a) carry out such programs as are practicable for the protection of species listed, pursuant to section 4 of this Act, as endangered or threatened;

(b) take such action as is necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or modification of any habitat of such species which is determined by the Secretary, after consultation to the extent appropriate and necessary with affected States, to be a critical habitat of such species.

INTERNATIONAL COOPERATION

Sec. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any endangered or threatened species listed by the Secretary pursuant to section 4 of this Act: *Provided*, That no funds other than foreign currencies available to this expenditure only within such foreign country shall be used pursuant to this section. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, water, or interests therein) to foreign countries under this section upon such terms and conditions as he deems appropriate.

(b) ENCOURAGEMENT.—In order to carry out further the provisions of this Act, the Secretary, with the assistance of the Secretary of State, shall encourage—

(1) foreign countries to provide for the protection, conservation, restoration, or propagation of fish or wildlife, including endangered and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements for foreign countries to provide for such protection, conservation, restoration, propagation; and

(3) foreign persons, who directly or indirectly take fish or wildlife in foreign countries or on the high sea for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide, conservation practices designed to enhance such fish, wildlife and plants and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the protection, conservation, restoration, or propagation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife or plant management, research, and law enforcement, and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) CONVENTION IMPLEMENTATION.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

Sec. 9. (a) REGULATIONS.—The Secretary shall publish any regulations proposed under this Act in the Federal Register at least sixty days prior to the time when such regulations shall become final, except that in case of an emergency the Secretary may publish such regulations not less than thirty days prior to the time when such regulations shall become final if at the same time he publishes in the Federal Register detailed reasons why emergency action is necessary. The Secretary shall also publish in the Federal Register a notice of all petitions received pursuant to this Act and, if such petition is denied, his reasons therefor. Such notice shall identify the purpose of the petition and include a statement of the availability of any data submitted in support of such petition. If any person adversely affected by a proposed regulation files objections and requests a public hearing within forty-five days of the date of publication of the proposed regulation, the Secretary shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Secretary until after the conclusion of such hearing. All public hearings authorized by this subsection shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Secretary may make applicable thereto. Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and shall state the relationship of such findings to the regulations issued.

(b) PROCEDURE.—Except as expressly modified by this section, the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.) shall apply to proceedings conducted by the Secretary under this Act: *Provided*, That the provisions of this section shall not apply to the extent necessary to permit emergency action by the Secretary. Notice of and reasons for such action shall be published prior to such action in the Federal Register.

(c) JUDICIAL REVIEW.—(1) Any judicial review of final regulations promulgated under this Act and final actions under section 5(c) of this Act shall be in accordance with sections 701-706 of title 5, United States Code, except that—

- (A) with respect to regulations promulgated under section 4 or 6 of this Act, the findings of the Secretary as to the facts shall be sustained if based upon substantial evidence on the record considered as a whole; and
- (B) with respect to relief pending review, on stay of action may be granted unless the reviewing court determines the party seeking such stay—
 - (i) is likely to prevail on the merits in the review proceeding; and
 - (ii) will suffer irreparable harm pending such proceeding.

(2) If the party seeking judicial review applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court either that—

- (A) the information is material and was not available at the time of the proceeding before the Secretary; or
- (B) failure to include such evidence in the proceeding was an arbitrary or capricious act of the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may notify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order.

(d) AID.—(1) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans, or other arrangements entered into other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the

proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, subgrants, contracts, subcontracts, loans or other arrangements referred to in subsection (a).

UNLAWFUL CONDUCT

Sec. 10. (a) PROHIBITED ACTS.—Except as provided in section 11 of this Act, it is unlawful for any person subject to the jurisdiction of the United States—

- (1) import into, or export from the United States any endangered species which has been listed pursuant to section 4 of this Act;
- (2) take any such species within the United States or in the territorial sea of the United States or upon the high seas;
- (3) possess, sell, deliver, carry, transport, ship, or receive, by any means whatever, any such species which are taken in violation of paragraph (2) of this subsection;
- (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and for commercial purposes, any such species;
- (5) sell, distribute, or offer for sale in foreign commerce, interstate commerce, or activity affecting interstate commerce specimens of any such species processed or manufactured in whole or in part from specimens of any such species;
- (6) attempt to commit, solicit another to commit, or cause to be committed, any act prohibited by paragraphs (1) through (5) of this subsection;
- (7) engage in any trade in any specimens of fish, wildlife, or plants, contrary to the provisions of the Convention, or possess any specimens traded in violation of the provisions of the Convention, including the definitions in article I therein;

(8) violate any regulation which is promulgated by the Secretary pursuant to section 4(c) of this Act; and

(9) import into or export from the United States except at a port or ports designated by the Secretary, any fish, or wildlife, except nonindigenous and nonthreatened shellfish and fishery products which are imported or exported for human or animal consumption or on the high seas, purposes in waters under United States jurisdiction or on the high seas, to facilitate enforcement of this paragraph and to reduce the costs of enforcement, the Secretary, with the approval of the Secretary of the Treasury and after notice and opportunity for public hearings, may, by regulations, designate ports and change such designations. Upon such terms and conditions as he may prescribe, the Secretary may permit such importation at non-designated ports in the interest of the health or safety of the fish or wildlife or for any other reasons he deems appropriate. Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 669cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under this paragraph until such time as the Secretary otherwise provides.

(b) STAMULATORY OF APPEARANCE CASES.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species of fish or wildlife as an endangered or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

- (A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;
- (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and
- (C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

EXCEPTIONS

Sec. 11. (a) **GENERAL.**—Upon a finding that the excepted conduct will not adversely affect the regenerative capacity of the involved species in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species, and upon such terms and conditions as he may prescribe, the Secretary may issue permits authorizing the importation, exportation, taking, or transportation, by persons found to be qualified, of any fish or wildlife which is listed as an endangered or threatened species pursuant to section 4 of this Act for—

- (1) scientific purposes in furtherance of the purposes of this Act; or
 - (2) the propagation of such species in captivity or in a controlled habitat.
- (b) **HANDSHP.**—The Secretary may except from the application of section 10(a) of this Act any person who enters into a contract with respect to a species of fish or wildlife before the date of publication in the Federal Register of notice of a proposed listing of that species as an endangered or threatened species if the failure to grant such exception will cause undue economic hardship to such person under the contract. The extent and duration of such exception shall be such as the Secretary deems appropriate. No such exception shall be granted unless such person applies to the Secretary in writing and furnishes with such application such information as the Secretary may require to prove such hardship. No such exception shall be for a duration of more than one year from the date of publication in the Federal Register of notice of a proposed listing of the involved species, nor shall such exception apply to a quantity of fish or wildlife in excess of that specified by the Secretary. The one-year period for those species of fish or wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275). No such exemption may be granted for the importation or exportation of a specimen listed in appendix I of the Convention which is to be used for primarily commercial purposes.

(c) **PROCEDURE.**—(1) The Secretary shall publish a notice in the Federal Register of each application for an exception. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(2) The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds, and publishes such finding in the Federal Register, that such exceptions were applied for in good faith and if granted and exercised will not operate to the disadvantage of such endangered or threatened species and will be consistent with the policy of this Act.

(d) **ALASKA NATIVES.**—(1) The provisions of this Act shall not apply with respect to the taking of any endangered or threatened species by any Indian, Aleut, or Eskimo who is an Alaska native who resides in Alaska if such taking is for the purpose of consumption or use in a native community or for the purpose of selling or creating for sale in interstate commerce authentic native articles of handicrafts and clothing: *Provided*, That in each case such taking is not accomplished in a wasteful manner. As used in this paragraph—

(A) "consumption or use in a native community" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption; and

(B) "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carriers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking by Indians, Aleuts, or Eskimos is an endangered or threatened species, and that such taking materially and negatively affects the threatened and endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, or Eskimo. Such regulations may be established with reference to species, geographical description of the area included, the season

for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared: *Provided*, That no such regulation shall be established which is in contravention of any provision of the Marine Mammal Protection Act of 1972.

PENALTIES AND ENFORCEMENT

Sec. 12. (a) **CIVIL PENALTY.**—(1) Any person who—

- (A) knowingly violates any provision of this Act or any regulation or permit issued under this Act, which prohibits the taking, importing, exporting, shipping, receiving, or otherwise moving in interstate or foreign commerce of any endangered or threatened species of fish or wildlife, or commits any act made unlawful under section 10(a) of this Act, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each violation;
- (B) commits any act made unlawful under section 10(a) of this Act, or violates any other provision of this Act, or any regulation or permit issued under this Act, may be assessed a civil penalty by the Secretary of not more than \$1,000 for each such violation.

No penalty shall be assessed unless such person is given notice of an opportunity for a hearing with respect to such violation. Each prohibited act is a separate violation. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action solely on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 564 of title 5, United States Code. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) **CRIMINAL VIOLATIONS.**—(1) Any person who knowingly and willfully violates any provision of this Act, or of any regulation or permit issued thereunder, shall, upon conviction, be fined not more than \$20,000 or imprisoned for not more than one year, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted under paragraph (1) of this subsection may immediately modify, suspend, or revoke such lease, license, permit, or other agreement. The Secretary may suspend, cancel, or refuse to issue for a period of up to one year Federal hunting or fishing permits or stamps with respect to any person who is convicted under paragraph (1) of this subsection. The United States shall not be liable to pay any compensation, reimbursement, or damages in connection with any such modification, suspension, or revocation of any lease, license, permit, stamp, or other agreement.

(c) **REWARDS.**—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed \$2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any

CONFORMING AMENDMENTS

Sec. 14. (a) Section 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 669(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered and threatened species listed as follows: "With the exception of section 4 of the Endangered Species Act of 1973 by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of such Act nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the System."

(b) Section 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and section 401(a) of the Act of June 15, 1935 (49 Stat. 388, 16 U.S.C. 715a(a)) are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered or threatened species."

(c) Section 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4801-9(a)(1)) is amended by striking out: "THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction," and inserting in lieu thereof the following: "DANGEROUS AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5 of the Endangered Species Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered or threatened species of fish, wildlife, or plants."

(u) The first sentence of section 2 of the Act of September 28, 1962 (76 Stat. 683; 16 U.S.C. 480k-1), is amended to read as follows: "Sec. 2. The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish- and wildlife-oriented recreational development,

"(2) the protection of endangered or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraph (1) through (3) of this section,

and are adjacent to, or within, the said conservation areas, except that as acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefore by the Congress or donated for such purposes, but such property shall not be the Congress or donated from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section (1) (B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a) (3) (B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b) (3) thereof and inserting in lieu thereof the following: "an endangered or a threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "Endangered Species List, authorized by the Endangered Species Conservation Act of 1969" in section 202(a) (6) thereof and inserting in lieu thereof the following: "endangered species list and threatened species list published pursuant to section 4(c) (1) of the Endangered Species Act of 1973."

REPEALS

Sec. 15. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 8, 1969; 16 U.S.C. 668aa-688cc-6) is repealed.

APPLICABILITY WITHIN STATES

Sec. 16. (a) STATE PLAN.—By the end of the first year after the date of enactment of this Act, a State may establish a plan for endangered and threatened species in accordance with this Act. A plan is in accordance with this Act if it meets or exceeds the requirements set forth in section 6(c) of this Act and represents an effective response to the Nation's need to conserve, protect, restore, and propagate endangered and threatened species of fish or wildlife. Upon the establishment of such a plan, the Governor or the head of the State agency shall promptly transmit a certified copy to the Secretary.

(b) DETERMINATION BY SECRETARY.—Within ninety days after the Secretary receives a certified copy of a State plan established under subsection (a) or subsection (d) of this section, the Secretary shall make a determination whether such State has established a plan for endangered and threatened species in accordance with this Act. Unless the Secretary determines, pursuant to this section, that a State plan is not in accordance with this Act, the plan shall have effect in such State on the date designated in the plan. In no event shall such State plan go into effect less than three months or more than nine months after the date of its establishment.

(c) PERIODIC REVIEW.—The Secretary shall periodically, but not less than once every three years, review each State plan for endangered and threatened species which has been approved under subsection (b) of this section and for which there is experience, to determine whether such plan is still in accordance with this Act and to evaluate the success of such plan in terms of the policy of this Act. To facilitate such review, the Governor or the head of the State agency in each such State shall submit to the Secretary periodically all information relevant and requested by the Secretary. The Secretary shall report to the President and Congress simultaneously each year on the results of such reviews, including any recommendations for legislation.

(d) NO STATE PLAN.—Except as to species listed in Appendix I of the Convention, the provisions of this Act regarding the management and taking of any State's resident species shall become applicable in their entirety within a State, fifteen months after the date of enactment of this Act unless, prior to such date, the Secretary has made a determination under subsection (b) of this section that such State has established a plan for endangered and threatened species in accordance with this Act: Provided, That the provisions of subsection (a) of section 10 of this Act shall be effective upon the date of enactment of this Act within any State which does not prevent the taking of any species listed by the Secretary as an endangered species. If, at any time thereafter, the Secretary upon petition makes a determination, pursuant to subsection (1) of this section, that a State has established a plan for endangered and threatened species in accordance with this Act, such plan shall go into effect and the provisions of this Act regarding the management and taking of any species shall cease to be applicable or in effect within such State on a date to be designated by the Secretary. If, after a State plan in accordance with subsection (c) of this section, the Secretary makes a determination, pursuant to subsection (c) of this section, that such plan is no longer in accordance with this Act, the provisions of this Act regarding the management and taking of any species shall go into effect within such State and such plan shall cease to be in effect on a date to be designated by the Secretary.

(e) PROCEDURE.—(1) Before making any determination under this section, the Secretary shall publish a notice in the Federal Register and afford the State and all interested parties a reasonable opportunity to present their views by oral and written submission.

(2) The Secretary shall notify in writing the Governor of the affected State of any determinations made under this section and shall publish these determinations with reasons therefor in the Federal Register.

(3) Any determinations made by the Secretary under this section shall be subject to judicial review in accordance with chapter V of title 5, United States Code, in the United States court of appeals for the circuit in which is located the State whose plan is the subject of such determination or in the United States Court of Appeals for the District of Columbia Circuit. Any such review shall be instituted within sixty days from the date on which the determination made by the Secretary is published in the Federal Register.

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of this Act shall become effective in their entirety upon the date of enactment of this Act.

MARINE MAMMALS ACT

SEC. 17. CONFLICTS.—Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammals Protection Act of 1972.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 18. For purposes of this Act, other than section 6 and section 13 of this Act, there are authorized to be appropriated such sums as are necessary, not to exceed \$3,960,000 for the fiscal year ending June 30, 1974; not to exceed \$6,660,000 for the fiscal year ending June 3, 1975; and not to exceed \$8,870,000 for the fiscal year ending June 30, 1976.

The ACTING PRESIDENT pro tempore, The time for debate on this bill will be limited to 1 hour, to be equally divided and controlled by the majority leader and the minority leader or their designees, with 30 minutes on any amendment, debatable motion, or appeal.

The Senator from California is recognized.

Mr. TUNNEY. Mr. President, I yield to the Senator from Alaska.

Mr. STEVENS. I only wanted to have stated the time situation. I shall handle the bill for the minority.

The ACTING PRESIDENT pro tempore, The Senators from California and Alaska, according to the understanding of the Chair, are the designees of the majority leader and the minority leader.

Who yields time?

Mr. TUNNEY. Mr. President, the Endangered Species Act of 1973 is a vital piece of legislation which is absolutely necessary to provide protection to our Nation's species of wildlife that are threatened with extinction.

The goal of the Endangered Species Act is to conserve, protect, restore, and propagate species of fish and wildlife, that are in imminent danger of extinction or are likely to become endangered within the foreseeable future. This bill employs several mechanisms to insure the accomplishment of this goal. They include provision of greater authority to the Secretaries of Interior and Commerce to list endangered or threatened animals, encouragement of further international cooperation for the protection of these animals, provision for the acquisition of habitat useful for the purposes of this act, and incentives for the establishment of effective endangered species programs by the several States.

There is an urgent need for this type of protective legislation. In our country alone, there are 109 species listed as endangered by the Secretary of the Interior. On his foreign list, there are over 300 species. Furthermore, the situation continues to worsen. The rate of extinction has increased to a point where, on the average, one species disappears every year.

This is an extremely disturbing trend. To allow the extinction of animal species is ecologically, economically, and ethically unsound. Each species provides a service to its environment; each species is a part of an immensely complicated ecological organization, the stability of which rests on the health of its components. At present, we are unsure of the total contribution of each species of fish and wildlife to

the health of our ecology. To permit the extinction of any species which contributes to the support of this structure without knowledge of the cost or benefits of such extinction is to carelessly tamper with the health of the structure itself.

The existence of each species is also important to the growth of our scientific knowledge of man and his environment. Diversity of genetic types is necessary for thorough scientific knowledge. There is a yet unknown potential for investigation into these species' genetic structure which must remain unhindered if we wish to probe for further knowledge and the transfer of that knowledge into beneficial uses for man.

Finally, many of these animals simply give us esthetic pleasure. We like to view them in zoos and in their natural habitats. We, and our children, learn from these species about the diversity of our universe and the many forms of life which are necessary to support our bountiful and wonderful environment.

For these reasons, it is important that we adopt this act to protect our wildlife. In prior legislation we have taken several steps toward solution of the problem. In 1966 and in 1969, we provided the Secretary with the power to list species or subspecies of fish and wildlife that were threatened with extinction. Importation of these species from foreign countries was prohibited. Federal endangered wildlife reserves were encouraged by authorization of grants for land acquisition. However these provisions only gave limited protection to domestic endangered species; and the Federal grant program terminated last year. There is still no Federal prohibition against the taking of endangered species, still no widespread action to conserve and restore these animals, and the problem of the continuing extinction of species still exists.

The challenge before us now is to protect these species and their vital habitat and to restore their numbers to optimum levels. S. 1983 would accomplish this goal in several ways. First, it provides protection to a broader range of species by affording the Secretary the power to list animals which he determines are likely in the foreseeable future to become extinct, as well as those animals which are presently threatened with extinction. This gives the Secretary and the States which adopt endangered species management plans, the ability not only to protect the last remaining members of the species but to take steps to insure that species which are likely to be threatened with extinction never reach the state of being presently endangered.

The bill would thus hopefully, prevent a crisis situation from occurring for a number of species which would otherwise come close to extinction in future years. The two levels of classification facilitate regulations that are tailored to the needs of the animal while minimizing the use of the most stringent prohibitions. Since most of our resources for restoring and propagating species lie with the States, they are encouraged to use their discretion to promote the recovery of threatened species and Federal prohibitions against taking must be absolutely enforced only for those species on the brink of extinction.

To aid in the delicate and highly specialized task of listing these animals, the Secretary is required to appoint an advisory committee to assist him in the designation of endangered and threatened species.

To insure that the States that may be effected by the Secretary's designation are fully active through the listing process, the Secretary must consult with the States effected prior to listing any species. Furthermore, half the members of the advisory committee must be employed by State governments.

Many species have been inadvertently exterminated by a negligent destruction of their habitat. Their habitats have been cut in size, polluted, or otherwise altered so that they are unsuitable environments for natural populations of fish and wildlife. Under this bill, we can take steps to make amends for our negligent encroachment. The Secretary would be empowered to use the land acquisition authority granted to him in certain existing legislation to acquire land for the use of the endangered species programs. The bill also eliminates the restrictive ceiling which was placed on funds available to the Land and Water Conservation Fund Act by the Act of 1969. Through these land acquisition provisions, we will be able to conserve habitats necessary to protect fish and wildlife from further destruction.

Although most endangered species are threatened primarily by the destruction of their natural habitats, a significant portion of these animals are subject to predation by man for commercial, sport, consumption, or other purposes. The provisions in S. 1983 would prohibit the commerce in or the importation, exportation, or taking of endangered species except where permitted by the Secretary for scientific purposes in furtherance of the purpose of this act, or for the propagation of such species in captivity in a controlled habitat. Amendments which will be offered today, and which would greatly add to the purposes of this act would permit otherwise prohibited acts when they are undertaken to enhance the propagation or survival of the affected species or to prevent serious and otherwise unavoidable threats to human health or the environment.

In order to minimize economic hardship on persons who entered into contracts prior to the passage of the act, such persons are permitted for a limited period of time to engage in activities which would otherwise be in violation of the act.

Alaska Natives are allowed, under regulations to be adopted by the Secretary, to take animals for consumption or use in a native community or for the production of authentic native articles of handicraft or clothing.

Under the bill, the taking of an endangered species for their sale or movement in interstate or foreign commerce is forbidden. Violators of any prohibition under this bill will be liable for a civil penalty of up to \$10,000. Knowing violators of the law will be liable for a criminal penalty of up to \$20,000 and/or imprisonment for up to 1 year. The most important protective provisions of this bill are those which will improve the condition of existing species. These will be actions taken by the Secretary, the States, and individual citizens. However, we must extend some protection to animals subject to unrestrained predation.

Among the greatest contributions that have been made to the conservation, restoration, protection, and propagation of endangered and threatened species are the contributions made by private citizens. Exceptions to the prohibitions could be made by the Secretary wherever possible to encourage individual actions which will further the pur-

poses of this act. Recent activities by the Secretary to prosecute individuals involved in harmless violations of prior acts which were part of programs designed to restore endangered species appear to have been taken counter to the purposes of our earlier legislation. Penalty provisions of this act are intended to be used to prevent activity which may be actually harmful to a species or its individual members and not merely to employ the law enforcement divisions of the departments.

I would like to discuss what is perhaps the most important section of this bill. Important because I believe it provides the most effective means to achieve the purposes of this bill. Undoubtedly, the threatened extinction of our wildlife is a national problem, necessitating involvement of the Federal Government. Endangered animals are not limited to any one area or State of the Nation so it is impossible for the individual States to limit their movement in interstate or foreign commerce. Furthermore, no one State should be responsible for balancing its interests, with those of other States, for the entire Nation. Central authority is necessary to oversee endangered species protection programs and to insure that local political pressures do not lead to the destruction of a vital national asset.

On the other hand, it was well established in the hearings record that most of the States possess much greater wildlife management resources than does the Federal Government. Clearly, any effort on the part of the Federal Government to encourage restoration of threatened or endangered species would fail without the assistance of the State agencies. This bill is designed to permit and encourage State endangered species programs that act in concert with the purposes of this act.

Subject to the provisions of this act which provide maximum protection for species on the brink of extinction, States with active endangered species programs are given full discretion to manage threatened species which reside within their boundaries. Under the bill, the States are given 1 year to submit plans to the Secretary for the establishment of agencies for the promulgation, conservation, restoration, and protection of resident endangered species. Provisions of this act governing the taking and management of endangered species go into effect 15 months after the passage of this act only for those States where the submitted plans have not been approved by the Secretary.

Further, States, whose plans have been approved by the Secretary, are eligible for a portion of the \$10 million provided under this act for financial assistance to defer the cost of implementation. In the case where a State plan is not initially approved by the Secretary, and the Secretary must intervene to insure furtherance of the purposes of this act, a State may reapply at any time for approval of its plan. A State's power to manage endangered species is preempted only to the extent that such State does not prevent taking of endangered species—that is, species which are in imminent danger of extinction. Even in these cases, States whose plans have not been disapproved by the Secretary would have management powers not inconsistent with the prohibitions against taking.

The plan for Federal-State cooperation provides for much more extensive discretionary action on the part of the Secretary and the

State agencies. Under existing laws, a species must be declared "endangered" even if in a certain portion of its range, the species has experienced a population boom, or is otherwise threatening to destroy the life support capacity of its habitat. Such a broad listing prevents local authorities from taking steps to insure healthy population levels.

Under S. 1983, however, the Secretary may list an animal as "endangered" through all or portion of its range. An animal might be "endangered" in most States but overpopulated in some. In a State in which a species is overpopulated, the Secretary would have the discretion to list that animal as merely threatened or to remove it from the endangered species listing entirely while still providing protection in areas where it was threatened with extinction. In that portion of its range where it was not threatened with extinction, the States would have full authority to use their management skills to insure the proper conservation of the species. Also, upon passage of S. 1983, Federal prohibitions against taking would apply only in those States which did not prevent the taking of endangered species. Fifteen months after the passage of the act, the act's provisions would apply only in those States which had not adopted a management plan approved by the Secretary.

A well-known example may serve to illustrate how S. 1983 provides for maximum management and conservation discretion, while insuring absolute protection for species imminently in danger of extinction. The American alligator, which has been plagued by habitat destruction and commercial exploitation, is currently listed as an endangered species. However, due to increased population resulting in habitat destruction, the Louisiana Wildlife and Fisheries Commission ended total protection last year and conducted a closely regulated harvest in one parish of the State. According to the Department of the Interior, it is likely that in certain portions of Louisiana, the American alligator may be relisted under this bill as a threatened species. S. 1983 would permit continued State action to enhance the existence of this species. In other areas the alligator would remain listed as an endangered species and would be entitled to absolute Federal or State protection until a State plan was approved by the Secretary under the provisions of this act.

Should a State decide not to adopt an endangered species protection program, under this bill, as I propose it be amended, that State could always secure a permit from the Secretary to exempt animals from the prohibitions of this act in order to permit management of a species, then listed as endangered, to enhance the propagation or survival of the affected species. However, I hope that, as soon as possible after the passage of this act, all of the State will formulate plans for the management of resident endangered species and that these plans can be approved by the Secretary so that enlightened management programs can continue under the control of the States.

I feel that this bill provides the necessary national protection to severely endangered species while encouraging the States to utilize all of their resources toward the furtherance of the purposes of this act. State participation is necessary for the protection of endangered and threatened species. This bill provides them the authority and additional funds with which to provide that protection. Only those States who are unwilling to adopt endangered species protection programs

to provide protection for species threatened with extinction need fear Federal preemption.

Finally, while we are concerned with our endangered domestic species, we must not forget the many animals that are in need of worldwide attention. S. 1983 includes the mechanisms of international cooperation that fulfill our commitments under international conventions for the protection of endangered species. This Nation has dedicated itself for international cooperation through several international treaties. S. 1983 extends this cooperation by permitting the President to use certain blocked Federal funds to provide assistance for the development of management programs in foreign countries, and to offer educational training for foreign personnel in wildlife management. The bill also permits loans for the development of protection agencies in foreign countries. And, the bill provides mechanisms for implementation of the Convention on International Trade and Endangered Species of Wild Flora and Fauna which was signed by representatives from the United States last March and is now pending ratification by the Senate.

As we consider this bill, we must remember the magnitude of the problem and the importance of our concern. We are dealing with the future of many species of fish and wildlife—species which in many cases we have placed near extinction from carelessness and a lack of understanding of their importance. These animals are part of our natural resources, part of our history, and part of our evolutionary heritage. We have a duty to restore what we have endangered—for ourselves and for posterity.

This bill is a step toward that necessary restoration. I urge Senators' favorable consideration.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. STEVENS. Mr. President, I am pleased to support the Endangered Species Act of 1973.

While the bill is not perfect, I believe it takes a major step in the protection of American endangered and threatened species. It will provide for the conservation of endangered fish and wildlife by prohibiting the taking of these species and also by encouraging the establishment of State programs. It retains the present bifurcation of responsibility between the Departments of Interior and Commerce over different species. It extends protection to species which are either endangered or likely to become endangered within the foreseeable future. It expands the protection of the Endangered Species Conservation Act of 1969 (85 Stat. 275). That act mainly prohibited the importation of foreign species. This legislation extends protection to domestic species. That act also implemented State statutes. This act will permit national listings of species as either endangered or threatened and also impose Federal prohibitions on their taking.

This legislation was the subject of extensive hearings last Congress in the Senate Environment Subcommittee. The former Senator from Virginia (Mr. Spong) and I heard a number of knowledgeable witnesses from governmental agencies and also from various private groups. They were, almost uniformly, of the opinion that such legislation was necessary for the protection of endangered species.

As former Senator Spong said: "Extinction is quite literally a fate worse than death."

I agree.

This bill is designed to provide the Secretary of the Interior and the Secretary of Commerce with the authority to list a species as either endangered or threatened if its habitat or range is threatened with destruction, it is overutilized and taken in great numbers, it is the victim of disease or predation, it is out of balance with its environment, or natural or manmade factors adversely affect its continued existence.

The Secretaries must use the best scientific data to make this determination. They are to consult with all necessary persons and are to publish such a list in the Federal Register. They may periodically review this list upon the petition of any interested party.

For this purpose they are to establish an advisory committee on endangered and threatened species. This advisory committee was recommended by the State departments of fish and game to give them additional input. It will insure that the Secretaries have the very best possible advice before they list any species or delist it.

Section 5 is particularly important. Under it they are to establish particular programs to protect and conserve fish and wildlife listed as endangered and threatened. They are to acquire land for this purpose and may also utilize other Federal lands for this purpose.

Section 6 and 16 provide for cooperation with the States. They provide the major backbone of the act. Presently the States have an extensive network of endangered species legislation. Unfortunately, not all States have as yet implemented such programs. This bill will assist those States not yet involved to implement such programs and will, if the States do not, provide for Federal preemption.

Typical are the laws of Alaska, Illinois, and Texas. Alaska, for example, requires the State government to preserve the natural habitat of species or subspecies of fish and wildlife that are recognized as threatened with extinction. The language is very similar to S. 1983. The Alaska State commissioner of fish and game is required to seek the advice and recommendations of biological experts. Before anyone may take an endangered animal, he must obtain a special permit from the commissioner of fish and game which may only be given "for scientific or educational purposes, or for propagation in captivity for the purpose of preservation." The State statute also provides criminal penalties for anyone violating it.

I ask unanimous consent to have printed in the Record at this point the text of the Alaska State endangered species law.

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

ARTICLE 4. ENDANGERED SPECIES

- Section
180. Declaration of purpose
185. Protection of habitat
190. Determining endangered species
195. Permit for taking endangered species
200. Penalty
210. Definitions

Sec. 16.20.180. Declaration of purpose. The legislature recognizes that, due to growth and development, certain species or subspecies of fish and wildlife are now and may in the future be threatened with extinction. The purpose of §§ 180-210 of this chapter is to establish a program for their continued conservation, protection, restoration and propagation. (§ 1 ch 115 SLA 1971)

Sec. 16.20.185. Protection of habitat. On land under their respective jurisdictions, the commissioner of fish and game and the commissioner of natural resources shall take measures to preserve the natural habitat of species or subspecies of fish and wildlife that are recognized as threatened with extinction. (§ 1 ch 115 SLA 1971)

Sec. 16.20.190. Determining endangered species. (a) A species or subspecies of fish or wildlife is considered endangered when the commissioner of fish and game determines that its numbers have decreased to such an extent as to indicate that its continued existence is threatened. In making this determination the commissioner of fish and game shall consider

- (1) the destruction, drastic modification, or severe curtailment of its habitat;
- (2) its overutilization for commercial or sporting purposes;
- (3) the effect on it of disease or predation;
- (4) other natural or man-made factors affecting its continued existence.

(b) After making a determination under (a) of this section, the commissioner of fish and game shall, in accordance with the Administrative Procedure Act (AS 44.62), publish a list of the species or subspecies of fish and wildlife that are endangered. The commissioner shall, at least once every two years thereafter, conduct a thorough review of the list to determine what changes have occurred concerning the species or subspecies listed. Consideration of existing species or subspecies of fish and wildlife for listing under this section shall be made on a continuing basis. The review of listed species or subspecies conducted under this section shall be submitted in writing to the governor and the legislature and shall be made available to the public.

(c) In making his determination and review under (a) and (b) of this section, the commissioner of fish and game shall seek the advice and recommendation of interested persons and organizations, including but not limited to ornithologists, ichthyologists, ecologists and zoologists. (§ 1 ch 115 SLA 1971)

Sec. 16.20.195. Permit for taking endangered species. No species or subspecies of fish or wildlife listed as endangered under § 190(b) of this chapter may be harvested, captured or propagated except under the terms of a special permit issued by the commissioner of fish and game for scientific or educational purposes, or for propagation in captivity for the purpose of preservation. (§ 1 ch 115 SLA 1971)

Sec. 16.20.200. Penalty. A person who, without a permit issued under § 195 of this chapter, harvests, injures, imports, exports, or captures a species or subspecies of fish or wildlife listed under § 190 of this chapter, is guilty of a misdemeanor. (§ 1 ch 115 SLA 1971)

Sec. 16.20.210. Definitions. In §§ 180-210 of this chapter "fish or wildlife" includes birds. (§ 1 ch 115 SLA 1971)

Mr. STEVENS. The Illinois State statute lists a number of domestic and foreign species and makes it unlawful to "possess, sell, order for sale, give or dispose of any animal or the wild animal product of any animal which is an endangered species under this act" without obtaining a permit. Such permits may be given only for "zoological, educational or scientific purposes." It provides for fines and imprisonment for persons violating this act.

Mr. President, I ask unanimous consent that the text of the Illinois Endangered Species Act be printed in the Record at this point.

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

ILLINOIS ENDANGERED SPECIES ACT

An Act to prohibit the transfer, sale and possession of products or skins of animals in danger of extinction, to create a Board to determine which species are endangered and to provide penalties for the violation thereof, and to make an appropriation therefor.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. This Act shall be known and may be cited as the "Illinois Endangered Species Protection Act."

Section 2. As used in this Act the following words have the following meanings:

"Board" means the Endangered Species Protection Board created by this Act.

"Department" means the Department of Conservation and "Director" means the director of that Department.

"Endangered Species" means the species of animals listed in this Section plus such other species as the Board deems to be in danger of extinction. This includes but is not limited to the following species: leopard, *Panthera pardus*; snow leopard, *Panthera uncia*; clouded leopard, *Neofelis nebulosa*; tiger, *Panthera tigris*, cheetah, *Achonyx jubatus*; alligators, caiman, crocodiles and all other members of the order crocodylia; vicuna, *Vicugna vicugna*; red wolf, *Canis rufus*; gray wolf, *Canis lupus*; polar bear, *Ursus maritimus*; mountain lion, sometimes called cougar, *Felis concolor*; desert kit fox, *Vulpes macrotis*; kit or swift fox, *Vulpes velox*; Pacific Ridley turtle or warana, *Lepidochelys olivacea*; or green turtle, *Chelonia mydas*.

"Wild animal product" means the fur, hide, skin, teeth, feathers, tusks, claws or the body or any portion thereof whether in a green or raw state or as a product manufactured or refined from an animal protected under this Act or under regulations issued pursuant to this Act.

Section 3. After January 1, 1973, it is unlawful to possess, sell, order for sale, give or dispose of any animal or the wild animal product of any animal which is an endangered species under this Act, without a permit therefor issued by the Department.

Section 4. Upon proper application, the Department shall issue to any person, firm, association or corporation a permit which allows the possession, purchase and disposal of live animals or wild animal products of an endangered species for zoological, educational or scientific purposes only. Such permit shall be issued without fee. The holder of such permit and all applicants therefor shall submit a list of all animals and wild animal products of endangered species owned or in their possession when ordered by the Director, but no more than annually. The Director may, upon notice and hearing, revoke the permit of any holder thereof upon his failure to file the reports required by this Section or the filing of a knowingly false report or the use of any wild animal product or animal of an endangered species for any purpose other than an educational, zoological or scientific purpose.

Section 5. Upon proper application, the Department shall issue a limited permit to any person, firm, association or corporation which had in its possession prior to the effective date of this Act, wild animal product of an endangered species. Such permit shall specifically name and describe each wild animal product possessed by the permit holder and shall be valid only for possession of the products so named. The Department may require proof that acquisition of such wild animal was made before the effective date of this Act. Such permit shall be valid as long as the product is in existence. The limited permit may be revoked by the Director for any violation of this Act.

Section 8. Any officer or agent authorized by the Department or Conservation, or any police officer of any municipality within the State of Illinois, may execute any warrant to search for and seize any goods, merchandise or wildlife sold or offered for sale in violation of this Section, or any property or item used in connection with a violation of this Section. Such goods, merchandise, wildlife or property shall be held pending proceedings in any court of proper jurisdiction. Upon conviction, such seized goods, merchandise or wildlife shall be forfeited and, upon forfeiture, either offered to a recognized institution for scientific or educational purposes, or destroyed.

Section 9. Any person who violates any provision of this Act shall be fined not less than \$100 nor more than \$1,000 or imprisoned for not more than one year in a penal institution other than the penitentiary, or both.

Section 10. All fines collected under this Act shall be paid to the State Treasurer and deposited in the Game and Fish Fund.

Mr. Stevens, A third example is the Texas Endangered Species Act. This was signed into law this May. It implements the present Federal statutes and also closely follows the wording of S. 1983. It requires permits before any species may be taken for zoological or scientific purposes if that species has been classified as endangered. It also provides criminal penalties.

Mr. President, I ask unanimous consent that the text of the Texas Endangered Species Act be printed in the Record at this point.

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

TEXAS ENDANGERED SPECIES BILL

An act relating to the conservation, management, protection, propagation, sale, and use of nongame fish and wildlife species; relating to the classification of certain fish and wildlife as endangered species; and the protection, propagation, sale, and use of endangered species and products of endangered species; providing penalties for violations; and declaring an emergency

Be it enacted by the Legislature of the State of Texas:

Section 1. Definitions.—As used in this Act:

(1) "Director" means the executive director of the parks and wildlife department.

(2) "Department" means the parks and wildlife department.

(3) "Fish or wildlife" means any wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, product, egg, offspring, dead or alive, of a wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean.

(4) "Person" means any individual, firm, corporation, association, or partnership.

(5) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and the maintaining of such levels. The term "management" likewise includes the entire range of activities constituting a full scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

Sec. 2. Nongame species. (a) The department shall conduct investigations on nongame fish and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determination, the department shall issue proposed regulations not later than one year from the effective date of this Act and develop management programs designed to insure the continued ability of nongame fish and wildlife to perpetuate themselves successfully. The proposed regulations shall set forth species or subspecies of nongame wildlife which the department deems in need of management pursuant to this section, giving their common and scientific names by species and subspecies. The department shall conduct ongoing investigations of nongame fish and wildlife and may from time to time amend such regulations by adding or deleting therefrom species or subspecies of nongame wildlife.

(b) The department shall by regulations establish proposed limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage nongame fish and wildlife. The regulations shall become effective 60 days after being proposed and during that period public comment shall be solicited. The department shall hold a public hearing, notice of which shall be published in at least three major newspapers of general circulation in this state at least one week prior to the hearing date. On the basis of public comments received or the testimony at a hearing the department may make such changes in the proposed regulations as are consistent with effective management of nongame fish and wildlife.

Sec. 3. Endangered species. Fish or wildlife are classified as endangered species if they appear on:

(1) the present United States List of Endangered Foreign Fish and Wildlife

(2) the present United States List of Endangered Native Fish and Wildlife

(3) the list filed by the director under this Act of fish or wildlife threatened with statewide extinction.

Sec. 4. Statewide extinction. Fish or wildlife may be classified by the director as threatened with statewide extinction if the department finds that the continued

existence of the fish or wildlife is endangered in this state due to any of the following factors:

(1) the destruction, drastic modification, or severe curtailment of its habitat;

(2) the over-utilization of it for commercial or sporting purposes;

(3) the effect on it of disease or predation; or

(4) other natural or man-made factors affecting its continued existence.

Sec. 5. Initial classification by director. Within 45 days after the effective date of this Act, the department shall file with the secretary of state a proposed list of fish or wildlife threatened with statewide extinction. This list shall become effective on the 45th day after the date it is filed. Before the effective date of the proposed list, the department shall hold a public hearing on the proposed list. Notice of the hearing shall be published in at least three major newspapers of general circulation in this state at least one week prior to the hearing date. The proposed list may be amended prior to its effective date.

Sec. 6. Classification amendment by director. (a) If the federal lists set out in Section 3 of this Act are subsequently altered, the director shall file an order with the secretary of state accepting the alteration. The order is effective immediately.

(b) The department may amend the list filed under Section 5 of this Act by filing an order with the secretary of state. Notice of the intent to file the order and the contents of the proposed order must be given 60 days prior to the date of filing. If petition procedures set out in Section 7 of this Act are initiated relating to the contents of the proposed order during the 60-day notice period, the order may not be filed until the conclusion of the proceedings. The order is effective on the date of filing.

Sec. 7. Petition for reclassification. (a) On the petition of three interested persons presenting substantial scientific evidence for the addition or deletion of fish or wildlife classified as threatened with statewide extinction, the department may conduct a review of the classification and file an order with the secretary of state adding or deleting fish or wildlife from the list of fish or wildlife threatened with statewide extinction.

(b) If the department refuses to conduct a review of the classification of fish or wildlife threatened with statewide extinction under Subsection (a) of this section, a petition of 50 interested persons presenting scientific evidence for the addition or deletion of fish or wildlife classified as threatened with statewide extinction may be presented to the department. On receipt of this petition, the department must hold a public hearing to review the classification. Notice of the hearing shall be published in at least three major newspapers of general circulation in this state at least one week prior to the hearing date. Based on findings from the public hearing, the department may file an order with the secretary of state adding or deleting fish or wildlife from the list of fish or wildlife threatened with statewide extinction.

(c) Orders filed under this section are effective immediately.

Sec. 8. Use of name for sale. No person may advertise, offer for sale, or sell any other species of fish or wildlife under the name of any fish or wildlife classified as an endangered species.

Sec. 9. Permit to take certain fish or wildlife. (a) No person may take, possess, or transport fish or wildlife classified as endangered species for zoological gardens or scientific purposes or take or transport fish or wildlife classified as endangered species from the wild or from their natural habitat for propagation for commercial purposes, unless he has obtained a permit under Article 913, Penal Code of Texas, 1925, as amended, or under a federal permit.

(b) A permit may not be granted under Article 913, Penal Code of Texas, 1925, as amended, if the taking, possessing, or transporting of the fish or animal classified as an endangered species is specifically prohibited by federal law.

(c) The department may refuse to grant a permit to take or transport fish or wildlife classified as an endangered species from the wild or from their natural habitat for propagation for commercial purposes if the fish or wildlife may be legally obtained from a source in this state other than the wild or its natural habitat.

(d) Fish or wildlife classified as an endangered species shall be considered and included within the meaning of "protected fish or wildlife" as that term is used in Article 913, Penal Code of Texas, 1925, as amended.

(e) Failure to comply with this section is a violation of this Act. Failure to comply with the terms of a permit issued under Article 913, Penal Code of Texas, 1925, as amended, is a violation of that article.

(f) The provisions of this Act do not apply to the possession of mounted or preserved endangered species by public or private nonprofit educational, zoological, or research institutions held prior to the effective date of this Act. The department may require such institutions to furnish a list of mounted or preserved endangered species which they hold, together with adequate proof of the time of acquisition.

Sec. 10. Propagation. No person may possess fish or wildlife classified as endangered species for the purpose of propagating them for sale unless he has obtained a commercial propagation permit issued under this Act.

Sec. 11. Original commercial propagation permit. (a) An applicant for an original commercial propagation permit must submit to the department the permit fee of \$300 and an application containing information or statements required by the department.

(b) The department shall issue an original commercial propagation permit to an applicant on compliance with Subsection (a) of this section if the department is satisfied that the fish or wildlife to be used for initial breeding stock was acquired by the applicant for commercial propagation purposes under Section 9 of this Act, federal rules, regulations, or permits, or from a person or source authorized to possess, sell, or dispose of the fish or wildlife under the laws of this state, another state, or federal law.

(c) Each original commercial propagation permit which is issued shall contain a description of the fish or wildlife classified as an endangered species which may be possessed by the permit holder.

(d) An original commercial propagation permit expires one year from the date of issuance.

Sec. 12. Renewal commercial propagation permit. (a) The department shall renew a commercial propagation permit on receipt of an application and the \$550 renewal fee prior to or within 10 days of the expiration date of the permit.

(b) A renewal commercial propagation permit expires three years from the date of issuance and may be renewed under the same conditions as renewal of the original permit.

(c) The department may refuse to renew any permit when it is deemed to be in the best interest of the species.

Sec. 13. Duty of permittee. A person holding a commercial propagation permit must submit annually to the department:

(1) a written report by a veterinarian licensed to practice in this state containing an evaluation of the physical conditions of the propagation facilities and the condition of the fish or wildlife held by the permit holder; and

(2) a written report by the permit holder on forms prepared by the department relating to the general propagation activity during the previous year.

Sec. 14. Refusal of cancellation of permit. (a) If, on the basis of the reports required by Section 13 of this Act or from an investigation or inspection of an authorized employee of the department, the department finds that a permit holder is improperly caring for or handling the fish or wildlife held under the permit, the department shall give written notice of the objectionable actions or conditions to the permit holder.

(b) If the department finds that the improper caring for or handling of the fish or wildlife is detrimental to the fish or wildlife and the fish or wildlife need immediate protection, the department may seize the fish or wildlife and authorize proper care pending the correction of the improper conditions or actions.

Sec. 15. Appeal. (a) A person whose application for a commercial propagation permit or for renewal of a commercial propagation permit has been refused by the department or whose permit has been cancelled may take an appeal within 20 days from the date of refusal to any district court of Travis County or to any district court of the county of his residence.

(b) A case reviewed under this provision of this section proceeds in the district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this state. Appeal from the judgment of the district court lies as in other civil cases.

Sec. 16. Disposition of fish or wildlife. A person who holds a commercial propagation permit and fails to renew the permit or his renewal application is denied, or whose permit is cancelled under Section 14 of this Act, must dispose of the fish or wildlife held under Section 14 of this Act, must dispose of the fish or wildlife held under the permit and any increase in the fish or wildlife in the manner specified by the department.

Sec. 17. Rules and regulations. The department shall make rules and regulations to administer the provisions of this Act including:

- (1) permit application forms, fees, and procedures;
- (2) hearing procedures;
- (3) procedures for identifying fish or wildlife classified as endangered species which may be possessed, propagated, or sold under the provisions of this Act;
- (4) publication and distribution of lists of the species or subspecies of fish or wildlife or products of fish or wildlife classified as endangered species; and
- (5) other rules and regulations necessary to attain the objectives of this Act.

Sec. 18. Disposition of Funds. Money received from the issuance of permits under this Act or from violations of this Act shall be deposited by the department in the state treasury to the credit of the general revenue fund.

Sec. 19. Sale of fish or wildlife classified as endangered species. (a) No person may sell, process, offer for sale, advertise for sale, or distribute fish or wildlife classified as endangered species unless the fish or wildlife have been lawfully born and raised in captivity for commercial purposes under the provisions of this Act or federal law.

(b) No person may sell, process, offer for sale, advertise for sale, or distribute goods made from fish or wildlife classified as endangered species unless the goods were made from fish or wildlife which were lawfully born and raised in captivity for commercial purposes under the provisions of this Act or federal law.

(c) Fish or wildlife classified as endangered species or goods made from fish or wildlife classified as endangered species sold under this section must be tagged or labeled in a manner to indicate compliance with this section.

Sec. 20. Exemptions. The provisions of this Act do not apply to coyotes (prairie wolves), cougars, bobcats, prairie dogs or red foxes.

No provision of this Act shall apply to any animals, fish or fowl which are privately owned animals, fish or fowl by the private owners of such animals, fish or fowl.

Sec. 21. Enforcement. (a) The Provisions of this Act shall be enforced by the department.

(b) Any commissioned peace officer in this state, including game management officers commissioned as peace officers in this state may execute a warrant to search for and seize fish or wildlife or goods made from fish or wildlife taken, sold, or possessed in violation of this Act or the rules and regulations issued under this Act.

(c) An officer who has made an arrest of a person for a violation of this Act or the rules and regulations issued under this Act may search the person at the time of arrest and seize fish or wildlife, or goods made from fish or wildlife, taken, possessed, or made in connection with a violation of this Act or the rules and regulations issued under this Act.

(d) Fish or wildlife, or goods seized under this section shall be delivered to the department and held by the department pending disposition of court proceedings. Subsequent to the disposition of court proceedings, the department shall dispose of fish or wildlife, and goods in accordance with rules and regulations established by the department. Any costs of maintenance for fish or wildlife seized under this section incurred by the department during the pendency of court proceedings may be assessed to the defendant.

Sec. 22. Penalty. A person who violates a provision of this Act or a rule or regulation issued under this Act is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than \$100 nor more than \$200. A person who is convicted for a second violation of a provision of this Act or a rule or regulation issued under this Act is punishable by a fine of not less than \$200 nor more than \$500 or confinement in the county jail for not less than 30 days nor more than 90 days, or both. A person who is convicted for a third or subsequent violation of a provision of this Act or a rule or regulation issued under this Act is punishable by a fine of not less than \$500 nor more than \$2,000, and confinement in the county jail for not less than six months nor more than one year.

Sec. 23. Conflict of laws. Any species or subspecies of fish or wildlife classified as an endangered species shall be governed exclusively by the provisions of this Act and no other regulatory or licensing laws of this state shall be applicable. This Act does not repeal Article 913, Penal Code of Texas, 1925, as amended.

Sec. 24. Funding. Funds for the administration of this Act may be appropriated from the general revenue fund by legislative appropriation.

Sec. 25. Issuance of permits on effective date. Any person who is engaged in the business of commercial propagation of a species of fish or wildlife classified as an endangered species on the effective date of this Act, may obtain a permit under Section 11 of this Act regardless of the method in which the fish or wildlife were initially obtained. Application for a permit under this section must be submitted within 120 days from the effective date of this Act.

Sec. 26. Effective date. Subsection (b) of Section 19 of this Act shall become effective September 1, 1974.

Sec. 27. Emergency. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act shall take effect and be in force according to its provisions, and it is so enacted.

Mr. STEVENS. These then are but three examples of the many State laws on the subject.

As Dr. Ralph MacMullen, president of the International Association of Game, Fish, and Conservation Commissioners, stated last year in hearings before our subcommittee, State wildlife agencies employ presently over 5,800 enforcement officers across the Nation. Formal endangered species programs are being implemented in over 30 States. The three I have just had printed in the Record are but examples.

The International Association of Game, Fish, and Conservation Commissioners have promulgated a model State bill relating to funding and authorization for improved nongame and endangered species programs. This is set forth on pages 164-168 of the hearing record, S. 92-81 of the Senate Commerce Committee. I will not ask that that be reprinted, but merely incorporated by reference.

But even Dr. MacMullen believed that the Federal Government has a definite role in this area to insure that minimum standards are set and to assist the States in their responsibility for managing resident species.

Dr. MacMullen indicated that there are only two Federal enforcement people in Michigan and there are 200 full-time conservation officers and another 200 part-time employees in the same State in 83 counties. In other words, in Michigan there are an average of over two full-time conservation officers plus a number of other peace officers in each county to enforce State laws. These State and local law enforcement officials enforce Federal as well as State laws. He said "we perform the legwork." This is true nationwide. He also indicated that if the Federal Government were to take away the right of the States to manage these species and to preempt the States, State legislatures would not be willing to appropriate the necessary funds to protect endangered species.

This is, as a practical matter, what has happened in the ocean mammal bill. The Federal Government has preempted the States and has not provided enough money to manage the program. Thus there is no enforcement agency to protect ocean mammals. This is the reason for the Endangered Species Act of 1973 provides for a larger role for States and why there has been less opposition to it. I strongly support this trend.

Sections 6 and 16 of this legislation require the Secretaries to consult with the States before the acquisition of any lands, waters or interests

therein for the protection of an endangered species. Cooperative agreements may be entered into. Financial assistance may be given to the States for this purpose. Specific requirements for the States are listed. Periodic review is required also. Section 16 specifically provides that by the end of the first year after the date of enactment each State may establish a plan in accordance with this act to protect endangered and threatened species. The Secretary must make a determination as to whether the plan meets the requirements of the act. Periodic review is also required. States are given 15 months to conform their statutes to the provision of this act. If not, they are subject to Federal preemption. I shall offer an amendment shortly to improve this section.

Financial assistance and encouragement of international efforts in the conservation of endangered species are also encouraged. This is particularly important for many of the migratory species involved. Stringent prohibitions against unlawful taking or importation are also included.

There is set forth a specific exception for undue economic hardship. Because of certain technical problems with this section, I shall speak on it at some length when I offer an amendment on this later this morning.

There is also a specific exception for Alaska Natives. This was written utilizing the Marine Mammal Protection Act of 1972 (86 Stat. 1027) as a guide and was reviewed in detail with my staff and is entirely agreeable to me. I believe it provides the protection necessary for Alaskan Natives. Many of the technical changes were made as a result of certain problems we have found in the implementation of the marine mammal bill and certain questions that have subsequently been raised by those agencies in enforcing that act. Hopefully this will eliminate many of these ambiguities and will also, I intend, clarify our original interpretation of the Marine Mammal Protection Act.

It was my specific intent in this subsection to obviate the problems I mentioned in my several letters to the Departments of the Interior and Commerce on the Marine Mammal Protection Act. By passing this section, the Senate will be again indicating our congressional intent on each of these points.

Section 17 discusses the relationship of this act with the Marine Mammal Protection Act. A similar provision is found in section 11 (d). It is important to note that certain of the provisions in that subsection will affect marine mammals and that, as specified in that subsection, they will take precedence over the Marine Mammal Protection Act of 1972.

One final point, last year at my request this legislation was not taken up on the Senate floor after being reported out of the Senate Commerce Committee.

That report, S. 92-1136, set forth my supplemental views also. I did not oppose this legislation at that time and I do not now. As I stated then: "I agree with the majority of the committee that legislation embodying the concerns in this bill is necessary."

I went on to state that time remaining in that congressional session was too short to permit the care and deliberation essential to the drafting and passage of legislation of this magnitude. The necessary time and care has since been spent. I believe we have a good bill in S. 1983

and am very pleased to have been designated the Republican floor manager for it.

Mr. President, in the United States there are 109 species and subspecies of wildlife—14 mammals, 50 birds, 7 reptiles, and 30 fish species—now threatened with extinction. These include such animals as the black-footed ferret, the whooping crane, the eastern timber wolf, the masked bobwhite, the ivory-billed woodpecker, and peregrine falcons. These are only domestic endangered species and do not include foreign endangered species.

Of this number, eight species, including the eastern cougar and the Mississippi sandhill crane, were listed on June 1 of this year.

I ask unanimous consent to have printed in the Record at this point, a list of the endangered species so specified by the Secretary of the Interior prior to June 1 and a second list of the additional species listed on June 1 of this year.

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

ENDANGERED SPECIES

MAMMALS

Hawaiian hoary bat, *Lasiurus cinereus semotis*.
 Indiana bat, *Myotis sodalis*.
 Delmarva Peninsula fox squirrel, *Sciurus niger cinereus*.
 Murre Bay kangaroo rat, *Dipodomys heermanni morroensis*.
 Salt marsh harvest mouse, *Reithrodontomys raviventris*.
 Eastern timber wolf, *Canis lupus lyccon*.
 Red wolf, *Canis rufus*.
 San Joaquin kit fox, *Vulpes macrotis nuttica*.
 Black-footed ferret, *Mustela nigripes*.
 Florida panther, *Felis concolor coryi*.
 Florida manatee (sea cow), *Trichechus manatus latirostris*.
 Key deer, *Odocoileus virginianus clavium*.
 Columbian white-tailed deer, *Odocoileus virginianus leucurus*.
 Sonoran pronghorn, *Antilocapra americana sonoriensis*.

BIRDS

Hawaiian dark-rumped petrel, *Pterodroma phaeopygia sandwicensis*.
 California least tern, *Sterna albigrons browni*.
 Hawaiian goose (nene), *Branta sandwicensis*.
 Aleutian Canada goose, *Branta canadensis leucopareia*.
 Laysan duck, *Anas laysanensis*.
 Hawaiian duck (koloa), *Anas wyvilliana*.
 Mexican duck, *Anas diazi*.
 Brown pelican, *Pelecanus occidentalis*.
 California condor, *Gymnogyps californianus*.
 Florida everglade kite (snail kite), *Rostrhamus sociabilis plumbeus*.
 Hawaiian hawk (io), *Buteo solitarius*.
 Southern bald eagle, *Haliaeetus leucocephalus leucocephalus*.
 American peregrine falcon, *Falco peregrinus tundrius*.
 Arctic peregrine falcon, *Falco peregrinus tundrius*.
 Attwater's greater prairie chicken, *Tympanuchus cupido attwateri*.
 Masked bobwhite, *Colinus virginianus ridgwayi*.
 Whooping crane, *Grus americana*.
 Yuma clapper rail, *Rallus longirostris yumanensis*.
 California clapper rail, *Rallus longirostris obsoletus*.
 Light-footed clapper rail, *Rallus longirostris leucipes*.
 Hawaiian gallinule, *Gallinula chloropus sandwicensis*.
 Hawaiian coot, *Fulica americana alai*.
 Eskimo curlew, *Numenius borealis*.
 Hawaiian stilt, *Himantopus himantopus knudseni*.

Puerto Rican plain pigeon, *Columba inornata wetmorei*.
 Puerto Rican parrot, *Amazona vittata*.
 Ivory-billed woodpecker, *Campylippus principalis*.
 Red-cockaded woodpecker, *Dendrocolaptes borealis*.
 Hawaiian crow (alala), *Corvus tropicalis*.
 Small Kauai thrush (pualohi), *Phacornis palmeri*.
 Large Kauai thrush, *Phacornis obscurus mgalestina*.
 Molokai thrush (Olomanu), *Phacornis obscurus rufina*.
 Nihoa millerbird, *Acrocephalus kingi*.
 Kauai oo (oo-aa), *Moloo brevicauda*.
 Crested honeycreeper (akohokehe), *Palmicera dolei*.
 Hawaii akapa (akepa), *Lozops coccynea coccynea*.
 Maui akapa (akepule), *Lozops coccynea ochracea*.
 Oahu creeper (alaunahio), *Lozops maculata maculata*.
 Molokai creeper (kakawahie), *Lozops maculata flamma*.
 Akaloaian *Hemignathus wilsoni*.
 Kauai akaloa, *Hemignathus procerus*.
 Kaula and Maui nukupuu, *Hemignathus lucidus*.
 Laysan and Nihoa finches, *Petitirostra cantans*.
 Oahu, *Petitirostra pititaea*.
 Maui parrotbill, *Pseudonestor scanthorhynchus*.
 Bachman's warbler, *Vermivora bachmani*.
 Kirtland's warbler, *Dendroica kirtlandii*.
 Dusky seaside sparrow, *Ammospiza nigrescens*.
 Cape Sable sparrow, *Ammospiza mirabilis*.

REPTILES AND AMPHIBIANS

American alligator, *Alligator mississippiensis*.
 Blunt-nosed leopard lizard, *Crotaphytus silus*.
 San Francisco garter snake, *Thamnophis sirtalis tetrataenia*.
 Puerto Rican bon, *Epiplatys inornatus*.
 Santa Cruz long-toed salamander, *Ambystoma macrodactylum croceum*.
 Texas blind salamander, *Typhlomolge rathbuni*.
 Houston toad, *Bufo houstonensis*.

FISHES

Shortnose sturgeon, *Acipenser brevirostrum*.
 Longjaw cisco, *Coregonus alpinus*.
 Lahontan cutthroat trout, *Salmo clarki henshawi*.
 Plute cutthroat trout, *Salmo clarki selentris*.
 Greenback cutthroat trout, *Salmo clarki stomias*.
 Gila trout, *Salmo gila*.
 Arizona (Apache) trout, *Salmo sp.*
 Humpback chub, *Gila cypha*.
 Mohave chub, *Siphates mohavensis*.
 Pahrnagat bonnytail, *Gila robusta jordani*.
 Moqui dace, *Moapa coriacea*.
 Woundfin, *Plagophorus argentissimus*.
 Colorado River squawfish, *Ptychocheilus lucius*.
 Kendall Warm Springs dace, *Rhinichthys osculus thermalis*.
 Out-let, *Chasmistes cufus*.
 Devil's Hole pupfish, *Cyprinodon diabolis*.
 Comanche Springs pupfish, *Cyprinodon elegans*.
 Teocapa pupfish, *Cyprinodon nevadensis calidae*.
 Warm Springs pupfish, *Cyprinodon nevadensis pectoralis*.
 Owens River pupfish, *Cyprinodon radiosus*.
 Pahrump killifish, *Empetrichthys latos*.
 Bib Bend gambusia, *Gambusia galgeti*.
 Clear Creek gambusia, *Gambusia heterochir*.
 Peos gambusia, *Gambusia nobilis*.
 Unarmored threespine stickleback, *Gasterosteus aculeatus williamsoni*.
 Gila topminnow, *Poeciliopsis occidentalis*.
 Mountain darter, *Etheostoma fonticola*.

Watercress darter, *Etheostoma nuchale*.
 Maryland darter, *Etheostoma sellare*.
 Blue pike, *Stizostedion vitreum glaucum*.
 Created in 1849, the Department of the Interior is concerned with the management, conservation, and development of the Nation's water, fish, wildlife, mineral, forest, and park and recreational resources. It also has major responsibilities for Indian and Territorial affairs.

As the Nation's principal conservation agency, the Department works to assure that nonrenewable resources are developed and used wisely, that park recreational resources are conserved for the future, and that renewable resources make their full contribution to the progress, prosperity, and security of the United States—now and in the future.

ADDITIONAL SPACE LISTED JUNE 1, 1973

1. Utah prairie dog.
2. Northern Rocky Mountain wolf.
3. Eastern cougar.
4. Mississippi sandhill crane.
5. Puerto Rican whip-poor-will.
6. Santa Barbara song sparrow.
7. Desert slender salamander.
8. Okaloosa darter—a tiny minnow found only in Okaloosa County, Florida.

Mr. STEVENS. Some question has arisen with respect to the status of dall sheep and brown bear, two species found in Alaska. Neither of these species is on the Department of the Interior's list of endangered native fish and wildlife. Nor are there plans to add them at this time. I ask unanimous consent to have printed in the Record a letter from the Associate Director of the Bureau of Sport Fisheries and Wildlife to this effect.

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

U. S. DEPARTMENT OF THE INTERIOR,
 FISH AND WILDLIFE SERVICE,
 Washington, D. C., June 7, 1973.

Hon. Tom STEVENS,

U. S. Senate, Washington, D. C.

DEAR SENATOR STEVENS: This responds to your letter on behalf of Mr. John W. Hendrickson, Esq., regarding dall sheep and brown bear.

Please assure Mr. Hendrickson that neither of these animals are on the Department's list of Endangered Native Fish and Wildlife and there are no plans to add them to this time.

We hope this information will clarify the matter. If we can assist you further, please call on us.
 Sincerely yours,

Associate Director.

Mr. STEVENS. Mr. President, I would like to inquire of the Senator from California if he is prepared at this time to take up an amendment I have concerning undue economic hardship.

Mr. TUNNEY. Mr. President, the Senator from New Jersey has a few comments that he wants to make in debate, if that is agreeable with the Senator from Alaska.

Mr. STEVENS. Mr. President, that is perfectly agreeable with me.

Mr. WILLIAMS. Mr. President, first I want to extend my sincere thanks and appreciation to the Senator from Washington (Mr. Magnuson) and to other members of the Senate Commerce Committee for their hard and alert work on this bill and for their dedication to the protection of endangered wildlife.

Mr. President, this is important legislation. It is remarkable when one considers the time in which the committee has been able to deal with this bill after its introduction on the floor, the hearings, and then bringing it to the Senate for consideration by the full Senate.

It was only June 12 of this year that I introduced this bill. It followed the introduction of another bill by the Senator from Washington (Mr. Magnuson) in April. The bill that I had introduced had a broader sweep of protection than the Magnuson bill. In my judgment, the best of both bills has been combined in S. 1983, the bill before us today, and I am more than grateful to the committee for their expeditious consideration of this measure.

Mr. President, one of our most precious natural resources is our wildlife. It is difficult to imagine a world without the many and varied creatures which inhabit our forests, rivers, and oceans.

And yet, if our wildlife continues to decline at the alarming rate we have witnessed during the past 100 years or so, it is indeed possible that the time will come when it will be necessary to visit a zoo or wildlife preserve in order to observe what was once an integral part of our everyday environment.

Many species of fish, birds and mammals have disappeared through the evolution process. Many of them were never abundant to begin with and were therefore particularly vulnerable to the encroachment of civilization. However, many species would still be abundant today were it not for overexploitation by man.

It was once necessary for man to hunt wild animals in order to obtain food and clothing. However, in today's industrial society, where there is a synthetic substitute for almost anything nature can provide, we are no longer dependent upon animals, as we once were. Most animals are worth very little in terms of dollars and cents.

However, their esthetic value is great indeed. The pleasure of simply observing them, as demonstrated by the hundreds of thousands of people who visit zoos and wildlife preserves each year, is immeasurable. Furthermore, the integral part they play in preserving the delicate balance of nature cannot be ignored.

In the United States alone, over the past 100 years, 47 species of native fish and wildlife have become extinct. We have hunted them and destroyed their habitat. We have been indifferent to their fate and ignored the fact that once an animal has vanished from the Earth, it can never be replaced. Today, we can only hope to prevent more wildlife from becoming extinct.

For quite some time, it has been evident that present laws are inadequate for protecting endangered wildlife.

Neither the Endangered Species Protection Act of 1966, nor the Endangered Species Conservation Act of 1969, prohibits the taking or possession of native, endangered fish and wildlife.

Migratory birds are protected under the Migratory Bird Treaty Act; eagles are protected under the Bald Eagle Act; and marine mammals under the Marine Mammal Protection Act. The Lacey Act provides for Federal involvement if an animal is taken contrary to State law and transported across State lines. And the importation of foreign endangered wildlife is prohibited under the Endangered Species Conservation Act of 1969.

The present endangered species law requires the Secretary of the Interior to maintain two lists of endangered wildlife. One list is composed of the names of native—or domestic—endangered wildlife and the other list is made up of the names of foreign endangered wildlife. This law further requires that a species of wildlife be threatened with extinction before it may be placed on the endangered list. An animal's continued existence must actually be in peril before it may be considered endangered.

It is absolutely essential that a species of wildlife be afforded protection before it reaches the endangered list and thereby the brink of extinction. In addition, a Federal prohibition against the taking, import, export and interstate transportation of any species listed as endangered is mandatory if endangered wildlife is to be saved.

The continued survival of many species now listed as endangered is questionable. Various factors, including small population levels, restricted breeding areas, continued destruction of habitat and inadequate prohibitions against taking are responsible for their precarious existence.

The bill before us today, S. 1983, which I introduced, is designed to provide the protection needed to save species of wildlife threatened with extinction, as well as those species which are likely to become threatened with extinction if protective measures are not taken.

I would like to take a few moments to briefly review the provisions of this legislation.

S. 1983 requires that the Secretary maintain two lists. One list shall contain the names of "endangered" native and foreign wildlife and the other shall contain the names of "threatened" native and foreign wildlife. The endangered list will be composed of those species which are in danger of extinction. The threatened list will be composed of those species which are not presently in danger of extinction, but which are likely to become endangered if protective measures are not taken. The bill sets up requirements for determining and listing species of fish and wildlife which are endangered or threatened. Further, whenever the Secretary lists a species as threatened, he is required to issue regulations to protect such species.

S. 1983 would prohibit the taking, import, export, and interstate transportation, of any species of wildlife or part thereof which is listed as endangered or threatened. In addition, the Secretary is authorized to extend the protection of the act to any species which so closely resembles in appearance one which has been listed as endangered or threatened that enforcement personnel have difficulty in distinguishing between the listed and nonlisted species.

Jurisdiction over endangered and threatened species of wildlife is divided between the Secretaries of the Department of the Interior and the Department of Commerce.

Most States are intimately involved with endangered wildlife because of the habitat they control, the legal responsibilities they have for resident wildlife, and the skilled professional personnel which they employ. Many States are already conducting programs to identify and collect information about threatened resident wildlife and to design programs for their protection.

In recognition of the fact that the protection and conservation of endangered wildlife requires close cooperation between the Federal

and State Governments, S. 1983 establishes mechanisms through which they can work together to protect endangered and threatened wildlife.

S. 1983 directs the Secretary to cooperate to the maximum extent practicable with the States. Financial aid grants to the States are authorized for the purpose of carrying out programs for the protection and management of endangered and threatened species. In order to qualify for this financial assistance, a State program must meet the strict criteria which is set forth in the bill. The Federal share of such a program may not exceed 50 percent of the total estimated costs for a single State.

The act in no way limits the power of any State to enact legislation or regulations more restrictive than the provisions of the act.

Under the provisions of S. 1983, the Secretary may delegate to a State the authority to manage resident endangered and threatened wildlife, if such State submits an acceptable plan for this purpose. Such plan must be submitted to the Secretary within 1 year from the date of enactment and must meet or exceed the requirements set forth in the act for obtaining financial assistance. If the plan is not disapproved by the Secretary, it shall go into effect within the State.

The prohibitions against the taking of endangered and threatened wildlife contained in S. 1983 will not apply within the 15-month period following the date of enactment, except in those States which have not established an acceptable plan and those which do not prohibit the taking of endangered and threatened wildlife.

Resident endangered and threatened wildlife will be subject to the provisions of S. 1983 in their entirety upon the date of enactment in any State which has not established an acceptable plan.

One of the major causes of the decline in wildlife populations is the destruction of their habitat. The future of many species, including some already listed as endangered, is in jeopardy because of continued threats to their environment.

It is therefore essential that the habitat of endangered or threatened wildlife be protected from further encroachment. S. 1983 gives the Secretary authority to acquire any real property which he determines to be necessary in order to protect and restore an endangered or threatened species. He is authorized to use the land acquisition authorities of the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act. He is further authorized to use funds authorized and appropriated under the Land and Water Conservation Fund Act, in addition to direct appropriations under S. 1983, for the purpose of acquiring such lands.

In order to facilitate international cooperation in the protection of endangered and threatened wildlife, foreign currencies accruing to the United States in other nations under the Agricultural Trade Development and Assistance Act or any other law, may be used to provide assistance to any foreign country in the development and management of programs which are necessary or useful in the conservation and protection of endangered or threatened wildlife. Further, the Secretary, in cooperation with the Secretary of State, is authorized to encourage foreign countries to establish protective programs and to enter into bilateral or multilateral agreements for the protection of endangered or threatened species, and to encourage citi-

zens of such countries to practice conservation in taking fish or wildlife for importation into the United States.

In February of this year, the United States convened a plenipotentiary conference to bring international protection to wild fauna and flora in danger of extinction due to commerce. Representatives from 80 countries attended this conference. The result was the Convention on International Trade in Endangered Species of Wild Flora and Fauna, which provides for a system of regulation for the purpose of preventing the commercial overexploitation of any species of flora or fauna judged to be endangered or threatened by trade. S. 1983 provides the means with which to carry out the provisions of the convention.

Permits may be issued for the taking of a threatened or endangered species for scientific purposes or the propagation of such species in captivity or in a controlled habitat. But only if such taking will not adversely affect the survival of the wild population.

The provisions of the act do not apply to Alaska natives, who take endangered or threatened species for the purposes of consumption or use in a native community or for the purpose of creating authentic native articles of handicrafts and clothing, provided the taking is not done in a wasteful manner.

In addition, a limited hardship exemption is authorized for persons who have entered into contracts prior to the date a species is listed or proposed to be listed as an endangered or threatened species.

A civil penalty of up to \$10,000 and a criminal penalty of up to \$20,000 and up to 1 year in prison, is provided for under the act.

The act also authorizes the Secretary to pay a reward of up to \$2,500 to persons who furnish information leading to a civil penalty or criminal conviction.

Importers of fish and wildlife will be required to register with the Secretary of the Treasury, to keep records and to provide the Secretary or his representative with access to these records and to their place of business.

Citizen suits are also permitted, subject to certain conditions. Furthermore, the Secretary of the Smithsonian Institution is directed to review species of plants which are endangered or threatened and methods of providing adequate protection, including legislation. He is directed to report his findings to Congress within 1 year from the date of enactment.

Mr. President, I believe that in S. 1983, we have before us the necessary tools with which to restore our endangered and threatened wildlife. I sincerely hope that my colleagues in the Senate share this view, and that S. 1983 will be approved without delay.

I appreciate the full and comprehensive explanation and review of the provisions of this bill that has been made earlier by the knowledgeable Senator from California (Mr. Tunney) and the manager of the bill, the Senator from Alaska (Mr. Stevens).

Mr. President, I yield the floor.

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

The ACTING PRESIDENT pro tempore. The amendment will be stated. The second assistant legislative clerk proceeded to read the amendment.

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

The Acting President pro tempore. Without objection it is so ordered. The amendment will be printed in the Record.

Mr. Stevens' amendment is as follows:

On page 53, line 13, through page 54, line 11, strike sub-section 11(b) and insert:

"(b) (1) *HABUSHIR*.—The Secretary may except from the application of section 10(a) of this Act any person if the failure to grant such exception will cause undue economic hardship: *Provided*, That such exception shall be granted any non-Native resident of an Alaska Native Village unless such resident is found by the Secretary not to be primarily dependent upon the taking of fish and wildlife for consumption or use in a Native community or for creating and selling authentic Native articles or handicrafts. The extent and duration of such exception shall be such as the Secretary deems appropriate: *Provided*, No such exception shall be for a duration of more than one year from the date of publication in the Federal Register of notice of proposed listing of the involved species. No exception shall apply to a quantity of fish or wildlife in excess of that specified by the Secretary. No such exception shall be granted unless such person, except non-Native residents of Alaska Native villages who are primarily dependent upon the taking of fish and wildlife for subsistence purposes, applies to the Secretary in writing and furnishes with such application such information as the Secretary may require to prove hardship. The one year period for those species of fish or wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of Section 3 of the Act of December 5, 1969 (83 Stat. 275). No such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used for primarily commercial purposes.

"(2) As used in this subsection, the term 'undue economic hardship' shall include, but not be limited to:

"(A) Substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of a proposed listing of such species as an endangered or threatened species.

"(B) Substantial economic loss to persons who, for the year prior to their listing of a species under this Act derived a substantial portion of their income from the lawful taking of any listed species which taking would be made unlawful under this Act; or

"(C) Curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

"(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability."

Mr. STEVENS. Mr. President, this is really a noncontroversial amendment, and I am pleased to note that I understand the distinguished Senator from California, the manager of the bill (Mr. Tunney) has indicated that he would accept the amendment.

It makes certain changes in the section granting exceptions for undue economic hardship. Because it makes a series of changes throughout that section, I have set forth the entire section as amended in my proposed amendment.

My amendment would require that an exception for undue economic hardship must be granted to all non-Native residents of Alaskan Native villages unless such residents are found by the Secretary not to be primarily dependent upon the taking of fish and wildlife for consumption or use in a Native community or for creating and selling

authentic Native articles of handicrafts. In other words, the presumption is that such persons are to be entitled to such an exception. This exception will apply probably to no more than a dozen Alaskans. These are persons who are not one quarter or more Native by blood but are integral members of the Native communities that take endangered species. Presently the only such species of which I am aware is the bowhead whale. This is taken in approximately seven villages along the northwest coast of Alaska. Thus, very few people will be covered. However, to be fair, I believe that all such persons, because they really are part of the Native communities, must be excepted to the same extent as Alaskan Natives in the same communities. Such non-Natives who depend primarily upon the taking of fish and wildlife for subsistence need not apply in writing for the exception. Others must.

This amendment defines the term "undue economic hardship" to also include three groups of persons.

The first group is those persons who incur substantial economic loss resulting from the inability caused by this act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a proposed listing of a species.

The second is those who, for the year prior to the listing of a species, have derived a substantial portion of their income from the lawful taking of any listed species and will incur substantial economic loss as the result of such listing.

The third is those who must take endangered species for subsistence and who first, are not reasonably able to secure other sources of subsistence, and second, depend to a substantial extent upon hunting and fishing for subsistence, and third, must engage in such curtailed taking for subsistence purposes.

The Secretary is also, under my amendment, given additional discretion to grant exceptions under such limits as he may determine necessary, if he does not believe blanket exceptions are warranted. Such limits may be as to time, area, or any other factor of applicability. I ask unanimous consent to have printed in the Record a telegram I received from the Alaska Legal Services Attorney for Nome.

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

SENATOR TED STEVENS,
Washington, D.C.

This is to convey my strong support for your amendments to the endangered species legislation currently before the commerce committee. As an Alaska legal services attorney assigned to the Nome office I travel quite extensively through the villages in northwest Alaska. The impact on the residents of these villages of prohibiting the taking of animals supplying traditional foods would be disastrous. As for nonnatives, I would estimate there are not more than 10 persons who rely on the taking of animals used in traditional Eskimo food for subsistence. They are hardly a danger to any species.

ROBERT BURDY,
Attorney at Law.

Mr. STEVENS. Mr. President, this amendment and the other amendments dealing with Alaska Natives were worked out by my staff and the staff of the Senate Commerce Committee's Environmental Subcommittee in coordination with Alaska Legal Services.

NOME, ALASKA, July 19, 1978.

I am most pleased to express my appreciation to the staff of the Commerce Committee's Environmental Subcommittee and to the Alaska legal services in regard to this amendment. I believe that it does protect fully the rights of those residents of Alaska Native villages. That is the intent of the amendment, to clarify the congressional intent with regard to that protection.

I am hopeful that the Senator from California may be able to accept the amendment.

Mr. TURNER. Mr. President, I understand that this amendment is not intended to create a loophole for those who would exploit their Native village resident status in order to increase their taking of the endangered species or to increase commerce in such endangered species but only in order to meet the bona fide community needs; is that not correct?

Mr. STEVENS. The Senator from California is absolutely correct. They are bona fide residents of Native villages who may not be considered to be Natives, who may be married, for instance, to Native people and who are part of the subsistence economy. This amendment is not intended to give anyone the opportunity to start taking endangered species or any other kind of species by virtue of merely establishing residence in a Native village.

Mr. TURNER. We have seen examples of thoughtless commercial taking of endangered species, which only helps to drive endangered species nearer and nearer to extinction. I would expect that no permit would be granted under the provisions of this amendment to further that kind of process. I am sure that the Senator from Alaska would agree that no area of the drafting of this amendment would be utilized in order to permit unwarranted exploitation of endangered species.

Mr. STEVENS. I absolutely concur. The Endangered Species Act of the State of Alaska is specific in that regard already. I am trying to make certain that the Federal law is as specific. We are not trying to open the door to commercial exploitation. We are trying, however, to protect those people who live in a subsistence economy and depend on the animals for food and for their livelihood. It is not intended in any way to encourage or to authorize commercial exploitation by those not so dependent.

Mr. TURNER. The Senator from California is aware that certain non-Native Alaska village residents are dependent upon the taking of endangered species. Some of these people have entered into contracts which may have to be broken due to this act. They would suffer unwarranted economic hardship. As I understand the amendment, its purpose is to provide individuals, particularly those who depend on such taking for subsistence purposes, and may be unaware of the application requirements of the act, with a 1-year period to find other means of support. Is that correct?

Mr. STEVENS. That is correct.

Mr. TURNER. With that understanding, I think that the Senator from Alaska has offered an amendment which will strengthen the legislation and will protect certain constituents of the Senator in Alaska, and the committee will accept the amendment.

The PRESIDING OFFICER (Mr. Charles). Is all time yielded back on the amendment?

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

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

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Alaska (Mr. Stevens).

The amendment was agreed to.

Mr. STEVENS. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. TURNER. Mr. President, I move to lay that motion on the table. The motion to lay on the table was agreed to.

Mr. TURNER. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. STEVENS. I call up another amendment.

The PRESIDING OFFICER. The clerk will report the amendment. The second assistant legislative clerk read as follows:

On page 71, lines 20 through 24, strike the proviso and substitute:

"Provided, That if, within fifteen months of the date of enactment of this Act, the Secretary finds that a state which does not prevent the taking of a species listed by him as endangered does not provide adequate protection for that species, he may be regulation implement the provisions of subsection 10(a) of this Act with respect to that species in that State."

Mr. STEVENS. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. ROBERT C. BRAD. Mr. President, I ask unanimous consent that the vote on the pending amendment occur today at the hour of 2 p.m.

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

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

The PRESIDING OFFICER. The Senator would have to ask unanimous consent for that because there is an amendment already pending.

Mr. EASTLAND. Mr. President, I ask unanimous consent that I may send an amendment to the desk for immediate consideration. The manager of the bill has agreed to accept it.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will state the amendment.

The second assistant legislative clerk read as follows:

On page 29, line 15, before the period, insert a comma and the following: "other than a species of the order Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man."

The PRESIDING OFFICER. Who yields time?

Mr. EASTLAND. Mr. President, I yield myself such time as I may desire.

Mr. President, this amendment would except insect pests which the Secretary found presented an overwhelming risk to man from the protection provided by the bill. The Senate recently passed S. 1888 to provide for a program to eradicate the boll weevil and other insect pests of cotton. Millions of dollars are spent every year in trying to protect man from such pests. If these eradication programs should

approach success, the bill as reported would require their cessation until the insect had been given an opportunity to regenerate.

Another example is the gypsy moth, which was brought into this country by an individual for scientific purposes and has multiplied and spread across the Northeast and is expanding its range State by State defoliating our forests. I do not believe that it makes any sense to attempt to eradicate and preserve these pests at the same time; and I hope that the committee will see fit to agree to this amendment as a technical correction to the bill.

Mr. TURNER. Mr. President, I accept the amendment offered by the Senator from Mississippi, which would permit the Secretary to not list species of the order of insecta determined by the Secretary to constitute a pest whose protection under provisions of this act would present an overwhelming and overriding risk to man.

It is my understanding that this amendment would permit the Secretary to not list an insect upon a finding that the insect presented such an overwhelming risk to man that there was no possible justification for providing protection, but that it would not be used to promote the elimination of species which in only a few numbers might be of value to society. The term "overriding" threat implies an extreme danger which only total destruction would prevent.

Even if the risk is overwhelming, that, in and of itself, would not keep the species off the list. The Secretary must also find that the avoidance of that overwhelming risk overrides the need to protect the species. In other words, he has discretion as to whether he chooses to protect the species or humans in the case of an overwhelming risk to man. Without the Eastland amendment, he would not have that discretion and would have to protect the species whenever it became endangered regardless of the very worst consequences for man's health or well-being.

I think that the Senator from Mississippi has a similar understanding of the amendment.

Mr. EASTLAND. That is correct.

Mr. TURNER. I am prepared to accept the amendment and yield back the remainder of my time.

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

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Mississippi (Mr. Eastland).

[The amendment was agreed to.]

Mr. STEVENS. Mr. President, the pending amendment is my amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. STEVENS. Mr. President, it is my understanding that the Senator from Utah has an amendment and if it is one that is to be accepted by the manager of the bill, I would have no objection to taking it up at this time.

I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged against my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

[The second assistant legislative clerk proceeded to call the roll.] Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. STEVENS. Mr. President, the amendment I have at the desk is to section 16(d). The present proviso states that the prohibitions against taking under S. 1983 automatically apply in any State which does not prevent the taking of any species listed by the Secretary as an endangered species. These prohibitions against taking apply to all species which have been listed by the Secretaries. The present proviso gives the Secretaries no discretion in the matter. The prohibitions automatically apply.

This amendment, as submitted by me and the Senators from Montana (Mr. Mansfield and Mr. McCall) and the Senator from Georgia (Mr. Talmadge), would give the Secretary the discretion he needs to act in this area. This amendment also preserves traditional areas of State sovereignty over resident species.

The amendment provides that if the Secretary with authority over the particular species finds that a particular State does not prevent the taking of a species listed by him as endangered and also does not provide adequate protection for that species, he may in his discretion by regulation implement the provisions of subsection 10(a), the prohibitions against taking.

Certain species, like the American alligator, are listed as endangered presently by the Federal Government. However, they are not endangered in certain States like Louisiana. As a matter of fact, there are enough American alligators in Louisiana to permit the export of a number of animals to other States, for zoos and other purposes.

Certain States do not "prevent the taking" of particular species, but have enacted other measures to protect them. These include habitat acquisition to protect the areas in which these animals live and forage. Such programs are not taken into account under the present language of this section. Land acquisition and other similar conservation measures actually will do more to protect many species of endangered animals than preventing their taking.

Third, certain States, like Illinois, lists the species protected under their State statutes. The Secretary may, by regulation, list or delist additional species and it will take some time to amend the State law to take care of those circumstances.

If each State law which so lists the species covered does not exactly conform to the Secretary's lists, present prohibitions of the bill, under section 10(a), will automatically become effective.

Unfortunately, in none of these cases is the Secretary given any discretion. He must prohibit the taking of all species covered under the act merely because some of the species are not protected by State statute, although there is every reason to believe that the State would act to protect those species that are found to endangered. They have in the past, and I feel certain they will in the future.

This amendment will give the Secretary the discretion he needs to act in such situations.

I want to emphasize the necessity of keeping the States interested in endangered species. They have almost 6,000 officers who are capable of

protecting these species. The Federal Government has only some 200 in the whole United States, and to shift this burden from the States to the Federal Government without giving the Secretary discretion to recognize those States which are in fact taking action to protect endangered species would be unfortunate.

I am pleased that Senators Mansfield, Metcalf, and Talmadge have seen fit to join as cosponsors of the amendment.

I hope Senators will read the letter we have placed on their desks before voting on this amendment, because the amendment, I think, is very important to preserve the role of the State fish and game departments who have done an admirable job so far in trying to protect endangered species.

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

Mr. TURNER. Mr. President, as floor manager for the Endangered Species Protection Act, I am not able to accept the amendment offered by the Senator from Alaska. I recognize full well that the purposes of the Senator are well intended. However, I feel it goes too far.

The Committee on Commerce, which has carefully studied Federal-State relationships in the endangered species protection area, has designed in S. 1983, a legislative scheme which is sufficiently sophisticated, first, to permit the continued management of endangered species by those States with well-developed programs; second, to provide Federal protection to States which do not yet offer such protection; and third, to encourage the development of programs in those States which do not now actively protect endangered species in a manner that will eventually permit a much reduced Federal commitment to endangered species conservation and management.

If the bill is reported, Federal prohibitions against the taking of endangered species apply upon the date of enactment of this act only in those States which have not adopted similar protective measures. During the 15 months subsequent to the passage of the act any State would otherwise be able to exercise its full powers to manage, protect, conserve, restore, or propagate endangered and threatened species. These powers would include the power to permit the taking of threatened species. Furthermore, during this 15-month period any State might apply to the Secretary for approval of its State's endangered species management plan. Any State whose plan was not disapproved by the Secretary within 3 months of submission to the Secretary would have full power to regulate both endangered and threatened species, including the power to regulate the taking of endangered species otherwise regulated under this Act. At the end of the 15 months following passage of the act, all of the provisions of this act regarding the management and taking of endangered and threatened species would go into effect in any State which had not applied to the Secretary or whose plan had been disapproved by the Secretary.

Thus, the bill as reported, takes care of all the options: First, it provides immediate protection against the taking of endangered species in any State which has not provided for such protection at this time. Second, it allows any State to secure full management powers over endangered species by submitting an adequate management plan to the Secretary for approval. Third, 15 months after the passage of the act, Federal law would go into effect to carry out the purposes of this act in any State that should not have an approved management program.

Not only does the bill, as reported, permit any State which adequately protects endangered species to continue such a protection program; it provides funds to assist the State in its management and conservation activities. Ten million dollars is provided to fund this effort for the first 2 years the act is in effect.

The Senator from Alaska argues that the issue is whether or not we are going to preempt the State judicial power to manage present fish and wildlife. This, however, is not the issue. The issue is whether we are going to provide full protection to those species of fish and wildlife which are imminently in danger of extinction in those States which have not yet deemed fit, on the 200 years of our Nation's existence, to provide full protection to these species.

Presently, 35 States provide protection for endangered species. In most of these States, their laws are as strong as or stronger than the provisions of this bill. In the others there are strong management programs. Only 15 States do not now provide some protection for endangered species.

Under this bill there would be absolutely no Federal intervention in those States which provided full protection for presently endangered species. Those States which do not provide absolute prohibitions against taking endangered species but do provide strong programs approved by the Secretary would be totally free to manage a residential species within 3 months of this act. The rationale behind the proposed amendment is that in an emergency the Secretary can rush in and take care of any endangered species. This bill as reported in predicated on the evidence provided in hearings before the Committee on Commerce in the last 2 years that an emergency already exists. This bill only prevents the capacity of those who would exploit endangered species in those States which have not yet had the time to prepare adequate endangered species programs.

This is a bill to protect endangered species, to provide for their conservation, restoration, and propagation. Some argue that the States should have their chance. I argue that the States have had their chance. Nothing in this bill prevents them from continuing to do the excellent work that most of the States have done in the past.

Some States, such as Alaska, have done an excellent job. I think California has done a good job. But there are States which have not done a good job, and it seems to me we ought to have the ability, immediately upon passage of this bill, to protect endangered species inasmuch as those States themselves have not seen fit to do as good a job as the authors of the bill envision as being necessary to protect endangered species.

Mr. STEVENS. Mr. President, I think the Senator from California states his case very well, but, unfortunately, the bill is drawn on the basis of making the Federal law preemptive. In the event there is a species that is not totally protected, then the Federal law applies to all species.

The effect of the amendment I have offered is that if the Secretary finds within this 15-month period that a State does not prevent the taking of a species listed by him as endangered, does not provide adequate protection for that species, he may by regulation implement subsection 10(a) with respect to the taking of that species. In other words, my amendment is directed to a particular situation.

The present language of section 16(d) makes the provisions of the bill effective on the date of enactment of the bill. It does not prevent the taking of any species listed by the Secretary as an endangered species. I think it is most important to keep in mind again what we are doing. We are saying, in effect, that if Louisiana has a management program which has in fact produced a situation in which alligators can be harvested for cultural, scientific, or other purposes without harming the species in that area, even though the alligator may be listed as an endangered species by the Secretary of the Interior, since they do not prevent the taking of alligators, and in fact are taking them under a very scientific and wise management program, that all of the Louisiana laws would be suspended with regard to any species listed among the 109 in the Federal endangered species list. That to me is foolhardy, to suspend the activities of a very viable and good management program, and one that is far-sighted.

All that my amendment would do would be to give the Secretary discretion over that on the basis of the individual species, and not make the law effective on the date of the act as to all species if there is any species that is not protected and on the list of the Secretaries on the date of enactment of the bill.

I think that it would be important to list some of the types of species we are talking about. There has been prepared a list of some 14 particular species.

I ask unanimous consent to have this material printed in the Record at this point if the Senator from California does not object.

Mr. TURNER. Mr. President, I do not object.

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

1. Longjaw cisco—distribution of this species is throughout Lakes Michigan and Huron, and a very small population in the small deep hole in Lake Erie that was present as late as 1948. The decline of this species is attributed to sea lamprey predation and intensive commercial fisheries for large ciscos and increased competition from the small bloater and alewife in Lakes Michigan and Huron. The low number in Lake Erie is due to a very limited favorable environment which has become increasingly unfavorable in recent years.
2. Lahontan cutthroat trout—this species is found primarily in California, but there are a few in Nevada. California provides complete protection but Nevada does not. The decline of the species is attributed to damage to spawning beds resulting from forest removal, fires, and overgrazing. Also, dams which block spawning runs, pollution, diversion of water for irrigation, hybridization, and competition with rainbow trout and other cutthroats are considered to be other reasons for their demise. This species is found primarily on public lands and has been placed in a special protected category by the Bureau of Land Management. The Bureau of Sport Fisheries and Wildlife is constructing a fish hatchery primarily for rearing this subspecies.
3. Breenback cutthroat trout—this species is found only in Boulder and Larimer Counties, Colorado. The decline of this species was caused by deterioration of habitat due to man's activities, competition from stocked trout, and hybridization. Although my information does not show that this species is fully protected by the State of Colorado, the wildlife agency is cooperating in reclamation and restocking of certain waters in the Rocky Mountain National Park and stocking is proposed in other limited reclaimed suitable waters. Barrier dams to isolate populations and angling restrictions are also proposed for certain streams.
4. Arizona trout—the Arizona Game and Fish Department has stocked several streams in Arizona with this species. They have closed Ford Creek and the Upper East Fork of the White River to fishing. Barrier dams to protect the species were constructed on both streams in cooperation with the department, and, the White Mountain Apache tribe constructed two lakes for this trout. Plans are underway to increase hatchery production of this species and restock suitable reclaimed

waters. The Arizona Game and Fish Department has several thousand of these fish producing at one of its state hatcheries.

5. Fahnragal bonytail—this species is found only at the outflow of two springs in Lincoln County, Nevada. Its decline is attributed to irrigation development and establishment of competitive and predatory exotic species in its range. Measures have been proposed to transplant the species into other suitable habitat, if it can be found.

6. Woundfin—this species found essentially in the Virgin River below Hurricane, Utah. Its decline is attributed to modification of its habitat by man. The species is adapted to life in sandy, swift, turbid rivers. A dam is proposed above St. George, Utah, which purportedly would render this species extinct. Research has been proposed to determine its habitat requirement so as to establish a population elsewhere.

7. Colorado squawfish—this species occurs only in the middle and lower Green River, the main Colorado River above Lake Powell, and the Salt River. The reason for its decline is attributed to the modification of its habitat by man through construction of large reservoirs. The species will not reproduce in cold tallwaters below high dams nor in reservoirs behind these dams.

8. Warm spring pupfish—this species is found in School Spring and Seruges Springs in the northern part of Ash Meadows, Nye, Nevada. Although not fully protected by state law, School Springs, which is administered by the Bureau of Land Management, was improved and fenced in 1969. In 1970 a well was drilled to serve as an additional water supply during periods of low spring waterflow to protect the species. This pupfish, of course, is found primarily on public land.

9. American alligator—the American alligator is completely protected in all states. However, due to increased populations and impending habitat destruction, the Louisiana Wildlife and Fisheries Commission lifted the total protection last year and conducted a closely regulated harvest in one parish of the state. This species, with its tremendous reproductive potential, and with strict law enforcement given by southern state wildlife agencies, has rebounded tremendously in recent years. It is very doubtful if it will remain on the endangered species list very long.

10. Puerto Rican boa—this species, found only in Puerto Rico, is in trouble mainly from mongoose predation, according to authorities. This theory has been disputed, however, by some observers. People usually kill every one they see and automobiles kill a few every year.

11. Aleutian Canada goose—this species does not receive total state or federal protection. It is managed by the Federal Government, not the state, under the Migratory Bird Treaty Act. Hunting is still permitted by the Bureau of Sport Fisheries and Wildlife.

12. Mexican duck—likewise, this species comes under the purview of the Federal Government. It is not totally protected, hunting is still allowed by the Bureau of Sport Fisheries and Wildlife.

13. Eastern timber wolf—this species is totally protected in every state except Minnesota. The State of Minnesota came up with a state plan to protect and manage this species last year but violent objection from the Bureau of Sport Fisheries and Wildlife resulted in the state legislature rejecting the proposal. Hopefully this program will be accepted by the next state legislature. At present nearly 2 million acres of the Superior National Forest provides complete protection for the species.

14. Red wolf—the red wolf is found in Texas and Louisiana. Texas recently passed an endangered species law which affords complete protection to the red wolf in that state. In Louisiana the red wolf is given complete protection except in cases of livestock predation which is controlled by federal agents. The livestock-killing animals are removed alive and transferred to the Wild Animal Propagation Trust of the American Association of Zoological Parks and Aquariums.

Those animals listed above are the only ones on the U.S. native endangered species list not receiving complete protection by state law, to the best of my knowledge. As you can see two of the species are under federal control, not state. Also, many of the species do receive protection in some form or another either from the state or some federal agency when they are found on public lands. Therefore, I cannot foresee where any animals on the endangered species list would suffer as a result of an interim period provided in the new endangered species act to give state agencies an opportunity to beef-up their programs in compliance with that act.

Mr. STEVENS. I am not trying to undermine the bill. My State supports the bill, and I think that we have been the leaders in this endeavor. My Governor has indicated that he thinks it is a good idea. However, we want to maintain our ability to act with regard to all species, even though it might be that one species is listed.

I hope that the Senator from California will see my point, that if one species or more is listed and is endangered in Pennsylvania, but is not endangered in Alaska, having it on that list, as the bill stands now, would not only lift it with regard to one State, but would lift it entirely.

Mr. TURNER. Mr. President, all that the State of Alaska would have to do would be to apply to the Secretary for approval of this plan.

Mr. STEVENS. But what that would require would be calling a special session of the State legislature. We protect them by State statute. And we must be given the time to call the legislature into session to pass a law on the subject. That is the reason for the 15 months delay. My friend, the Senator from California, will recall that we put in the 15 months as a sort of breathing period to permit the States which do not protect the taking of any species to have time to act.

We can turn that around and say that the burden is on the Secretary, and if he finds that they are not protected, he may suspend the State law as to that species.

I think that is fair. I think the burden is where it should be. After all, we are dealing with 109 species on the list now. And a lot of people are thinking that we want to take a species that is in danger. They do not understand the fact that Louisiana can have alligators literally, as the old saying goes, coming out of the swamps, whereas they are endangered in some other States.

Mr. TURNER. The State of Louisiana could apply for approval of the plan. And if they had an excess number of alligators and they felt that a reasonable harvest of alligators made sense in the State of Louisiana, the Secretary of the Interior might agree.

Mr. STEVENS. In the meantime, all of the plans would be suspended. The State law would become inoperative. They are listed and, therefore, no management could be undertaken as far as the harvesting of any species during that period of time. And the State has to wait and ask the Secretary of the Interior for approval of a plan which is already effective.

Mr. TURNER. In the case of Louisiana, it is the understanding of the Senator from California that if the State of Louisiana made application, they would have immediate approval of the plan as it relates particularly to alligators. They would then be under State management, and there would be no problem.

What specific species in Alaska is the Senator from Alaska talking about in terms of their being affected?

Mr. STEVENS. I would inform the Senator from California that to my knowledge there is no species in Alaska that are endangered that are not already protected by the State plan.

I am not talking about Alaska. I am talking about the general proposition of protecting them where they are endangered. Again, in the Lake Superior wilderness area, we have an area which protects wolves, even though they may not be fully protected by the State law.

They are provided a habitat, which is absolute protection. It would be immaterial as to whether the State law protected them, because the only place in which they are found is in a sanctuary.

Any Secretary of the Interior under my amendment, if he lists wolves, would look to that area and say that those wolves do not have to be listed under State endangered species law, because the State already has, as a practical matter, imposed absolute protection for that species. Under present language of the bill, because they are in fact listed on the Federal endangered species list for the whole Nation, they would be taken out of State jurisdiction in this regard.

Mr. TURNER. Unless the State came in and asked for approval of that management plan. In the case of Alaska, the management plan would be approved immediately. It is an excellent plan. We are not talking about States such as Alaska which have excellent management plans. However, we are talking about States which do not have plans or which have inadequate management plans. We did not want to wait 15 months to have the kind of controls that were deemed necessary.

It was the view of the committee that if there is a clear and present danger to the endangered or threatened species, then we wanted to have action to protect those species as of the date of the enactment of the law.

I think it is very important that we take such action immediately. It does not make sense, at least to me, to say that we are going to wait for another period of time when we already recognize that the danger is present and with us and that some species are threatened with extinction.

Mr. STEVENS. Mr. President, I think the Senator from California states his position well. I have no great disagreement with him the way it is stated.

The only problem is that the burden is placed on the wrong foot. The burden is placed on those people who have a good program—a program that is effective—to come forward and ask the Secretary to approve their program. However, my amendment puts the burden on the Secretary to go to those who do not have an effective program and suspend their authority as to particular species.

As the Senator points out, some 30 States do already have programs. A relatively small number of States do not have the program. However, it would be very simple for the Secretary to go to these States and say, "You are not protecting the species that are listed." They would then be suspended and they would have the burden of coming back and asking for approval.

However, under the Senator's amendment, the 30 States that do have programs are all suspended if any of them contain any species listed on the Federal endangered species list on the date of the enactment of this act.

In the outline which I had printed in the Record, one of the species, as I recall, is a small fish that is found only in Hot Springs. If that fish is not listed on the endangered species program in that State, the entire management program is suspended until the State comes in and asks for restoration.

That is wrong. If the State does not list that species, and the Secretary wants to have it listed, he can do so immediately under my

amendment. There is no time frame involved. He can issue the regulations to protect them immediately.

I am sure that if my amendment is in the bill at the time the bill goes to the House and the bill is signed by the President, the Secretary will have the regulations ready to protect those species that are not protected now.

But I believe we have an honest difference of opinion. I want to be subjective, to put the burden on the Secretary to look after those States which do not have effective regulation. I believe the Senator from California is defending the committee's bill, which puts the burden on those States which do have effective regulation to come in and prove it. That to me is the wrong way to approach the bill, and I disagree very honestly and openly with the Senator from California, as I have throughout the consideration of this measure.

Therefore, I would like to change that proviso.

Mr. TURNER. Mr. President, I would just like to say there is no Senator who has made a greater contribution to the development of this legislation than the Senator from Alaska.

The PRESIDING OFFICER. All time of the Senator from California has expired. The Senator from Alaska has 8 minutes remaining.

Mr. STEVENS. I yield such time as the Senator from California may desire.

Mr. TURNER. I thank the Senator. As I say, there is no Senator who has made a greater contribution to the development of this legislation than the Senator from Alaska. So I certainly do not want my remarks to be in any way construed that I think the Senator from Alaska is trying to open up an evasive loophole in this legislation, because I do not think that is the case. His persistent interest in seeing this legislation passed shows that he is devoted to the concept of protecting endangered species. I know this full well, and I would say that he has made a tremendous contribution, not only in the committee but on the floor, in explaining what the purposes of this act are. I must say that I do disagree on this particular point. I think that we do have a clear and present danger to endangered species now, and I think that the Federal Government ought to, at the time that this bill passes, provide protection to endangered species, and the States ought to come in and have their plans approved if they are not now providing adequate protection. In the case of Alaska, it would be approved forthwith, and with many other States the case would be the same. As things now stand, many States already provide the protection required under the act.

The Senator mentioned the State of Louisiana and the alligators, and the fact that at one point alligators were threatened in Louisiana, but through a good management program the State of Louisiana has been able to see propagation of alligators to the point that a reasonable harvest is deemed desirable.

There is nothing in the legislation as presently drafted and as reported by the committee to prevent the Secretary from granting a permit to take a reasonable number of alligators, even if the State plan for the management of endangered species in Louisiana was disapproved by the Secretary. I do not know whether the State plan would be disapproved or approved, but even if it were disapproved,

and that meant that the Federal regulations would be operative, it would not prevent the Secretary from granting a specific permit to the State to allow a reasonable number of alligators to be taken.

So I recognize that there is a disagreement. I recognize that there is a difference of philosophy. I just happen to think that we have such a need for the management at the Federal level of endangered species that we ought to have the act become operative across the board at the time of passage, and if States are now handling the problem better than the Federal Government, the Federal Government would not be involved in their affairs.

Mr. STEVENS. Mr. President, I thank the Senator from California for his kind remarks. I believe we have, as I stated, an honest difference of opinion on the approach to be taken with regard to alligators. They are listed among the 109 that are already endangered species, notwithstanding the fact that, as I say, in Louisiana they have a good management program and they are not endangered there. The effect of the committee bill would be to suspend the Louisiana program until the State of Louisiana came forward and demonstrated that it was in fact a good program. The fact that there is a surplus of alligators there demonstrates that they have a good program, in my opinion.

I would say to the Senator from California that when I conducted the hearings on this matter, I asked the representatives of the National Association of State Game & Fish Commissioners, the Wilderness Society, the Friends of Earth, and the others with regard to this preemption, did they not feel that the States should have a time period to act before the Federal Government should move. My understanding of their response was that they all believed that the State should be given a reasonable time. That is the reason for the 15-month time period that is in the bill, which is reasonable as far as the committee is concerned. The Secretary should act on an emergency basis to protect individual species that are in need of protection during that period.

That is my understanding of the general tenor of the witnesses' comments, and I believe that amendment would carry out that objective, which I outlined to the witnesses as they appeared before the committee.

Mr. President, I assume that the time is expired.

The PRESIDING OFFICER (Mr. Chiles). All time on the amendment has expired. Time can be yielded on the bill itself.

Mr. TURNER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. TURNER. Is there anything in the rules to prevent another amendment from being offered between now and 2 o'clock, the time that was designated for the ye-a-and-nay vote on the Stevens amendment?

The PRESIDING OFFICER. The time on the Stevens amendment having expired, another amendment is in order.

Mr. MOSS. Mr. President, I send to the desk a series of amendments, which I call up, and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

The amendments will be stated.

The legislative clerk proceeded to read the amendments.

Mr. Moss. Mr. President, since they are rather lengthy and complicated, I ask unanimous consent that further reading of the amendments be dispensed with, and I shall try to explain what the purpose of the amendments is. I have discussed them fully with the manager of the bill.

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

Mr. Moss' amendments, en bloc, are as follows:

Page 29, line 9, insert "(1) 'Conservation' and 'management' mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of endangered and threatened species at the optimum carrying capacity of their habitat. Such terms include the entire scope of activities that constitute a modern scientific resources program, including, but not limited to, research census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the protection, propagation, conservation and restoration of such species, including regulation and taking necessary to these ends."

Page 30, line 16, insert "(7) 'Optimum carrying capacity' means the ability of a given habitat to support the optimum sustainable population of an endangered or threatened species in a healthy state without diminishing the ability of the habitat to continue that function."

Page 30, line 16, and immediately following (7) above, insert "(8) 'Optimum sustainable population' means, with respect to any population segment to endangered or threatened species, the number of such species which will result in the maximum productivity of the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a consistent part."

Pages 29, 30, 31 and 32, renumber the present paragraphs (1), (2), (3), (4) and (5) as (2), (3), (4), (5) and (6) and renumber the present paragraphs (6), (7), (8), (9), (10), (11), (12), (13) and (14) as (9), (10), (11), (12), (13), (14), (15), (16) and (17).

Page 36, lines 14 and 15, strike the words "protection, restoration or propagation" and insert the words "and management."

Page 38, lines 2 and 3, strike the words "protection, restoration, or propagation" and insert the words "and management."

Page 38, lines 11 and 12, strike the words "management, conservation, protection, and restoration" and insert the words "conservation, protection, restoration, and propagation."

Page 39, lines 12 and 13, strike the words "conservation, protection, restoration, and propagation" and insert the words "conservation and management."

Page 39, lines 21 and 22, strike the words "conservation, protection, restoration and propagation" and insert the words "conservation and management."

Page 40, lines 7, 8 and 9, strike the words "research, censusing, law enforcement, propagation and habitat acquisition or improvement." and insert the words "conservation and management."

Page 72, line 4, strike the words "management and taking" and insert the words "conservation and management."

Mr. Moss. Mr. President, these amendments that I have proposed are simply to establish in this bill a definition or definitions that are consistent generally with the language that was worked out in the sea mammal bill that the Senator from South Carolina (Mr. Hollings) worked on so vigorously, and that also came out of our Commerce Committee.

What we are trying to do here, and what this amendment will accomplish, is to define conservation and management in a way that is agreeable to and supported by the wildlife community. It reinforces Congress' determination, as expressed in the Marine Mammal Protection Act, that our invaluable and irreplaceable wildlife resources be handled on a professional and not simply an emotional basis.

The amendments would, first of all, insert a new paragraph 1 at page 29, line 9, to provide that conservation and management mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations in endangered and threatened species at the optimum carrying capacity of their habitat.

Such terms include the entire scope of activities that constitute a modern scientific resources program, including but not limited to research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the protection, propagation, conservation, and restoration of such species, including regulation and taking necessary to these ends.

The thrust of these amendments is that the States, in managing resident wildlife, are authorized to maximize the population. It is not simply to keep endangered species at a good level, but really to improve and expand the species, and that whatever scientific methods are needed in order to bring the population up to the maximum carrying capacity of the habitat shall be done, and this includes all of the specific functions. Also, in the amendments, we define "optimum carrying capacity" and "optimum sustainable population" and what those terms mean. Then, with those definitions engrafted in there, there is a renumbering of the paragraphs in order to make them fit in their regular order in there. That is what constitutes the second page of the amendment.

We consistently use the words "conservation and management" rather than repeating all the other terms, because they all refer back to the first paragraph on conservation and management.

In our consideration of the bill, we thought it would be entirely proper to write this language in a concise and logical manner, and to emphasize the fact that the purpose of this is not simply to protect the resident species which are threatened or endangered, but simply to provide that there be a maximum effort made to restore the numbers of those species to the point that they would not any longer be considered threatened or in any way endangered.

We believe that this language will accomplish that.

I have discussed this, as I say, at some length with the manager of the bill. I compliment him very highly for his dedication to the work he has done on this matter and for his great concern for the problems we face.

As our country has become more populated and metropolitan in nature, of course, we put pressure on the various species of wildlife. The time is here when we must make a determined effort to see that we do not drive to extinction any of the wildlife that can be preserved.

I think that is the objective of all of us who have been concerned with this bill.

I especially compliment the Senator from California for the valuable work he has done on this matter.

Mr. TURNER. Mr. President, I want to thank the distinguished Senator from Utah for his very kind remarks. It is clear that the language which is suggested by the Senator from Utah would strengthen the purposes of this act, which is, namely, to protect, conserve, propagate and restore endangered species. I have had the opportunity to consult with the Senator from Utah, as he has indicated, regarding the lan-

guage, and I think that my understanding of it is similar to his; that is, that the amendment is designed in a more careful fashion to articulate the type of protections the committee intended when it reported the bill from the committee to the floor of the Senate.

Mr. Moss. I thank the Senator from California for his remarks. I believe that we see eye to eye on the matter. It will strengthen the bill considerably as these definition amendments are adopted.

Mr. TURNER. One further point. It is the understanding of the Senator from Utah, is it not, that in no way by this amendment are we going to be moving the direction of treating endangered species as game animals?

Mr. Moss. No. It does not affect that at all. It does not change the characterization of any animal into a game or a nongame kind of animal. But many of those on the endangered or the threatened species list do fall into the game classification.

Mr. TURNER. If they do fall into the game classification the protection afforded them under this bill, will in no way be diminished by the language which is the clarifying language suggested by the Senator from Utah?

Mr. Moss. Yes. That is true. It applies to all animals of resident species. In fact, beyond even the animal class.

Mr. TURNER. It would not change the protection given to endangered species.

Mr. Moss. No, it would not change that.

I want to compliment the Senator from Utah for the great interest he has shown in the bill. As a member of the committee, he has taken a very deep interest in the matter and has helped to fashion the bill which has come to the floor of the Senate today.

With the understandings that I now have, and as expressed by the Senator from Utah, I am prepared to accept the amendment and yield back the remainder of my time.

Mr. Moss. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. Haskell). All time on the amendment has now expired.

The question is on agreeing to the amendment of the Senator from Utah (Mr. Moss).

The amendment was agreed to.

Mr. Moss. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. TURNER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.
Mr. TURNER. Mr. President, I send to the desk a series of technical and clarifying amendments to S. 1973 and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. The amendments will be stated.

The legislative clerk proceeded to read the amendments.

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

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendments will be printed in the Record.

The text of the amendments is as follows:

On page 27, line 12, before the word "educational," insert the words "aesthetic, ecological."

On page 28, line 8, after the word "States" insert the words "and other interested parties."

On page 31, line 6, delete the word "ferrestrial."

On page 31, line 20, after the word "harass," and before the word "pursue", insert the word "harm."

On page 33, delete lines 17-23.

On page 33, line 34, delete the number "3" and insert the number "2."

On page 35, line 9, delete the word "Secretary" and insert the word "Secretaries".

On page 36, lines 15-16, strike the words "endangered or".

On page 38, line 12, before the word "and" insert the word "propagation".

On page 38, line 18, after the word "has", insert the words "statutory and regulatory".

On page 39, line 13, strike the words "facing extinction" and, before the word "fish" strike the words "endangered and threatened".

On page 40, strike lines 13-17 and insert, in lieu thereof, the following:

"(B) the readiness of a State to proceed with a conservation and management program consistent with the objectives and purposes of this Act;

"(C) the number of endangered and threatened species within a State;

"(D) the potential for restoring endangered and threatened species within a State; and

"(E) the relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of the survival of the species."

On page 40, line 19, after the word "year" insert the word "shall".

On page 40, line 20, after the period insert the words "Any funds remaining unobligated or unexpended at the close of the second fiscal year shall remain available to the Secretary for the purpose of this section."

On page 41, line 18, after the period, insert the words "For the purposes of this section, the non-federal share may, in the discretion of the Secretary, be in the form of real or personal property, the value of which will be determined by the Secretary, as well as money."

On page 41, line 23, after the word "appropriated" insert the words "through the fiscal year ending June 30, 1977."

On page 42, line 12, strike the word "of" and insert in lieu thereof the word "regarding".

On page 49, lines 19 and 20, delete the words "subsection (a)" and insert the words "paragraph (1) of this subsection".

On page 50, lines 20-22, strike the words "specimens or products processed or manufactured in whole or in part from specimens of any such species" and insert, in lieu thereof the words "any endangered species of fish or wildlife".

On page 51, lines 12-14, after the word "consumption" strike the words, "or taken for recreational purpose in waters under United States jurisdiction or on the high seas," and insert in lieu thereof the words "or fish or wildlife taken for recreational purposes pursuant to applicable Federal or State laws and regulations in waters under United States jurisdiction or on the high seas".

On page 55, line 16, after the word "consumption" insert the words "within native villages or towns".

On page 59, line 14, after the word "revocation," insert the words "made pursuant to this section".

On page 68, line 11, strike the word "protection", and insert in lieu thereof the word "conservation".

On page 69, line 20, add a new subsection as follows:

"(F) Section 2(1) of the Federal Environmental Pesticide Control Act of 1972 (P.L. 92-516) is amended by striking out the words 'by the Secretary of the Interior under Public Law 91-135' and inserting in lieu thereof the words 'or threatened by the Secretary pursuant to the Endangered Species Act of 1973'."

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

Mr. TURNER. Mr. President, I have submitted these technical and clarifying amendments to the Senator from Alaska (Mr. Stevens) and he has indicated that he will support them. The amendments will help

to achieve the purposes of the bill and will clarify some confusion caused by language remaining in the bill from earlier drafts or omitted from earlier drafts which went unnoticed during the final committee markup.

They are, as I indicate, technical in nature. They are important, however.

If there is a member of the minority on the floor now, I should like to move their adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. TURNER. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

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

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the Record.

The amendment is as follows:

On page 53, line 8, strike the word "for".

On page 53, line 8, before the word "scientific" insert the word "for".

On page 53, at line 11-12, strike the words "the propagation of such species in captivity or in a controlled habitat", and insert the following "(2) to enhance the propagation or survival of the affected species including the propagation of such species in captivity or in a controlled habitat."

Mr. TURNER. Mr. President, the purpose of the amendment I am offering is to allow the Secretary to permit the taking of an endangered species for the enhancement of the species. This is a needed management tool recommended by all wildlife biologists. It is needed, for example, where a species is destroying its habitat or where the species is diseased.

This amendment has been discussed with the Senator from Alaska, who has indicated that he approves of it.

I am prepared to yield back the remainder of my time, if the distinguished Senator from Kentucky, the designee of the minority leader, is prepared to yield back the remainder of his time.

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

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. TURNER. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

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

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the Record.

The amendment is as follows:

On page 52, between lines 22 and 23, insert a new subsection as follows:

"(c) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of this section shall not apply to any species held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this Act."

Mr. TURNER. Mr. President, I submit an amendment to S. 1983 to exempt from the prohibitions of this bill present owners of certain endangered species.

This amendment would exempt from Government interference endangered species now lawfully held in captivity or in a controlled environment which might come under provisions of this bill. These animals include pets, species held for obligation purposes for which permits might otherwise have to be secured under this bill, and species held in similar circumstances. The Government has made several attempts in the recent past to prosecute certain individuals attempting to enhance the condition of endangered species for seemingly technical violations of the law.

Mr. President, this amendment has been discussed with the Senator from Alaska, and he has indicated that he approves of this amendment.

I am prepared to yield back the remainder of my time, if the Senator from Kentucky is prepared to do the same.

Mr. COOK. Mr. President, we have no objection to this amendment and I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

ENDANGERED SPECIES ACT OF 1973

The Senate continued with the consideration of the bill (S. 1983) to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

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

The PRESIDING OFFICER. The clerk will report the amendment. The legislative clerk read as follows:

On page 43, line 11, insert the following: strike the word "such," and insert the word "any."

Mr. COOK. Mr. President, an earlier version of this bill provided that the appropriate Secretary review other programs administered by him and utilize such programs in furtherance of the purpose of the act. The bill provided further that all other Federal departments and agencies, shall, in consultation with and with the assistance of the Secretary, utilize their authority in furtherance of the purpose of the act by carrying out programs for the protection of endangered species or subspecies of fish and wildlife by taking such action necessary to insure that the continued existence of endangered species do not jeopardize the continued existence of endangered species.

I am in complete agreement with this provision as stated, but it did not go far enough as it did not protect the habitat of the endangered species. I therefore recommended to the committee, and I am pleased that the bill we are now considering includes a provision which would prohibit the destruction or modification of the critical habitat of such species.

Mr. President, the only purpose of my amendment to change the word "such" to "any" is to make the provision all inclusive. I think we should be concerned with the habitat of all wildlife instead of considering that of endangered species.

We have a situation in my State that falls in this category. Mr. TURNER. Mr. President, I ask the Senator whether the effect of his amendment would be, first, if the Bureau of Public Roads wanted to build a highway through an area of the country, as it deemed necessary for the citizens of the Nation, if it would be prevented from doing so by changing the word "such" to "any."

Mr. COOK. Mr. President, I would be less than fair with the Senator if I would say otherwise to him. It is conceivable that this could happen. It is conceivable also that never would happen.

The only point I am making is that they would have to have consultation with the respective agency. The point I have in mind is that we have the Pioneer Weapons Hunting Area in the State of Kentucky. It is the only one of its kind in the United States. There is no other. It is a tremendous nesting area for wild turkeys.

I might suggest that the Corps of Engineers decided that it would build a road right through the middle of this area. We have tried our best to have them change the route of the road. They had alternate routes, but they decided, despite their alternative routes, that this is where they would build the road.

This language means that they have to consult with the respective agencies under this bill, and they have to consult with the respective State agencies in order to work out this problem. That is exactly what it means. And I would be less than candid if I did not explain that to the Senator.

Mr. TURNER. Mr. President, as I understand it, after the consultation process took place, the Bureau of Public Roads, or the Corps of Engineers, would not be prohibited from building such a road if they deemed it necessary to do so.

Mr. COOK. The point is that they would then be doing it after consultation with the respective agencies, rather than making that decision on their own.

Mr. TURNER. But they would have the final decision after consultation.

Mr. COOK. The Senator has put me in a rather bad light. Under the terms of this, it would have to be under an agreement worked out with the respective agencies.

Mr. TURNER. Mr. President, as I understand the legislation, just reading the language:

All other departments, agencies, and instrumentalities of the Federal Government shall, in consultation and with the assistance of the Secretary—
(b) take such action as is necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or modification of any habitat of such species which is determined by the Secretary, after consultation to the extent appropriate and necessary with affected States, to be a critical habitat of such species.

So, as I read the language, there has to be consultation. However, the Bureau of Public Roads or any other agency would have the final de-

cision as to whether such a road should be built. That is my interpretation of the legislation at any rate.

Mr. COOK. Mr. President, we find ourselves in a position where we are debating or really talking about endangered or threatened species, and that is where the consequence of this amendment lies.

I might suggest to the Senator from California that if the Senator feels this might be the burden of this language, I do have another amendment which would designate this area.

Mr. TURNER. Mr. President, I would prefer it if the Senator would withdraw his pending amendment. I know what the Senator's next amendment is. And I support that amendment. I recognize that the Senator has to secure unanimous consent to make the amendment germane to the bill. However, I am prepared to accept the amendment. I have looked it over.

I do not think there is any desire on the part of any Senator on the floor to object to a unanimous-consent request that the amendment be considered.

Mr. President, I am hesitant, as the floor manager of the bill, to accept the amendment. This does broaden considerably the impact of the language which requires consultations with the respective agencies and the Department and the Secretary of Interior. It moves it from endangered species to any species of animal. And with that extension of the language on the floor and without any hearings, I believe it is something that I would not be able to accept.

Mr. COOK. Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.
Mr. COOK. Mr. President, I send to the desk an amendment which is the same as S. 1532 which I introduced earlier this year and ask that it be immediately considered.

The PRESIDING OFFICER. The clerk will report the amendment.
The legislative clerk proceeded to state the amendment.

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

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

The amendment reads as follows:

At the end of the bill, add the following:
That, in accordance with section 3(b) of the Wilderness Act (78 Stat. 892; 16 U.S.C. 1132(b)), those lands in the Daniel Boone National Forest, Kentucky, comprising the Pioneer Weapons Hunting Area and consisting of approximately seven thousand three hundred acres, are hereby designated as wilderness.

Sec. 2. As soon as practicable after this Act takes effect, a map of the wilderness area and a description of its boundaries shall be filed with the Interior and Insular Affairs Committee of the United States Senate and House of Representatives and such map and description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made. A copy of such map and description shall be on file and available for public inspection in the offices of the Chief, Forest Service, United States Department of Agriculture.

Sec. 3. The wilderness area designated by this Act shall be known as the Cave Run Wilderness and shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as Wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

Sec. 4. Nothing in this Act or the Wilderness Act shall be construed as precluding the construction of a Zippo recreation site access road generally on a route extending northward from Forest Development Road, Numbered 129 generally skirting the eastern boundary of the Pioneer Weapons Hunting Area, or as affecting or modifying in any manner the 1962 Cooperative Management Plan between the Department of Fish and Wildlife Resources of the State of Kentucky and the Department of Agriculture involving the designation of the Pioneer Weapons Hunting Area within the Daniel Boone National Forest.

Mr. COOK. Mr. President, I ask unanimous consent that as to this amendment the rule of germaneness be waived.

Mr. ROBERT C. BYRD. Mr. President, the Senator does not have to ask unanimous consent as long as no Senator makes a point of order.

The PRESIDING OFFICER. The Senator from West Virginia is correct.

Mr. COOK. Mr. President, I thank the Senator from West Virginia. Mr. President, I thank the Senator from California, because this now gives me an opportunity to clarify the situation.

Mr. President, I believe that S. 1983 as written will contribute to the guarantee we all want that succeeding generations will enjoy, some measure of nature and wildlife as we have known it. However, I would like further assurance for the people of Kentucky.

Mr. President, in my State of Kentucky, we have located at Cave Run, in Daniel Boone National Forest, a Pioneer Weapons Hunting Area. Within this area are various species of wild turkeys, white-tailed deer, red and grey foxes, ruffed grouse, dove, and quail. During the past year there have been attempts made to bisect this Pioneer Weapons Hunting Area by construction of a road through the normal nesting and grazing area of these species. To do so would most assuredly destroy or severely endanger the species. The tragedy is in the fact that a feasible alternate route is available that would generally skirt the Pioneer Weapons Hunting Area. We cannot permit such inconsiderate and ill-conceived projects to continue.

The amendment would now add a new section to the bill which would designate under section 3(b) of the Wilderness Act of the United States Code, that this area be designated as a wilderness area. Therefore, having such a designation, it is in the unique position of not being subject to this kind of tampering.

If we can get this accomplished, we will solve a problem and this has been going on for more than 2 years on my part.

We no longer have to fear that an agency can decide to arbitrarily build a major highway which bisects this area. I assure my colleagues that this would be of significance to the Pioneer Weapons Hunting Area located in the Daniel Boone National Forest in Kentucky.

Mr. TURNER. Mr. President, I have had an opportunity to consult with the Senator from Kentucky on his amendment. It is a good amendment. It is specific. It clearly focuses on the problem. I am prepared to accept the amendment.

I yield back the remainder of my time.

Mr. COOK. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. HASKELL). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Kentucky.

The amendment was agreed to.

The PRESIDING OFFICER. The hour of 2 p.m. having arrived, the Senate will now proceed to vote on the amendment of the Senator from Alaska (Mr. Stevens) to S. 1983.

On this question the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.
Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. Cannon) is necessarily absent.

I further announce that the Senator from South Dakota (Mr. Aboutrezk) is absent on official business.

I also announce that the Senator from Mississippi (Mr. Stennis) is absent because of illness.

Mr. GARRITY. I announce that the Senator from Oklahoma (Mr. Bellmon) is absent to attend the funeral of a friend.

The Senator from New Hampshire (Mr. Cotton) is absent because of illness.

The Senator from Maryland (Mr. Beall) and the Senator from Arizona (Mr. Goldwater) are detained on official business.

The result was announced—yeas 60, nays 33, as follows:

[No. 321 Leg.]

YEAS—60

Aiken	Pannin	McIntyre
Allen	Fulbright	Metcalf
Baker	Gravel	Montoya
Bartlett	Gurney	Moss
Bennett	Hansen	Nunn
Bible	Helms	Pearson
Biden	Hollings	Percy
Brock	Hruska	Randolph
Burdick	Huddleston	Saxte
Byrd, Harry F., Jr.	Inouye	Scott, Pa.
Chiles	Jackson	Scott, Va.
Church	Johnston	Spartanman
Clark	Long	Stafford
Cook	Magnuson	Stevens
Curtis	Mansfield	Symington
Dole	Mathias	Talmadge
Donnell	McClellan	Thurmond
Dominick	McClure	Tower
Eagleton	McGee	Weicker
Eastland	McGovern	Young

NAYS—33

Bayh	Hartke	Packwood
Bentsen	Haskell	Pastore
Brooke	Hatfield	Pell
Buckley	Hathaway	Proxmire
Byrd, Robert C.	Hughes	Ribicoff
Case	Humphrey	Both
Cranston	Javits	Schweiker
Ervin	Kennedy	Stevenson
Fong	Mondale	Taft
Griffin	Muskie	Tunney
Hart	Nelson	Williams

NOT VOTING—7

Aboutrezk	Cannon	Goldwater
Beall	Cotton	Stennis
Bellmon		

So Mr. Stevens' amendment was agreed to.
The PRESIDING OFFICER. The bill is open to further amendment.

Mr. FULBRIGHT. Mr. President, I send an amendment to the desk. The Presidenting Officer. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 66, line 12, strike "the Secretary of the Smithsonian Institution" and insert in lieu thereof "The Secretary of Agriculture."

Mr. FULBRIGHT. Mr. President, this provision, authorizing the money to the Smithsonian Institution, was not in the original bill. It was inserted in the House, in the Subcommittee on Commerce, by Representative Dingell.

I have consulted the Smithsonian, and Mr. Michael Hurley, the Assistant Secretary, has informed me that they do not wish to pursue this; and they have suggested the substitution of the Secretary of Agriculture for the Smithsonian Institution.

The Smithsonian is interested in this subject, but they do not feel that they are in a position today to carry out the program which is here authorized, and they have suggested that the Department of Agriculture be substituted. It is my understanding that this amendment is acceptable to the chairman of the committee.

Of course, if the Department of Agriculture wishes the cooperation of the Smithsonian, I am quite sure they can obtain it, insofar as the Smithsonian's facilities will permit them to do so.

Mr. TURNER. Mr. President, it is my understanding that the amendment would enable the Department of Agriculture to contract with the Smithsonian Institution to conduct a part of the study if the Department of Agriculture felt that it was necessary—or, for that matter, to contract with any other Federal agency, State agency, or private individual for the purpose of conducting that study.

Mr. FULBRIGHT. I see nothing to prevent that, either.

I must say that I had no notice of this matter until a couple of hours ago, and on inquiry from the Smithsonian, this is the best information I have.

Mr. TURNER. I certainly have no objection to the amendment; but I want to make clear that it is the manager's understanding that it would not prevent the Secretary of Agriculture from contracting with the Smithsonian Institution or any other group or agency for the purpose of conducting the study.

Mr. FULBRIGHT. So far as I can see, there is nothing to prevent that. It is up to the Department of Agriculture.

Mr. TURNER. I accept the amendment, and I yield back the remainder of my time.

Mr. FULBRIGHT. I yield back the remainder of my time. The Presidenting Officer. The question is on agreeing to the amendment of the Senator from Arkansas.

The amendment was agreed to.

The Presidenting Officer. The bill is open to further amendment.

Mr. NELSON. Mr. President, I send an amendment to the desk.

The Presidenting Officer. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

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

The Presidenting Officer. Without objection, it is so ordered; and, without objection, the amendment will be printed in the Record.

The amendment is as follows:

On page 32 insert the following new subsection after Section 3(14):

"(15) 'chemical toxicant' means any chemical substance designed, intended, or employed to control or eradicate insects, rodents, predators and any other wildlife, or plants, by causing significant bodily malfunction, injury, illness, or death immediately before the semicolon, insert a comma and On page 39, line 23, immediately before the semicolon, insert a comma and the following: "and plans to issue regulations prohibiting the use of chemical toxicants within the areas comprising such lands, waters, and interests so acquired, in a manner comparable to that provided under section 10(a) (9)."

On page 52, insert the following new subsection after section 10(a) (9):

"(10) uses any chemical toxicants within any area, comprising lands and waters, including interests therein, of the United States, which were acquired and are being utilized for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species, except that the Secretary may authorize the use of a chemical toxicant, but only if he makes a written finding which he shall publish in the Federal Register, that:

"(A) an emergency exists to the endangered or threatened species that cannot be dealt with by means which do not involve the use of chemical toxicants, and that such use is necessary for the survival of the endangered or threatened species; or

"(B) a particular method of applying a chemical toxicant will not impair the survival of an endangered or threatened species."

Mr. NELSON. Mr. President, this act is designed to stave off the extinction of our wildlife by protecting the endangered species from men who might knowingly or inadvertently harm them. Because of this act, an animal or fish species will not be overtly "taken."

Yet, it is common knowledge that there is another danger to our wildlife, a threat which is unavoidable: the expansion of our cities and industries. But we should also watch that we do not destroy the animal world, made helpless by human technology. This act acknowledges that habitat modification is liable to be increasingly prevalent as the cause of future wildlife losses. The Secretaries of Interior and Commerce are authorized to acquire the lands upon which the endangered and threatened species reside and funds are provided for this purpose. Habitat acquisition will provide a framework, a base for the construction of true sanctuaries, preserves free from harmful human intrusions. This amendment would aid in safeguarding the sanctuaries of the endangered species.

Around 10 years ago we first learned the insidiousness of chemical poisons: how the residues of herbicides, insecticides, of pesticides in general, remain and find their way into the tissue of the low members of the food chain which are consumed by the next higher and so on, until the birds and mammals of prey, representing the top of the food chain, accumulate massive concentrations of chemical poisons.

They become the victims of chemical poisoning in the form of reproductive failures, incapacitation, or death.

There are presently eight species upon the Department of the Interior's red book list of rare and endangered species, including the southern bald eagle and the California condor which have been decimated by the use of chemical toxicants. Other species like the prairie falcon will have to be added to the future endangered and threatened species list because of our widespread use of pesticides. This amendment does not cover much area, only those small preserves which are wholly dedicated to endangered species protection.

Poisons are so lethal and the existence of endangered species so precarious that we must be overly cautious to avoid chemical disasters. This amendment applies to those lands "acquired and being utilized for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species." However, the Secretary is authorized to allow the use of chemical toxicants if he finds that that use is needed to insure the survival or that such use will not at all affect the survival of an endangered or threatened species.

The amendment prohibits the use of chemical poisons upon the lands that the Federal Government and the States have and will acquire as selected habitat for the endangered or threatened species. The lands this amendment refers to are primarily those in the National Wildlife Refuge System and those lands which State Fish and Game Departments will oversee. The ratio will be even more lopsided for the lands the States will acquire under the provisions of this act. For example the California Department of Fish and Game has identified seven of its indigenous rare and endangered species of wildlife as being presently threatened by county rodent control programs and is negotiating a joint policy agreement with the California Department of Food and Agriculture so that the two Departments will cooperate more closely. In other words, the Fish and Game Department is very concerned, and with good reason, that control people in the field will not realize until it is too late that they are using chemical toxicants within the areas upon which the endangered and rare species are making their last stand.

Mr. President, this is a very simple amendment which provides that chemical toxicants, poisons, may not be used on those lands which are—

Acquired by and are being used for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species, except that the Secretary may authorize the use of a chemical toxicant, but only if he makes a written finding which he shall publish in the Federal Register.

That the use of chemical toxicants is necessary for the purpose of protecting endangered species.

I think there is no controversy about the amendment. I ask the Senator if he is willing to accept it.

Mr. TURNER. Mr. President, I want to make sure I understand the amendment. Does the amendment provide that the Secretary of Interior must make a positive finding that before chemical toxicants can be used such a toxicant will protect the species or not hurt the species?

Mr. NELSON. He must file a statement saying that the use of the chemical toxicant is necessary for the purpose of protecting the endangered species. Otherwise it may not be used on sanctuary lands.

Mr. TURNER. Let me make sure that I understand the lands this applies to. The Senator said sanctuary lands.

Mr. NELSON. Yes. In the amendment it is described as—

Lands acquired and being utilized for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

The Government is going to be acquiring lands under this provision and there are sanctuary lands already set aside; the amendment

applies to these lands unless the Secretary says that the use of toxicants is necessary for the protection of endangered species.

Mr. TURNER. Are toxicants presently allowed to be used on sanctuary lands?

Mr. NELSON. For example, I think there is a case in the Senator's State where there are two different agencies. One agency used chemical poisons to kill rodents and one of the endangered birds was being poisoned by the poisons being used to kill rodents. Those two departments of the state government which were operating with conflicting purposes have now reached an agreement. But this is the kind of case that could occur. Poison could be used on same lands where you are trying to protect a species, and at the same time they are threatening the survival of the endangered species.

This provides that poison cannot be used on those lands unless the Secretary certifies that it is necessary to protect the species for which the sanctuary is in existence.

Mr. TURNER. What if it is a State sanctuary as contrasted with the Federal sanctuary? If it were a State sanctuary would they have to get authorization from the Secretary of the Interior?

Mr. NELSON. That is the way I interpret it.

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

Mr. NELSON. I yield.

The PRESIDING OFFICER. The Senator from Wyoming is recognized. The Senate will be in order. The Senator may proceed.

Mr. HANSEN. I am wondering about this situation. In times past, in western Wyoming, the State game and fish commission has found it advisable to employ the use of so-called coyote getters in and around elk winter feeding areas. I am not certain that has been used in national elk sanctuaries.

My question is, if in the judgment of the Fish and Wildlife Service, or the Bureau of Sports, Fisheries, and Wildlife, as it is now called, it became necessary to try to bring some effective control upon the coyote—we have trumpeter swan and waterfowl and other birds in addition to elk, which is the major big game animal in the area, although there are moose, deer, and mountain sheep—would this amendment prohibit any control of the coyote within the national elk refuge, if it is permitted, assuming it may be, if in the judgment of the Bureau of Sports, Fisheries, and Wildlife it became necessary or desirable to effect control of the coyote? Would this preclude that action unless the Secretary certified that the use of the coyote getter was to protect the endangered species?

Mr. TURNER. I do not know the classification of the Elk Refuge Commission. It is clear that if it involved any lands that were being acquired under this legislation—

Mr. HANSEN. These lands have been acquired first, partly by gift. The Izaak Walton League many years ago made a grant and, from 1914 forward, the Federal Government through different measures has added to the refuge, and by purchase.

Does that answer the Senator's question?

Mr. NELSON. I am not sure it does. If the sanctuary has been created or the lands acquired for the purpose of creating a sanctuary or a wild-

life habitat for an endangered species, very clearly you could not use chemical poisons on that land except upon authorization of the Secretary who would make the finding in the amendment.

I assume it would apply to the elk land referred to, but I do not know what classification they are under.

Mr. HANSEN. My purpose in asking the question is to try to have a better understanding of the amendment. I have posed a hypothetical question. I do not think for a moment this might happen, but sometimes in our enthusiasm it is easy to attain a certain objective that might be our hands. The trumpeter swan found in that refuge were an endangered species. As far as I know, they are the only endangered species in the elk refuge. I do not think the elk refuge was established because the elk was endangered, but was an important wildlife species which deserved better year-around care than they were getting.

Mr. TURNER. Mr. President, I believe the Senator's amendment is designed to achieve a very desirable purpose but during the course of the hearings we never did have an opportunity to get testimony from any party with respect to chemical toxicants and the use of chemical toxicants on sanctuaries. Inasmuch as the Senator's amendment relates also to State sanctuaries and we would be imposing the will of the Secretary of the Interior on State officials as it relates to State sanctuaries. I think the matter should be subject to hearings.

Therefore for the committee, I cannot accept the amendment. Mr. NELSON. I would like to ask a question. Is there a similar bill under consideration in the other body?

Mr. TURNER. Yes. The House will be considering legislation.

Mr. NELSON. On this bill, or do they have a bill of their own?

Mr. TURNER. They have one of their own.

Mr. NELSON. Have they finished the hearings on that?

Mr. TURNER. Yes.

Mr. NELSON. In view of the Senator's objection, Mr. President, I will withdraw the amendment and if they have not acted on the House side, I will have further comment.

Mr. TURNER. I sympathize with the purpose of the Senator's amendment, but I do not see how we can include it without hearings.

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

The PRESIDING OFFICER. The amendment is withdrawn.

If there be no further amendment to be proposed, the question is on agreeing to the committee amendment, as amended, in the nature of a substitute.

The committee amendment, as amended, in the nature of a substitute was agreed to.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. ROHN. Mr. President, I am proud to lend my support to the Endangered Species Act of 1973, a long overdue piece of legislation. The time has come for us to recognize that more than one hundred species and subspecies of wildlife—fish, animals, and birds—as well as forms of plantlife, are being seriously threatened through hunting and trapping, and by man's encroachment on their natural habitats. I

encourage support of S. 1983 because it refines previous legislation that this body developed and passed in 1966 and expanded upon in 1969.

The President stated in his environmental message of February 8, 1972, that the existing law "simply does not provide the kind of management tools needed to act early enough to save a vanishing species." In effect, the present law prevents the Government from taking action until a species is virtually extinct. Often, by the time something is done, it is too late to reverse the trend. I support the provisions of this bill and urge your careful consideration. Especially notable in this legislation are its provisions to create a more flexible classification and declassification system, strict civil and criminal penalties, and its acknowledgement of migratory patterns and the need for international cooperation.

The people of Delaware who admire the graceful and inspiring flight of the few American bald eagles remaining in the State, who view with awe the migratory flight of geese, ducks, and swans, hope that the Senate will look favorably upon this measure.

Mr. DOMERTIC. Mr. President, today we will vote on S. 1983—the Endangered Species Act of 1973—a bill which provides for the conservation, protection and propagation of now endangered species of fish and wildlife. If implemented, this legislation will save from extinction one of our more valuable natural resources.

In recent years, many citizens of the United States have come to view the various species of wildlife as environmental indicators for their State, and, in a larger context, for the world. These citizens consider wildlife a precious natural resource which, if husbanded and protected, will be one of the factors in our natural surroundings which will endure for generations to follow. These individuals—whether they live in New York City or Chama, N. Mex.—want to be assured that there exists abundance of wildlife "somewhere" in our Nation, as well as to be assured of its continued existence.

The beautiful State of New Mexico has fought hard, although in some cases not hard enough, to protect its environment and its endangered species. The people of my State share a feeling of pride in the fact that they continually strive to preserve the natural resources strive to prevent technology from overriding the natural resources of our State.

In terms of wildlife, there has always been an endangered species for both natural and manmade reasons. Natural population fluctuations of some species have diminished their number to such a low point that they were unable to generate a continued existence. Other species have become so highly specialized that any slight alteration of the habitat spelled doom for their continued existence—experts point out that this natural phenomenon continues today. However, in the "modern age" of man, many experts claim that the possible extinction of numerous species of wildlife has increased by a tremendous factor. In many cases, "progress" for man means threatening disaster or devastating decline for a major portion of our wildlife. I feel the main thrust of our discussion on this legislation should be man's obvious detrimental effect on wildlife to the point of practically guaranteeing its extinction.

We are not here today to discuss individual blame but to plan an immediate solution to insure the life of our endangered species. The advance of man's civilization has proved to be costly to the natural environment. It is a fact that man has been the culprit in bringing certain species to the point of extinction; it would be a double indictment against humanity to ignore the present situation and allow the destruction of our resource of wildlife to continue.

How has man effected wildlife adversely? Some reasons are quite obvious and others more subtle. Many of our land-use practices have destroyed the delicate habitat necessary to maintain a healthy wildlife. Certain intensive agricultural practices, unconcerned with their harmful influence on wildlife, have brought various species to the brink of extinction. All of us in these Chambers have heard of the now infamous golden eagle killings in Colorado and Wyoming. While the golden eagle has been saved from extinction, it was through indiscriminate shooting and treatment that this species was almost lost. In New Mexico, the prairie dog towns have been so decimated that the rare and endangered black-footed ferret is nowhere to be seen. While most naturally harmful organochlorine pesticides have been banned, their effects have been detrimental to various wildlife species. Again, in New Mexico, the peregrine falcon is still trying to recover from DDT poisoning.

Also, man through commercial exploitation of a particular wildlife species has placed some animals in the endangered category. Most of you here today are aware of the disputes within the whaling industry which exist among other nations. While the legislation under consideration takes care of such problems within the United States territorial boundaries, we must additionally have a procedure to intervene in such international disputes where the existence of endangered species is at stake.

Under the provisions of this act, there exists various means of recovery that can be instituted on behalf of rare and endangered species. We must demand the continued protection of prime habitat and, where feasible, renew and refurbish deteriorated species. Through the Office of Endangered Species and other Federal agencies, and with the aid and coordination of the various States' fish and game agencies, innovative and intensive programs should be initiated for all endangered species; such management will result in beneficial effects for our wildlife. Finally, various programs of captive propagation would be beneficial for rare and endangered species in order that progeny raised in captivity could be used to replenish the wildlife population.

At the same time, our governmental agencies, in cooperation with biologists and interested citizens, should continue research on the rare and endangered wildlife of our Nation. Continued investigations should be made to determine the population fluctuations of the various species. On the basis of a complete census, efforts should be made to determine which are the limiting factors at the present time and which factors in the future will affect the well-being of our wildlife resource.

Senate bill 1983 addresses itself to rare and endangered wildlife. This legislation is drafted to protect these species, and it suggests a number of ways by which this can be accomplished. Under the authority of the Secretaries of Interior and Commerce, any species which is considered rare or endangered shall be free from molestations by the threat of civil penalty. It also gives authority to the Secretaries to permit continued scientific research into the problems of endangered wildlife. With a broadening of our knowledge concerning the problems of endangered species, maybe we can turn the tide on the uncertain existence of many of these animals. I urge my colleagues in the Senate to support this legislation which will benefit the generations which follow us and our Nation as well.

Mr. PERCY. Mr. President, it is certainly encouraging to me that the Senate is about to move promptly and hopefully unanimously upon S. 1983, the Endangered Species Act of 1973. For too long there has been insufficient means to protect and preserve all the valuable species of wildlife that contribute so much to the quality of life as we know it. S. 1983 will provide the tools we need both to protect animals that are presently endangered and to take the necessary precautions so that additional species are not reduced to the endangered level.

Action in this field reflects both an increased awareness of man's place in the ecosystem and the healthy respect that that awareness must engender. I am pleased that the Senate will take positive action with the adoption of S. 1983 and I am confident that this legislation will go a long way toward preserving our valuable and unfortunately perishable wildlife.

It is my pleasure to report that the State of Illinois has taken a lead in the area of endangered species with the passage of vigorous legislation earlier this year and will have no trouble in complying with the new Federal regulations.

The PRESIDING OFFICER. The bill has been read the third time. The question now is, shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. Cannon) is necessarily absent.

I further announce that the Senator from South Dakota (Mr. Abourezk) is absent on official business.

I also announce that the Senator from Mississippi (Mr. Stennis) is absent because of illness.

I further announce that, if present and voting, the Senator from South Dakota (Mr. Abourezk) would vote "yea."

Mr. GARRITY. I announce that the Senator from Oklahoma (Mr. Bellmon) is absent to attend the funeral of a friend.

The Senator from Utah (Mr. Bennett) is necessarily absent.

The Senator from New Hampshire (Mr. Cotton) is absent because of illness.

The Senator from Maryland (Mr. Beall) and the Senator from Arizona (Mr. Goldwater) are detained on official business.

The result was announced—yeas 92, nays 0, as follows:

Alken	Gurney	Muskie
Allen	Hansen	Nelson
Baker	Hart	Nunn
Bartlett	Hartke	Packwood
Bayh	Haskell	Pastore
Bentsen	Hathfield	Pearson
Bible	Hathaway	Pell
Biden	Helms	Percy
Brock	Hollings	Hruska
Buckley	Huddleston	Randolph
Burdick	Hughes	Ribicoff
Byrd, Harry F., Jr.	Humphrey	Roth
Byrd, Robert C.	Inouye	Saxbe
Case	Jackson	Schweiker
Chiles	Javits	Scott, Pa.
Church	Johnston	Sparkman
Clark	Kennedy	Stافتord
Cook	Long	Stevens
Cranston	Magnuson	Stevenson
Curtis	Mansfield	Symington
Dole	Mathias	Taft
Domenici	McClellan	Talmadge
Eagleton	McClure	Thurmond
Eastland	McGee	Tower
Ervin	McGovern	Tunney
Fannin	McIntyre	Welker
Fong	Metcalf	Williams
Fullbright	Mondale	Young
Gravel	Montoya	
Grimm	Moss	

NAYS—0

NOT VOTING—8

Abourezk	Bennett	Goldwater
Beall	Cannon	Stennis
Bellmon	Cotton	

So the bill (S. 1983) was passed, as follows:

S. 1983

An act to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act of 1973".

DECLARATION OF POLICY

Sec. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve and protect to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Conservation on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation, protection, restoration, and propagation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) Purposes.—The Congress hereby declares that the purposes and policy of this Act are to—

(1) provide an effective means to conserve, protect, and restore the ecosystems upon which endangered and threatened species of fish or wildlife depend;

(2) provide a viable program for the conservation, protection, restoration, and propagation of endangered and threatened species;

(3) take all appropriate steps to implement the Nation's international commitments with respect to endangered and threatened fish or wildlife; and

(4) insure that all departments, agencies, and instrumentalities of the United States seek, within the scope of their authority and administrative jurisdiction, to protect endangered and threatened species.

DEFINITIONS

Sec. 3. As used in this Act—

(1) "Conservation" and "management" mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of endangered and threatened species at the optimum carrying capacity of their habitat. Such terms include the entire scope of activities that constitute a modern scientific resources program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms when and where appropriate, is the protection, propagation, conservation and restoration of such species including regulation and taking necessary to these ends.

(2) "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(3) "Endangered species" means any species of fish or wildlife which is in danger of extinction throughout all or a significant portion of its range, other than a species of the order Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(4) "Fish or wildlife" means any living member of the animal kingdom and remains of any dead member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, or any part, egg, or offspring of any such member, or any product produced from any part or parts of the remains of any such member.

(5) "Foreign commerce" includes any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(1) between persons within the United States, where the fish or wildlife involved are moving in any country or countries outside the United States.

(6) "Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(7) "Optimum carrying capacity" means the ability of a given habitat to support the optimum sustainable population of an endangered or in a healthy state without diminishing the ability of the habitat to continue that function threatened species.

(8) "Optimum sustainable population" means, with respect to any of endangered or threatened species, the number of such species which will result in the maximum productivity of the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent part.

(9) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(10) "Plant" means any member of the plant kingdom, including seeds, roots, or other parts of any such member.

(11) "Secretary" means, except as otherwise provided, the Secretary of the Interior or the Secretary of Commerce in the same manner in which program responsibilities are vested under Reorganization Plan Numbered 4 of 1970. With respect to enforcement of the provisions of this Act and of the Convention, which pertain to the importation of plants, the term means the Secretary of Agriculture.

(12) "Species" includes any subspecies or other group of fish or wildlife of the same species or lesser taxa in common spatial arrangement that interbreed when mature.

(13) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(14) "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish and wildlife resources within a State.

(15) "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(16) "Threatened species" means any species of fish or wildlife which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(17) "United States", when used in a geographical sense, includes all States.

DETERMINATION OF ENDANGERED OR THREATENED SPECIES

Sec. 4. (a) GENERAL.—The Secretary shall by regulation determine whether any fish or wildlife is an endangered or threatened species as a result of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b) BASIS FOR DETERMINATIONS.—(1) The determinations required by this section shall be made on the basis of the best scientific and commercial data available to the Secretary, including any recommendations that have been made by the Advisory Committee established under subsection (d) of this section and after consultation, as appropriate, with all interested persons and organizations, including affected or knowledgeable Federal, State, and foreign government agencies. In any case in which such determinations involve an indigenous species, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which determinations involve a species which

is normally found on the high seas, in lakes, or other waters off the coast of a State of which are customarily harvested by citizens of such a State, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which such determinations involve a species which is normally found in a foreign country or countries or which is harvested from the ocean by citizens of such country or countries, the Secretary shall (where practicable) with the assistance of the Secretary of State, consult with and consider the recommendations of such country or countries.

(2) Fish or wildlife which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive special and full consideration by the Secretary to determine whether each is an endangered or a threatened species.

(c) LISTS.—(1) The Secretary shall publish in the Federal Register a list of all fish or wildlife determined by him by regulation to be endangered species and a list of all fish or wildlife determined by him by regulation to be threatened species. Such lists may be amended, modified, or revised periodically by regulation. Each list shall refer to each species of fish or wildlife named therein by scientific name and common name or names and shall specify the portion of its range over which it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct a review of any listed or unlisted species of fish or wildlife proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list of species of fish or wildlife determined to be threatened with extinction, by the Secretary of the Interior pursuant to the Endangered Species Conservation Act of 1969, which is in effect the day before the date of enactment of this Act shall be republished to conform to the appropriate classification under this Act. Pending reclassification as endangered species or threatened species and republication, any species listed pursuant to the Act of 1969 shall be deemed an endangered species within the meaning of this Act. Such reclassification and republication shall not require a public hearing or comment under section 553 of title 5, United States Code.

(d) ADVISORY COMMITTEE.—(1) The Secretaries shall establish an Advisory Committee on Endangered and Threatened Species to consult with, advise, and make recommendations to him and to the State. The Advisory Committee shall consist of not more than eleven members including a Chairman who shall be appointed by the Secretary from lists of qualified individuals submitted by State fish and wildlife agency administrators, universities, nongovernmental organizations concerned with conservation, and scientific societies. Five of the members shall be regularly employed by State governments or political subdivisions thereof. The terms of office shall be so arranged by the Secretary that each year at least three new members shall be appointed to fill vacancies caused by the expiration of terms of office.

(2) The Advisory Committee shall periodically, but not less than once each year, make recommendations to the Secretary with respect to removal from, addition to, or reclassification within the lists maintained pursuant to subsection (a) of this section and may, with the approval of the Secretary, perform other functions in furtherance of the purposes of this Act. A member of the Advisory Committee who is not otherwise a Government employee may, in the discretion of the Secretary, receive not more than \$150 per diem when engaged in the actual performance of his duties. Each member may receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

(e) PROTECTIVE REGULATIONS.—Whenever the Secretary lists a species of fish or wildlife as a threatened species, pursuant to subsection (a) of this section, he shall issue such regulations as he deems necessary and advisable to provide for the conservation and management of such species. With respect to any threatened species, the Secretary may by regulation prohibit any act prohibited with respect to an endangered species under section 10(a) of this Act.

LAND ACQUISITION

Sec. 5. The Secretary shall establish and implement a program to conserve, protect, restore, and propagate fish or wildlife which are listed as endangered or threatened species pursuant to section 4 of this Act. To carry out such programs, the Secretary—

(a) shall utilize as appropriate the land acquisition and other authorities conferred upon him under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act;

(b) may acquire by purchase, donation, or otherwise any lands, waters, or interests therein necessary for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species. Such authority shall be in addition to any other land acquisition authority vested in him;

(c) may use funds made available under the Land and Water Conservation Fund Act of 1965 or under this Act to acquire such lands, waters, or interests therein.

COOPERATION WITH THE STATES

Sec. 6. (a) GENERAL.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. In addition to all other obligations, the Secretary shall consult with the affected State before the acquisition of any lands, waters, or interests therein for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

(b) MANAGEMENT AGREEMENTS.—The Secretary may enter into an agreement or agreements with any State for the administration and management of any area established for the conservation and management of an endangered or a threatened species. Any revenues derived from the administration of such areas under such agreements shall be subject to section 401 of the Act of June 15, 1935 (16 U.S.C. 715s).

(c) FINANCIAL ASSISTANCE.—The Secretary is authorized to enter into a cooperative agreement in accordance with this subsection to provide financial assistance to any State which establishes and maintains an adequate and active program for the conservation and management of endangered and threatened species. Before the Secretary may enter into or renew such a cooperative agreement to provide financial assistance to a State, he shall make, justify, and publish in the Federal Register a finding that such agreement would further the policy of this Act and that such State has a program under which—

(1) the State agency has statutory and regulatory authority and administrative jurisdiction to manage and protect any species of fish or wildlife which is determined by such agency or the Secretary to be endangered or threatened;

(2) the State has established a State plan, including a management program under the State agency, for all species of resident fish or wildlife which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency during the first year of the existence of such agreement—

(A) will issue protective regulations;

(B) will employ sufficient trained and qualified personnel; and

(C) will maintain investigation, enforcement, and public education programs, which are adequate, in the Secretary's judgment, for the conservation and management of species of endangered and threatened fish or wildlife;

(4) the State agency is authorized and plans to conduct studies to determine the status and requirements for survival of species of resident fish or wildlife and agrees to transmit a copy of the findings of such studies to the Secretary;

(5) the State agency is authorized and plans to establish programs, including the acquisition of lands, waters, or interests therein, for the conservation and management of endangered and threatened species; and

(6) provision is made for public participation in designating species of resident fish or wildlife as endangered or threatened.

(d) ALLOCATION OF FUNDS.—(1) Funds appropriated for financial assistance pursuant to subsection (c) of this section shall be available to the Secretary for allocation to the States under cooperative agreements. The purposes for which such funds may be used include, but are not limited to, conservation and management. The Secretary shall allocate appropriated funds to such States upon the basis of—

(A) the international commitments of the United States to protect endangered or threatened species;

(B) the readiness of a State to proceed with a conservation and management program consistent with the objectives and purposes of this Act;

(C) the number of endangered and threatened species within a State;

(D) the potential for restoring endangered and threatened species within a State; and

(E) the relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of the survival of the species.

Funds allocated to a State but unexpended at the close of the fiscal year shall remain available for expenditure by such State until the close of the succeeding fiscal year. Any funds remaining unobligated or unexpended at the close of the second fiscal year shall remain available to the Secretary for the purpose of this section.

(2) Each cooperative agreement between a State and the Secretary shall provide for—

(A) the actions to be taken by the Secretary and the State;

(B) the benefits that are expected to be derived in connection with preservation and restoration of endangered or threatened species;

(C) the estimated cost of these actions; and

(D) the share of such costs to be borne by the Federal Government and by the States, except that—

(i) the Federal share of such program costs shall not exceed 50 per centum of the estimated program costs stated in the agreement; and

(ii) the Federal share may be increased to 66 2/3 per centum whenever two or more States, having a common interest in a program that the Secretary deems to meet the criteria of paragraph (1) of this subsection, 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 purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of real or personal property, the value of which will be determined by the Secretary, as well as money.

(3) The Secretary is authorized to issue such regulations as may be appropriate to carry out the provisions of this section with respect to financial assistance to States.

(4) For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, not to exceed \$10,000,000.

(e) PERIODIC REVIEW.—The finding made under subsection (c) of this section and any action taken by the Secretary under this section shall be subject to his periodic review, including the consideration of comment from interested persons, at no greater than annual intervals. Upon ninety days' notice in writing to the affected State, the Secretary may terminate in his discretion any cooperative agreement entered into under this section.

(f) STATE ACTION PERMITTED.—Nothing in this Act shall be construed as superseding or limiting the power of any State or political subdivision thereof to enact legislation or regulations more restrictive than or consistent with the provisions of this Act with respect to an endangered or a threatened species. Provided, That any State law or regulation regarding the import or export of or the interstate or foreign commerce in an endangered species listed pursuant to section 4 of this Act is void to the extent that it may effectively permit what is prohibited by this Act or its implementing regulations, or prohibit what is authorized pursuant to Act or its implementing regulations, or prohibit what is authorized pursuant to an exemption or permit provided for in this Act or its State law or regulation. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife.

INTERAGENCY COOPERATION

Sec. 7. The Secretary shall review all programs administered by him and utilize such programs in furtherance of the policy of this Act. All other departments, agencies, and instrumentalities of the Federal Government shall, in consultation with and with the assistance of the Secretary—

(a) carry out such programs as are practicable for the protection of species listed, pursuant to section 4 of this Act, as endangered or threatened;

(b) take such actions as are necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endan-

gered or threatened species, or result in the destruction or modification of any habitat of such species which is determined by the Secretary, after consultation to the extent appropriate and necessary with affected States, to be a critical habitat of such species.

INTERNATIONAL COOPERATION

Sec. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any endangered or threatened species listed by the Secretary pursuant to section 4 of this Act: *Provided*, That no funds other than foreign currencies available for expenditure only within such foreign country shall be used pursuant to this section. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section upon such terms and conditions as he deems appropriate.

(b) ENCOURAGEMENT.—In order to carry out further the provisions of this Act, the Secretary, with the assistance of the Secretary of State, shall encourage—

- (1) foreign countries to provide for the protection, conservation, restoration, or propagation of fish or wildlife, including endangered and threatened species listed pursuant to section 4 of this Act;
- (2) the entering into of bilateral or multilateral agreements for foreign countries to provide for such protection, conservation, restoration, or propagation; and
- (3) foreign persons, who directly or indirectly take fish or wildlife in foreign countries or on the high sea for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide, conservation practices designed to enhance such fish, wildlife and plants and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

- (1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the protection, conservation, restoration, or propagation of fish or wildlife; and
- (2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife or plant management, research, and law enforcement, and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) CONVENTION IMPLEMENTATION.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

Sec. 9. (a) REGULATIONS.—The Secretary shall publish any regulations proposed under this Act in the Federal Register at least sixty days prior to the time when such regulations shall become final, except that in case of an emergency the Secretary may publish such regulations not less than thirty days prior to the time when such regulations shall become final if at the same time he publishes in the Federal Register detailed reasons why emergency action is necessary. The

Secretary shall also publish in the Federal Register a notice of all petitions received pursuant to this Act and, if such petition is denied, his reasons therefor. Such notice shall identify the purpose of the petition and include a statement of the availability of any data submitted in support of such petition. If any person adversely affected by a proposed regulation files objections and requests a public hearing within forty-five days of the date of publication of the proposed regulation, the Secretary shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Secretary until after the conclusion of such hearing. All public hearings authorized by this subsection shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Secretary may make applicable thereto. Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and shall state the relationship of such findings to the regulations issued.

(b) PROCEDURE.—Except as expressly modified by this section, the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.) shall apply to proceedings conducted by the Secretary under this Act: *Provided*, That the provisions of this section shall not apply to the extent necessary to permit emergency action by the Secretary. Notice of and reasons for such action shall be published prior to such action in the Federal Register.

(c) JUDICIAL REVIEW.—(1) Any judicial review of final regulations promulgated under this Act and final actions under section 5(c) of this Act shall be in accordance with sections 701-706 of title 5, United States Code, except that—

(A) with respect to regulations promulgated under section 4 or 6 of this Act, the findings of the Secretary as to the facts shall be sustained if based upon substantial evidence on the record considered as a whole; and

(B) with respect to relief pending review, no stay of an action may be granted unless the reviewing court determines that the party seeking such stay—

(i) is likely to prevail on the merits in the review proceeding, and

(ii) will suffer irreparable harm pending such proceeding.

(2) If the party seeking judicial review applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court either that—

(A) the information is material and was not available at the time of the proceeding before the Secretary; or

(B) failure to include such evidence in the proceeding was an arbitrary or capricious act of the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order.

(d) AUDIT.—(1) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans, or other arrangements, ant to grants, subgrants, contracts, subcontracts, and which are otherwise authorized by this Act, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in paragraph (1) of this subsection of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, subgrants, contracts, subcontracts, loans or other arrangements referred to in subsection (a).

UNLAWFUL CONDUCT

Sec. 10. (a) PROMOTED ACTS.—Except as provided in section 11 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(1) import into, or export from, the United States any endangered species which has been listed pursuant to section 4 of this Act;

- (2) take any such species within the United States or in the territorial sea of the United States or upon the high seas;
- (3) possess, sell, deliver, carry, transport, ship, or receive, by any means whatever, any such species which are taken in violation of paragraph (2) of this subsection;
- (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and for commercial purposes, any such species;
- (5) sell, distribute, or offer for sale in foreign commerce, interstate commerce, or activity affecting interstate commerce any endangered species of fish or wildlife;
- (6) attempt to commit, solicit another to commit, or cause to be committed, any act prohibited by paragraphs (1) through (5) of this subsection;
- (7) engage in any trade in any specimens of fish, wildlife, or plants, contrary to the provisions of the Convention, or possess any specimens traded contrary to the provisions of the Convention, including the definitions in article I therein;
- (8) violate any regulation which is promulgated by the Secretary pursuant to section 4(e) of this Act; or
- (9) import into or export from the United States except at a port or ports designated by the Secretary, any fish or wildlife, except nontendered and nontendered shellfish and fishery products which are imported or exported for human or animal consumption, or fish or wildlife taken for recreational purposes pursuant to applicable Federal or State laws and regulations in waters under United States jurisdiction or on the high seas.
- To facilitate enforcement of this paragraph and to reduce the costs of enforcement, the Secretary, with the approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. Upon such terms and conditions as he may prescribe, the Secretary may permit such importation at nondesignated ports in the interest of the health or safety of the fish or wildlife or for any other reasons he deems appropriate. Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under this paragraph until such time as the Secretary otherwise provides.
- (b) **SIMILARITY OR APPEARANCE CASES.**—The Secretary may, by regulation, and to the extent he deems advisable, treat any species of fish or wildlife as an endangered or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—
- (A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;
- (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and
- (C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.
- (c) **SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.**—The provisions of this section shall not apply to any species held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this Act.

EXCEPTIONS

- Sec. 11. (a) **GENERAL.**—Upon a finding that the excepted conduct will not adversely affect the regenerative capacity of the involved species in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species, and upon such terms and conditions as he may prescribe, the Secretary may issue permits authorizing the importation, exportation, taking, or transportation, by persons found to be qualified, of any fish or wildlife which is listed as an endangered or threatened species pursuant to section 4 of this Act for—
- (1) for scientific purposes in furtherance of the purposes of this Act; or
- (2) to enhance the propagation or survival of the affected species including the propagation of such species in captivity or in a controlled habitat.

- (b) (1) **HARDSHIP.**—The Secretary may except from the application of section 10(a) of this Act any person if the failure to grant such exception will cause undue economic hardship: *Provided*, That such exception shall be granted any non-Native resident of an Alaska Native village unless such resident is found by the Secretary not to be primarily dependent upon the taking of fish and wildlife for consumption or use in a Native community or for creating and selling authentic Native articles of handicrafts. The extent and duration of such exception shall be such as the Secretary deems appropriate: *Provided*, No such exception shall be for a duration of more than one year from the date of publication in the Federal Register of notice of proposed listing of the involved species. No exception shall apply to a quantity of fish or wildlife in excess of that specified by the Secretary. No such exception shall be granted unless such person, except non-Native residents of Alaska Native villages who are primarily dependent upon the taking of fish and wildlife for subsistence purposes, applies to the Secretary in writing and furnishes with such application such information as the Secretary may require to prove hardship. The one year period for those species of fish and wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275). No such exemption may be granted for the importation or exportation of a specimen listed in appendix I of the Convention which is to be used for primarily commercial purposes.
- (2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

- (A) Substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of proposed listing of such species as an endangered or threatened species.
- (B) Substantial economic loss to persons who, for the year prior to the listing of a species under this Act derived a substantial portion of their income from the lawful taking of any listed species which taking would be made unlawful under this Act; or
- (C) Curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.
- (3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.
- (c) **PROCEDURE.**—(1) The Secretary shall publish a notice in the Federal Register of each application for an exception. Each notice shall invite the submitter of written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.
- (2) The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds, and publishes such finding in the Federal Register, that such exceptions were applied for in good faith and if granted and exercised will not operate to the disadvantage of such endangered or threatened species and will be consistent with the policy of this Act.
- (d) **ALASKA NATIVES.**—(1) The provisions of this Act shall not apply with respect to the taking of any endangered or threatened species by any Indian, Aleut, or Eskimo who is an Alaskan native who resides in Alaska if such taking is for the purpose of consumption or use in a native community or for the purpose of selling or creating for sale in interstate commerce authentic native articles of handicrafts and clothing: *Provided*, That in each case such taking is not accomplished in a wasteful manner. As used in this paragraph—
- (A) "consumption or use in a native community" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and
- (B) "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other

mass copying devices. Traditional native handicrafts include but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawings, and painting.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking by Indians, Aleuts, or Eskimos is an endangered or threatened species, and that such taking materially and negatively affects the threatened and endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, or Eskimo. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared: *Provided*, That no such regulation shall be established which is in contravention of any provision of the Marine Mammal Protection Act of 1972.

PENALTIES AND ENFORCEMENT

SEC. 12. (a) CIVIL PENALTY.—(1) Any person who—

(A) knowingly violates any provision of this Act or any regulation or permit issued under this Act, which prohibits the taking, importing, exporting, shipping, receiving, or otherwise moving in interstate or foreign commerce of any endangered or threatened species of fish or wildlife, or commits any act made unlawful under section 10(a) of this Act, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each violation;

(B) commits any act made unlawful under section 10(a) of this Act, or violates any other provision of this Act, or any regulation or permit issued under this Act, may be assessed a civil penalty by the Secretary of not more than \$1,000 for each such violation.

No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each prohibited act is a separate violation. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may by his own attorneys institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action solely on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 564 of title 5, United States Code. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) **CRIMINAL VIOLATION.—(1)** Any person who knowingly and willfully violates any provision of this Act, or of any regulation or permit issued thereunder, shall, upon conviction, be fined not more than \$20,000 or imprisoned for not more than one year, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted under paragraph (1) of this subsection may immediately modify, suspend, or revoke such lease, license, permit, or other agreement. The Secretary may suspend, cancel, or refuse to issue for a period of up to one year Federal hunting or fishing permits or stamps with respect to any person who is convicted under paragraph (1) of this subsection.

The United States shall not be liable to pay any compensation, reimbursement, or damages in connection with any such modification, suspension, or revocation made pursuant to this section of any lease, license, permit, stamp, or other agreement.

(c) **REWARDS.—**Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed \$2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(d) **ENFORCEMENT.—(1)** The provisions of this Act and any regulations or permits issued under this Act shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Coast Guard is operating, in furtherance of the enforcement of this Act may execute and serve any arrest warrant, search warrant, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction. A person so authorized may search and seize, with or without a warrant, to the extent authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection, except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4) All fish or wildlife, or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported or imported contrary to the provisions of this Act, any regulation issued under this Act, or any permit issued thereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit issued thereunder shall be subject to forfeiture to the United States.

(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 Act. Insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act, the powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(e) **REGISTRATION.—(1)** Any person who engages to any extent in business as an importer of fish or wildlife must register with the Secretary of the Treasury his name and the address of each place of business at which, and all trade names under which, he conducts such business.

(2) Any person required to register with the Secretary of the Treasury under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish or wildlife except nonendangered and nonthreatened shell fish or fishery products which are imported or exported for human or animal consumption or recreational purposes, made by him and the subsequent disposition made by him with respect to such fish or wildlife; and

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish or wildlife and the records required to be kept under subparagraph (A) of this paragraph and to copy such records.

(3) The Secretary of the Treasury, after consultation with the Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(7) **ENFORCEMENT REGULATIONS.**—(1) 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 Act, and to charge reasonable fees for expenses to the Government connected with permits authorized by this Act, including processing applications and reasonable inspections, and the transfer, board, handling, or storage of fish, wildlife, or plants and evidentiary items seized and forfeited under this Act. All 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 and services. Appropriated funds may be expended pending reimbursement from parties in interest.

(8) **CRITZER SUITS.**—(1) Except as provided in paragraph (2) of this subsection, any person may commence a civil suit on his own behalf 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 Act or regulation issued under the authority thereof. The district courts shall have jurisdiction, without regard to the amount in controversy, to the citizenship of the parties, to enforce any such provision or regulation, as the case may be.

(2) No action may be commenced—

(A) 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;

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

(C) 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.

(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).

(b) **COORDINATION.**—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101-105, 111-135b, and 612-614 and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306)). Nothing in this Act 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. No proceeding or determination under this Act 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 Act shall be construed as suspending or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, but not limited to, section 527 of such Act (19 U.S.C. 1527), 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.

ENDANGERED PLANTS

Sec. 13. The Secretary of Agriculture, in conjunction with other affected agencies, is authorized and directed to review species of plants which are endangered or threatened, and methods of providing adequate protection including legislation for such species. He shall report the results of such review to Congress, not later than one year after the date of enactment of this Act. For purposes of this section, there is authorized to be appropriated not to exceed \$250,000.

CONFORMING AMENDMENTS

Sec. 14. (a) Section 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668d(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of such Act nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the System."

(b) Section 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and section 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715(a)) are each amended by striking out "threatened with extinction" and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered or threatened species."

(c) Section 6(a) (1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9(a)(1)) is amended by striking out:

"THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction,"

and inserting in lieu thereof the following:

"ENDANGERED AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5 of the Endangered Species Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered or threatened species of fish, wildlife, or plants"

(d) The first sentence of section 2 of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 406k-1), is amended to read as follows:

"Sec. 2. The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish- and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the conservation of endangered or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation area, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section 11(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a) (3) (B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b) (3) thereof and inserting in lieu thereof the following: "an endangered or a threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a) (6) thereof and inserting in lieu thereof the following: "endangered species list and threatened species list published pursuant to section 4(c) (1) of the Endangered Species Act of 1973".

(f) Section 2(1) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92-516) is amended by striking out the words "by the Secretary of the Interior under Public Law 91-135" and inserting in lieu thereof the words "or threatened by the Secretary pursuant to the Endangered Species Act of 1973".

REPEALS

Sec. 15. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1969, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 608aa-608cc-6) is repealed.

APPLICABILITY WITHIN STATES

Sec. 16. (a) STATE PLAN.—By the end of the first year after the date of enactment of this Act, a State may establish a plan for endangered and threatened species in accordance with this Act. A plan is in accordance with this Act if it meets or exceeds the requirements set forth in section 6(c) of this Act and represents an effective response to the Nation's need to conserve, protect, restore, and propagate endangered and threatened species of fish or wildlife. Upon the establishment of such a plan, the Governor or the head of the State agency shall promptly transmit a certified copy to the Secretary.

(b) DETERMINATION BY SECRETARY.—Within ninety days after the Secretary receives a certified copy of a State plan established under subsection (a) or subsection (d) of this section, the Secretary shall make a determination whether such State has established a plan for endangered and threatened species in accordance with this Act. Unless the Secretary determines, pursuant to this section, that a State plan is not in accordance with this Act, the plan shall go into effect in such State on the date designated in the plan. In no event shall such State plan go into effect less than three months or more than nine months after the date of its establishment.

(c) PERIODIC REVIEW.—The Secretary shall periodically, but not less than once every three years, review each State plan for endangered and threatened species which has been approved under subsection (b) of this section and for which there is experience, to determine whether such plan is still in accordance with this Act and evaluate the success of such plan in terms of the policy of this Act. To facilitate such review, the Governor or the head of the State agency in each such State shall submit to the Secretary periodically all information relevant and requested by the Secretary. The Secretary shall report to the President and Congress simultaneously each year on the results of such reviews, including any recommendations for legislation.

(d) NO STATE PLAN.—Except as to species listed in Appendix I of the Convention, the provisions of this Act regarding the management and taking of any State's resident species shall become applicable in their entirety within a State fifteen months after the date of enactment of this Act unless, prior to such date, the Secretary has made a determination under subsection (b) of this section in that such State has established a plan for endangered and threatened species in accordance with this Act: *Provided*, That if, within fifteen months of the date of enactment of this Act, the Secretary finds that a State which does not prevent the taking of a species listed by him as endangered does not provide adequate protection for that species, he may by regulation implement the provisions of subsection 10(a) of this Act with respect to that species in that State. If, at any time thereafter, the Secretary upon petition makes a determination, pursuant to subsection (b) of this section, that a State has established a plan for endangered and threatened species in accordance with this Act, such plan shall go into effect and the provisions of this Act regarding the conservation and management of any species shall cease to be applicable or in effect within such State on a date to be designated by the Secretary. If, after a State plan in accordance with this Act is designated by the Secretary, the Secretary makes a determination, pursuant to subsection (c) of this section, that such plan is no longer in accordance with this Act, the provisions of this Act regarding the management and taking of any species shall go into effect within such State and such plan shall cease to be in effect on a date to be designated by the Secretary.

(e) PROCEDURE.—(1) Before making any determination under this section, the Secretary shall publish a notice in the Federal Register and afford the State and all interested parties a reasonable opportunity to present their views by oral and written submission.

(2) The Secretary shall notify in writing the Governor of the affected State of any determinations made under this section and shall publish these determinations with reasons therefor in the Federal Register.

(3) Any determinations made by the Secretary under this section shall be subject to judicial review in accordance with chapter V of title 5, United States Code, in the United States court of appeals for the circuit in which is located the State whose plan is the subject of such determination or in the United States Court of Appeals for the District of Columbia Circuit. Any such review shall be instituted within sixty days from the date on which the determination made by the Secretary is published in the Federal Register.

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of this Act shall become effective in their entirety upon the date of enactment of this Act.

MARINE MAMMALS ACT

Sec. 17. CONFLICTS.—Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

AUTHORIZATION FOR APPROPRIATIONS

Sec. 18. For purposes of this Act, other than section 6 and section 13 of this Act, there are authorized to be appropriated such sums as are necessary, not to exceed \$3,960,000 for the fiscal year ending June 30, 1974; not to exceed \$6,660,000 for the fiscal year ending June 30, 1975; and not to exceed \$8,870,000 for the fiscal year ending June 30, 1976.

Sec. 19. (a) That, in accordance with section 3(b) of the Wilderness Act (78 Stat. 892; 16 U.S.C. 1132(b)), those lands in the Daniel Boone National Forest, Kentucky, comprising the Pioneer Weapons Hunting Area and consisting of approximately seven thousand three hundred acres, are hereby designated as wilderness.

(b) As soon as practicable after this Act takes effect, a map of the wilderness area and a description of its boundaries shall be filed with the Interior and Insular Affairs Committee of the United States Senate and House of Representatives and such map and description shall have the same force and effect as if included in this Act: *Provided, however*, That correction of clerical and typographical errors in such legal description and map may be made. A copy of such map and description shall be on file and available for public inspection in the offices of the Chief, Forest Service, United States Department of Agriculture. (c) The wilderness area designated by this Act shall be known as the Cave Run Wilderness and shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions, to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(d) Nothing in this Act or the Wilderness Act shall be construed as precluding the construction of a Zippo recreation site access road generally on a route extending northward from Forest Development Road Numbered 129 generally skirting the eastern boundary of the Pioneer Weapons Hunting Area, or as affecting or modifying in any manner the 1962 Cooperative Management Plan between the Department of Fish and Wildlife Resources of the State of Kentucky and the Department of Agriculture involving the designation of the Pioneer Weapons Hunting Area within the Daniel Boone National Forest.

The title was amended, so as to read: "A bill to provide for the conservation, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes."

Mr. TURNER, Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the bill, S. 1983, which was just passed.

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