

PART III

LEGISLATIVE HISTORY OF 1977 AMENDMENTS TO THE
ENDANGERED SPECIES ACT

ENDANGERED SPECIES ACT, SECTION 6, EXTENSION OF APPROPRIATION
AUTHORIZATION, PUBLIC LAW 95-212

BACKGROUND

The purpose of this legislation was to extend authorization for the Federal grant-in-aid programs (to the States), established by the ESA of 1973. Section 6 of the Act provides Federal assistance for state conservation programs which meet specific requirements. Under the original provisions of the Act, a number of states failed to qualify for section 6 funds because their state fish and wildlife agency did not possess the authority to provide blanket protection for any species listed as endangered or threatened by the Secretary of the Interior. Such agencies, instead, had authority to protect only certain categories of species, such as vertebrates, rather than all species. This amendment allow states to qualify for cooperative agreements if they satisfy some of the original requirements and have plans to devote immediate attention to those species most urgently in need of conservation programs.

Authorization for appropriations under section 6 expired on June 30, 1977. S. 1316 was introduced by Mr. Culver on April 29, 1977 and referred to the Committee on Environment and Public Works. The bill was reported to the Senate from the Committee with amendment on May 16, 1977 (S. Rept. 95-186). Hearings held by the Subcommittee on Resource Protection on April 21, 1977 (Serial 95-H19) included testimony from the National Marine Fisheries Service, International Association of Fish and Wildlife Agencies, and the Fish and Wildlife Service, all of which indicated the importance of state participation in endangered species management, and indicated strong support for reauthorization of section 6.

H.R. 4741, the predecessor bill to H.R. 6405, was introduced on March 9, 1977, by Mr. Leggett and cosponsored by Mr. Forsythe. The legislation was referred to the Departments of the Interior and Commerce for comment. The Subcommittee on Fisheries, Wildlife Conservation and the Environment held hearings on the legislation on March 22, 1977. The subcommittee received testimony from the Department of the Interior, the Department of Commerce, and the International Association of Fish and Wildlife Agencies. All of the witnesses appearing before the Subcommittee expressed support for continuing the authorization for the cooperative agreement section of

the Act. The Department of Commerce witnesses indicated they were unable to take a position on the adequacy of the authorization for fiscal years 1979 and 1980 since they had not been allocated funds for section 6 in the President's fiscal year 1978 budget.

The witness from the International Association of Fish and Wildlife Agencies suggested an amendment to the bill to facilitate the development of cooperative agreements with the individual States. On March 30, 1977, the subcommittee adopted an amendment in the form of a substitute offered by Mr. Leggett and ordered a clean bill, H.R. 6405, reported to the full committee. On May 16, 1977, the Committee on Merchant Marine and Fisheries reported to the House H.R. 6405, without amendment (H. Rept. 95-333).

The Senate bill as reported out of Committee was a simple extension of the grant-in-aid program, providing \$3 million for each fiscal year 1978 through 1980. The bill was amended on the floor to authorize a total of \$12 million through fiscal year 1980, \$9 million of which was for the Secretary of the Interior, and \$3 million for use by the Secretary of Commerce. S. 1316 passed the Senate on May 25, 1977.

The House bill as reported out of Committee extended the authorization through fiscal year 1981 and provided a \$16 million appropriation, which did not designate specific amounts for the two Secretaries. The House bill also contained language to facilitate qualification by the States for financial assistance under section 6 of the Endangered Species Act. The bill passed the House, unamended, on October 18, 1977. The measure was then laid on the table and S. 1316 was passed in lieu.

The Conference Committee adopted the House provisions for reauthorization of section 6 programs, and modified the qualifications for financial assistance to assure consistency with prohibitions set forth in other sections of the Act (S. Rept. 95-607). The final version of the bill authorized \$10 million through September 30, 1977; and \$16 million for the period beginning October 1, 1977, and ending September 30, 1981. An alternative set of requirements to be met by the States to qualify for financial assistance did not require a State conservation agency to have the authority to conserve all resident threatened or endangered species. The agency, however, requested plans to devote immediate attention to those species most urgently in need of conservation programs. An additional provision guaranteed the continued enforcement of certain prohibitions regarding the taking of resident endangered or threatened species when a cooperative agreement is entered into. The Senate agreed to the conference report on November 29, 1977. House agreement occurred on November 30, 1977. The bill was signed into law (Public Law 95-212) on December 19, 1977.

CHRONOLOGY—PUBLIC LAW 95-212

April 20, 1977—H.R. 6405 introduced and referred to House Committee on Merchant Marine and Fisheries.

April 20, 1977—S. 1316 introduced and referred to Senate Committee on Environment and Public Works.

May 16, 1977—H.R. 6405 reported to House by the Committee on Merchant Marine and Fisheries, H. Rept. 95-333.

May 16, 1977—S. 1316 reported to Senate, with amendment, by the Committee on Environment and Public Works, S. Rept. 95-186.

May 25, 1977—S. 1316 passed Senate, amended.

October 18, 1977—H.R. 6405 passed House.

October 18, 1977—S. 1316 passed House, amended, in lieu of H.R. 6405.

November 29, 1977—Senate agreed to conference report, S. Rept. 95-607.

November 30, 1977—House agreed to conference report, H. Rept. 95-823.

December 7, 1977—S. 1316 presented to the President.

December 12, 1977—S. 1316 signed into law (Public Law 95-212).

Public Law 95-212
95th Congress

An Act

To authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973.

Dec. 19, 1977
[S. 1316]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is amended—

(1) by striking out the period at the end of subsection (c) and inserting in lieu thereof “; or”, and by adding at the end of such subsection the following:

“that under the State program—

“(A) the requirements set forth in paragraphs (3), (4), and

(5) of this subsection are complied with, and

“(B) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to subparagraph (A) and this subparagraph shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9

(a) (1) with respect to the taking of any resident endangered or threatened species;” and

(2) by amending subsection (i) to read as follows:

“(1) APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

“(1) \$10,000,000 through the period ending September 30, 1977.

“(2) \$16,000,000 for the period beginning October 1, 1977, and ending September 30, 1981.”

Approved December 19, 1977.

Endangered
Species Act of
1973.
amendment.
Cooperative
agreements.

16 USC 1533.
16 USC 1538.

Appropriation
authorization.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-333 accompanying H.R. 6405 (Comm. on Merchant Marine and Fisheries) and No. 95-823 (Comm. of Conference).

SENATE REPORTS: No. 95-186 (Comm. on Environment and Public Works) and No. 95-697 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 123 (1977):

May 25, considered and passed Senate.

Oct. 18, considered and passed House, amended, in lieu of H.R. 6405.

Nov. 29, Senate agreed to conference report.

Nov. 30, House agreed to conference report.

95TH CONGRESS
1st Session

H. R. 6405

[Report No. 95-333]

IN THE HOUSE OF REPRESENTATIVES

April 20, 1977

Mr. LEAGERT (for himself, Mr. FORSYTHE, Mr. RUPPE, Mr. DE LA GARZA, Mr. BRALEY, Mr. McCLOSKEY, Mr. BOWEN, Mr. AUCOIN, Mr. EMERY, Mr. OBERSTAR, Mr. HUGHES, Mr. TARBLE, and Mr. AKAKA) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

May 16, 1977

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Endangered Species Act of 1973 regarding the requirements for State cooperative programs thereunder and to authorize appropriations through fiscal year 1981 to carry out such programs.

- 1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*
- 2 That section 6 of the Endangered Species Act of 1973 (16
- 3 U.S.C. 1535) is amended—
- 4 (1) by striking out the period at the end of sub-
- 5 section (c) and inserting in lieu thereof “; or”, and by
- 6 adding at the end of such subsection the following:
- 7 “that under the State program—
- 8

1 “(A) the requirements set forth in paragraphs (3),
 2 (4), and (5) of this subsection are complied with, and
 3 “(B) plans are included under which immediate
 4 attention will be given to those resident species of fish
 5 and wildlife which are determined by the Secretary or
 6 the State agency to be endangered or threatened and
 7 which the Secretary and the State agency agree are
 8 most urgently in need of conservation programs.”; and
 9 (2) by amending subsection (i) to read as follows:
 10 “(i) APPROPRIATIONS.—For the purposes of this sec-
 11 tion, there are authorized to be appropriated not to exceed
 12 the following sums:
 13 “(1) \$10,000,000 through the period ending Sep-
 14 tember 30, 1977.
 15 “(2) \$16,000,000 for the period beginning Octo-
 16 ber 1, 1977, and ending September 30, 1981.”

AUTHORIZATION OF SECTION 6 OF THE ENDANGERED
 SPECIES ACT OF 1973

MAY 16, 1977.—Committed to the Committee of the Whole House on the
 State of the Union and ordered to be printed

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

REPORT

[Including Cost of Estimate of the Congressional Budget Office]

[To accompany H.R. 6405]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 6405) to amend the Endangered Species Act of 1973 regarding the requirements for State cooperative programs thereunder and to authorize appropriations through fiscal year 1981 to carry out such programs, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 6405 is to extend the authorization period for section 6 of the Endangered Species Act of 1973, and increase the authorized level of appropriations under Section 6 of the Act. In addition, the bill would amend section 6 of the Act to facilitate the development of cooperative endangered species programs with the individual States.

LEGISLATIVE BACKGROUND

H.R. 4741, the predecessor bill to H.R. 6405, was introduced on March 9, 1977 by Mr. Leggett and co-sponsored by Mr. Forsythe. The legislation was referred to the Departments of the Interior and Commerce for comments.

The Department of the Interior, in its report of March 25, 1977, strongly recommended enactment of the legislation if it was amended to conform with the Department's suggestions. The Department of the Interior suggested amending the bill to provide that the authorization

for grant-in-aid in section 6(i) of the Endangered Species Act of 1973 be extended for four fiscal years at a total amount for all years not to exceed \$12 million. H.R. 4741, as introduced, would provide for a three year authorization period and a ceiling on the authorization of appropriations for all three years of \$9 million.

The Department of the Interior indicated that the amendment was needed in order to provide an incentive for other States to enter into the program and ultimately to return to the States authority for the management of resident endangered and threatened species.

The Subcommittee on Fisheries, Wildlife Conservation and the Environment held hearings on the legislation on March 22, 1977. The Subcommittee received testimony from the Department of the Interior, the Department of Commerce, and the International Association of Fish and Wildlife Agencies. All of the witnesses appearing before the Subcommittee expressed support for continuing the authorization for the cooperative agreement section of the Act. The Department of Commerce witnesses indicated that they were unable to take a position on the adequacy of the authorization for fiscal years 1979 and 1980 since they had not been allocated funds for section 6 in the President's fiscal year 1978 budget.

The witness for the International Association of Fish and Wildlife Agencies suggested an amendment to the bill to facilitate the development of cooperative agreements with the individual States. This proposal would amend section 6(c) of the Act to permit State endangered species programs to qualify for section 6(i) grant-in-aid funds if they satisfy the requirements of paragraphs (3), (4) and (5) of section 6(c) and if the Secretary finds that the State program includes plans to devote attention to resident endangered species of fish and wildlife most urgently in need of conservation programs. The bill, H.R. 6405, as ordered reported by the Committee included this amendment, with technical changes. This amendment is described further in the section-by-section analysis of this report.

The subcommittee gave careful consideration to the evidence presented at the hearings and the departmental reports. On March 30, 1977 the subcommittee adopted an amendment in the form of a substitute offered by Mr. Leggett and ordered a clean bill, H.R. 6405, reported to the full committee. On March 3, 1977, the Committee on Merchant Marine and Fisheries, by voice vote, unanimously reported to the House H.R. 6405, without amendment.

BACKGROUND AND NEED FOR THE LEGISLATION

The Endangered Species Act of 1973 was enacted to provide a program for the protection of endangered and threatened species, and the conservation of the ecosystems on which endangered and threatened species depend.

Section 6 of the Act establishes a mechanism for the development of cooperative endangered species programs with the individual States. Section 6 places the fundamental responsibility for establishing and overseeing an endangered species program in the Federal Government. However, section 6 mandates that the appropriate Secretary, depending upon the species involved, cooperate with the States in carrying

out the endangered species program. The cooperation envisioned by section 6 includes consultation with the States concerned before acquiring any land or water under the Act, and the development of cooperative management agreements with States that establish an adequate and active program for the conservation of endangered and threatened species.

Section 6 resulted from the realization that the successful development of an endangered species program depended upon a good working arrangement between the Federal and States agencies. Although the Federal agencies have the broad policy perspective and authority to carry out the Act, the State agencies have the physical facilities and the personnel to see that State and Federal endangered species policies are properly executed.

Section 6 of the Act authorizes the Secretaries to provide financial assistance to any State which has entered into a cooperative agreement with the Federal agency under the terms of the Act. Such Federal financial assistance, however, cannot exceed 66⅔ percent of any State's estimated program cost. Federal funding can be increased to 75 percent when two or more States enter into a joint cooperative agreement with the Federal agency. Funds allocated to the States under section 6 remain available for two years. If the funds are unobligated after two years, the funds revert to the Secretary and can be allocated to other programs under section 6.

Section 6(i) of the Act authorizes to be appropriated \$10 million for fiscal years 1974 through 1977. No money was appropriated under section 6(i) in fiscal year 1974 or fiscal year 1975; \$2 million was appropriated to the Department of the Interior in fiscal year 1976, and \$1 million in fiscal year 1977. In addition the President has requested a supplemental appropriation of \$3 million in fiscal year 1977 for the Department of the Interior. This \$3 million was included in the supplemental appropriation bill passed by the House on March 15, 1977 (H.R. 4877).

The Congress, in passing the Endangered Species Act of 1973, considered the State cooperative agreement program to be a vital element of the Act as a whole. Unfortunately, the development of cooperative agreements has developed much slower than originally hoped. To date, only 17 States have signed cooperative agreements with the Department of the Interior and have thereby qualified for grant-in-aid funds. The Department of Commerce has never entered into a cooperative agreement with an individual State largely because the Department has not been budgeted funds under section 6(i) of the Endangered Species Act.

Witnesses for the Department of Commerce indicated to the Committee that there are a number of endangered species under their jurisdiction that could be the subject of cooperative agreements with individual States. These witnesses also indicated that if cooperative agreements were signed with States regarding these species, some of the management duties now performed by the Federal Government could be accomplished by the State agencies.

The Committee feels that Department of Commerce activities under section 6 should now be funded. Accordingly, the Committee has in-

cluded an additional \$4 million in the authorization for Department of Commerce activities. The Department of Commerce has indicated to the Committee that this level of authorization will permit them to adequately establish and fund a cooperative agreement program over the next four years.

One of the greatest impediments to the development of an active cooperative agreement program has been the five requirements of section 6(c) necessary to be satisfied before a State qualified for grant-in-aid funds. A number of States are reluctant to enter into a cooperative agreement with the Federal Government because of the language of paragraphs (1) and (2) of section 6(c).

Paragraph (1) provides that before a State is eligible to receive Federal funds the Secretary must determine that the State agency has authority to conserve resident species of fish or wildlife determined by the Secretary to be endangered or threatened. Paragraph (2) requires the State agency to establish acceptable conservation programs for all resident endangered or threatened fish or wildlife which are deemed by the Secretary to be endangered or threatened. In essence, these paragraphs require States to provide blanket protection for any species listed as endangered or threatened by the Secretary.

A number of States have failed to qualify for section 6 funds because they have been unwilling to grant to their State agency the broad authority required by paragraphs (1) and (2) of section 6(c). The Committee feels that the requirements of section 6(c) should be modified to facilitate the development of cooperative agreements with the thirty-three States not now participating in the program. Some of the States not participating in a program with the Federal Government have a significant number of endangered and threatened species under their jurisdiction. The Committee believes that it is important that these States be brought into the program in order to properly preserve these species.

H.R. 6405 would satisfy the major objections raised by the States to the requirements of section 6(c). Under H.R. 6405, States could qualify for cooperative agreement funds if they satisfied the requirements of paragraphs (3), (4), and (5) of section 6(c) and if the State has plans to devote immediate attention to those species most urgently in need of conservation programs. The Department of the Interior has indicated that they are in support of this change in section 6(c).

Paragraph (3) of section 6(c) requires the State agency to be authorized to conduct investigations to determine the status and requirements for survival of resident species. Paragraph (4) requires the State agency to be authorized to establish programs for the consideration of resident endangered or threatened species. Paragraph (5) requires a finding that the State program provide for public participation in designating resident species as endangered or threatened.

Following is a list of States with cooperative agreements with the Federal Government under section 6 of the Endangered Species Act: Arkansas, California, Colorado, Delaware, Florida, Maine, Maryland, Michigan, Missouri, New Jersey, New Mexico, New York, South Carolina, South Dakota, Virginia, Washington and Wisconsin.

WHAT THE LEGISLATION DOES

The following is a section-by-section summary of H.R. 6405 accompanied by discussion where appropriate:

SECTION (1)

Section (1) would provide an alternative set of requirements to be satisfied by the individual States before they can qualify for Federal grant-in-aid funds under section 6 of the Endangered Species Act. The alternative requirements would be those listed in paragraphs (3), (4), and (5) of section 6(c) and that the State has plans under which immediate attention will be given to those resident species of fish and wildlife most urgently in need of conservation programs.

As explained in the background section of this report, this section is necessary to facilitate the development of cooperative endangered species programs with those States that are reluctant to grant broad authority to their State agency to conserve any resident species which may be determined by the Federal Government to be endangered or threatened.

SECTION (2)

Section (2) would amend section 6(i) of the Act to extend the authorization period from October 1, 1977 through September 30, 1981. This section would also establish a \$16 million level of funding authorized to be appropriated during the four-year period.

The current authorization of appropriations under section 6(i) of the Act expires on September 30, 1977. As originally enacted, the Act authorized \$10 million to be appropriated between 1974 and September 30, 1977.

COST OF THE LEGISLATION

In the event the legislation is enacted into law and the authorized funding is fully appropriated, the maximum cost to the Federal Government for fiscal years 1978 through 1981 would be \$16 million.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 6405 would have no significant inflationary impact on the prices and cost in the national economy.

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

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

(A) No oversight hearings were held on the administration of this Act during this session of the Congress, beyond the one day of hearings on the predecessor legislation, H.R. 4741, held by the Subcommittee on Fisheries, Wildlife Conservation and the Environment on March 22, 1977. The Subcommittee does intend to hold oversight hearings on the administration of this act from time to time during the 95th Congress.

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

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

(D) A letter was received from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974 in reference to H.R. 6405 and follows herewith:

CONGRESSIONAL BUDGET OFFICE,

U.S. CONGRESS,

Washington, D.C., May 5, 1977.

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

Dear Mr. CHARMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 6405, a bill to amend the Endangered Species Act of 1973 regarding the requirements for State cooperative programs thereunder and to authorize appropriations through fiscal year 1981 to carry out such programs.

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

Sincerely,

Alice M. RAVLIN, Director.

Attachment.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

May 5, 1977.

1. Bill number: H.R. 6405.
2. Bill title: To amend the Endangered Species Act of 1973 regarding the requirements for state cooperative programs thereunder and to authorize appropriations through fiscal year 1981 to carry out such programs.
3. Bill status: As reported by the House Committee on Merchant Marine and Fisheries.
4. Bill purpose: The purpose of the bill is to amend the Endangered Species Act of 1973 regarding the requirements for state cooperative programs and to authorize appropriation of \$16 million for the period fiscal year 1978 through fiscal year 1981. This bill is authorizing legislation which requires subsequent appropriation action.
5. Budget impact:

Fiscal year 1978:	
Authorization level	Millions
Estimated costs	\$16
Fiscal year 1979:	
Authorization level	16
Estimated costs	3

Fiscal year 1980:	
Authorization level	Millions
Estimated costs	\$16
Fiscal year 1981:	
Authorization level	16
Estimated costs	5
Fiscal year 1982:	
Authorization level	0
Estimated costs	2

The costs of this bill fall in budget subfunction 303.

6. Basis for estimate: The authorization level is that stated in the bill. For the purpose of this estimate it is assumed that this legislation and the necessary fiscal year 1978 appropriation legislation will be enacted prior to fiscal year 1978. The estimated costs of this legislation are based on agency plans for this program at a \$16 million authorization/appropriation level and historical spendout rates. The planned obligation level for this program would be: \$3 million in fiscal year 1978; \$3 million in fiscal year 1979; \$5 million in fiscal year 1980; and \$5 million in fiscal year 1981.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by Terry Nelson (225-7760).
10. Estimate approved by:

C. G. NICKOLS

(For James L. Blum,

Assistant Director for Budget Analysis).

DEPARTMENTAL REPORT

H.R. 4741, a predecessor of H.R. 6405, was the subject of a report from the Department of the Interior and follows herewith:

U.S. DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY,

Washington, D.C., March 25, 1977.

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

Dear Mr. CHARMAN: This responds to the request of your Committee for the views of this Department on H.R. 4741, a bill "To authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973."

We recommend the enactment of H.R. 4741, if it is amended as described herein.

H.R. 4741 amends section 6(i) of the Endangered Species Act to provide for an authorization of appropriations for grant-in-aids to States of \$3,000,000 for each of the fiscal years ending September 30, 1978, September 30, 1979, and September 30, 1980.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior (and the Secretary of

Commerce) to prevent the extinction of species. That authority included a broader responsibility to list species that are subject to protection and manage the listed species to the point where they are restored and can be removed from the list. The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystems species of animals and plants that are endangered with extinction or threatened with endangerment. Wherever possible, the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is our intent to prevent other species from becoming endangered.

In order to implement activities aimed at accomplishing these goals, the Endangered Species Act provides in section 6(i) an authorization for grant-in-aid to States not to exceed \$10 million for the first three years after enactment and a general authorization to carry out other provisions of the Act is contained in section 15. The section 6(i) authorization requires extension in order to provide grant funds to qualified States after fiscal year 1977. Section 15 funds do not expire until the close of fiscal year 1978.

The Endangered Species Act of 1973 contains a strong Federal commitment for closer coordination and cooperation with State fish and wildlife agencies than has been the case under the Endangered Species Preservation Act of 1966, as amended by the Endangered Species Conservation Act of 1969 and repealed by the 1973 Act. This commitment takes the form of cooperative agreements and a grant-in-aid program with the States in addition to cooperative development and execution of species recovery plans. Section 6 of the Act authorizes the Secretary to enter into cooperative agreements with the States to further the purpose of the Act. The grant-in-aid provisions of section 6 provide the means of accomplishing this cooperative approach to the management of endangered and threatened species. Only States that have entered into cooperative agreements with the Secretary are eligible for grant-in-aid.

To date 17 States have qualified for grant-in-aid funds and three more are imminent. Some 48 States have contacted the Fish and Wildlife Service for advice and assistance in reaching a cooperative agreement, and we anticipate signing 25 cooperative agreements in fiscal year 1978. The expertise, manpower and cooperation of the States are essential if we are to attain the goal of the Endangered Species Act of effecting the recovery of species. Federal financial assistance in this endeavor is essential.

In fiscal year 1976, \$2,000,000 were appropriated to remain available until expended for grant-in-aid to the States. The fiscal year 1977 appropriation contained an additional \$1,000,000. A supplemental request has been sent to Congress requesting an additional \$3 million. Of the funds appropriated in fiscal year 1976, \$1,165,000 were allocated to the following States: California, Colorado, Florida, South Carolina, Michigan, Maryland, New York, Missouri, Washington, Arkansas, Virginia, New Jersey, Delaware, Maine and Wisconsin. It is anti-

ipated that all funds appropriated under this authorization will be obligated by September 30, 1977. Examples of the types of activities for which the funds are used by the States are: to acquire the critical habitat of the Morro Bay kangaroo rat; conduct peregrine falcon nesting success surveys; to develop a gate that will pass Indiana bats but prevent people from entering certain key bat caves; to accomplish bald eagle status surveys; and to propagate peregrine falcons for release into the wild.

In order to provide an incentive for other States to enter into the program and ultimately to return to the States authority for the management of resident endangered and threatened species, we recommend that H.R. 4741 be amended to provide that the authorization for grant-in-aid in section 6(i) of the Endangered Species Act be extended for four fiscal years at a total amount for all years not to exceed \$12 million. Therefore, we recommend that H.R. 4741 be amended to delete lines 10-12, and insert in lieu thereof: "(2) for the fiscal year beginning October 1, 1977, through fiscal year 1981, there is authorized to be appropriated an amount not to exceed \$12,000,000".

We urge enactment of H.R. 4741 as amended above in order to assure continuation beginning the fiscal year 1978 of programs aimed at preventing the continued decline of our living natural resources.

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

Sincerely,

Cecil D. Andrus, *Secretary*.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italics*, existing law in which no change is proposed is shown in *roman*):

SECTION 6 OF THE ENDANGERED SPECIES ACT OF 1973 (16 U.S.C. 1535; PUBLIC LAW 93-205)

Sec. 6. * * *

(c) COOPERATIVE AGREEMENTS.—In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this subsection, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened

species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

- (1) authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;
 - (2) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State 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 is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;
 - (4) the State agency is authorized to establish program, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered species or threatened species; and
 - (5) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened.
- § 1: or
- that under the State program—
- (A) the requirements set forth in paragraphs (3), (4), and (5) of this subsection are complied with, and
 - (B) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs.
- *(i) APPROPRIATIONS.—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.†
- (2) APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:
 - (1) \$10,000,000 through the period ending September 30, 1977.
 - (2) \$16,000,000 for the period beginning October 1, 1977, and ending September 30, 1981.

[From the Congressional Record, Oct. 18, 1977]

HOUSE CONSIDERATION AND PASSAGE OF H.R. 6405

ENDANGERED SPECIES ACT AMENDMENTS

Mr. MURPHY of New York. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6405) to amend the Endangered Species Act of 1973 regarding the requirements for State cooperative programs thereunder and to authorize appropriations through fiscal year 1981 to carry out such programs.

The Clerk read as follows:

H.R. 6405

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is amended—

(1) by striking out the period at the end of subsection (c) and inserting in lieu thereof “; or”, and by adding at the end of such subsection the following: “that under the State program—

“(A) the requirements set forth in paragraphs (3), (4), and (5) of this subsection are complied with, and

“(B) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs.”; and

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

“(1) Appropriations.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

“(1) \$10,000,000 through the period ending September 30, 1977.

“(2) \$16,000,000 for the period beginning October 1, 1977, and ending September 30, 1981.”

The SPEAKER pro tempore (Mr. Yates). Is a second demanded?

Mr. FORSYTHE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York (Mr. Murphy) and the gentleman from New Jersey (Mr. Forsythe) are recognized for 20 minutes.

The Chair recognizes the gentleman from New York (Mr. Murphy). Mr. MURPHY of New York. Mr. Speaker, in 1973, Congress passed the Endangered Species Act in an attempt to slow the alarming rate at which wildlife species were becoming extinct in the United States and around the world. The Endangered Species Act provided for the development of a program for the protection of endangered and threatened species, and the conservation of the ecosystems on which endangered and threatened species depend. H.R. 6405 reauthorizes one small, but nevertheless vital, element of this historic act.

This legislation would authorize appropriations of \$16 million under section 6 of the Endangered Species Act. In addition, the bill would amend section 6 (c) of the act to facilitate the development of cooperative agreement programs with the States.

Section 6 of the Endangered Species Act is a little known, but highly important part of the act. It established a mechanism for the development of cooperative endangered species programs with the individual

States. The cooperation envisioned by section 6 includes consultation with the States concerned before acquiring any land or water under the Endangered Species Act, and the development of cooperative management agreements with States that establish a program for the conservation of endangered species. Those States that qualify under the act are eligible to receive section 6 matching grants on a 2-to-1 basis.

Section 6 of the Endangered Species Act expresses the congressional realization that a successful endangered species program depends upon a good working relationship with the States. Although the Federal agencies have the broad policy perspective and authority to carry out the Endangered Species Act, the States have the physical facilities and the personnel to see that State and Federal endangered species policies are properly executed.

Traditionally, State fish and game departments have had the primary responsibility for managing resident species of fish and wildlife. Section 6 of the Endangered Species Act insured that the States would continue to play an important role in the management of resident endangered and threatened species despite the Federal Government's assertion of general authority in the endangered species area. We recognized in 1973, as we do now, that if we want an endangered species program that works in fact, as well as on paper, it is imperative that the States be given authority to manage their resident species which are classified as endangered or threatened.

Unfortunately, the cooperative agreement program of the Endangered Species Act has not developed as rapidly as we had originally hoped. To date, only 17 States have signed cooperative agreements with the Federal Government and have qualified for Federal matching funds under the act. It is hoped that the changes proposed in this legislation, along with an increase in funding for State endangered species programs, will bring around the 33 States not now participating in the endangered species program.

Mr. Speaker, I would like to emphasize the noncontroversial nature of this legislation. It was reported out of the Committee on Merchant Marine and Fisheries without a single dissenting voice. This bill has nothing whatsoever to do with some of the more controversial aspects of the Endangered Species Act which have received press attention in recent months. Specifically, this bill has nothing to do with the conflict between some water development projects and the designation of critical habitat for a variety of endangered species.

Mr. LEAGERT. Mr. Speaker, I rise in support of H.R. 6405. This legislation authorizes appropriations of \$16 million through fiscal year 1981 to carry out a small but important part of the Endangered Species Act of 1973. That act stands as the most far-reaching Federal effort to slow and prevent the destruction of hundreds of fish and wildlife species that are facing extinction as a result of man's activities. The important goal of the Endangered Species Act is the maintenance of a healthy diversity of wildlife species, and to conserve the all important ecosystems on which the wildlife species of the world depend for survival.

Although the Endangered Species Act expressed the preeminent authority of the Federal Government in the management of endangered species, it recognized that any effective conservation program

demands active State involvement. Thus, section 6 of the Endangered Species Act established a mechanism for continuing State involvement in the management of resident threatened and endangered species.

Under the act, the Federal Government is authorized to enter into cooperative agreements with individual States that develop a qualifying endangered species program. Once a State has developed an acceptable endangered species program, it is eligible to receive Federal matching funds to carry out its program. In the past, these matching funds have been used for such activities as conducting peregrine falcon and bald eagle surveys, developing special gates to protect Indiana bats and propagating falcons for release into the wild.

The goal of this section is clear—the management of resident endangered species at the State level by those wildlife biologists best equipped to insure continued protection of the most beleaguered members of the animal kingdom. Unfortunately, we are not close to achieving this goal.

Only 17 States have signed cooperative agreements with the Federal Government under section 6. What is worse, some of the States with the greatest number of species under their jurisdiction have not yet joined the program. Many States have not qualified for Federal financial assistance because they are frankly unwilling to provide blanket protection for any species which may be listed as endangered or threatened. The existing law requires the States to authorize such blanket protection before they can qualify for any Federal assistance.

H.R. 6405 would ease the requirements of existing law and encourage the remaining 33 States to join this all important program. I want to emphasize that this bill in no way diminishes the force or effect of the Endangered Species Act. In fact, if anything, the proposed amendment of section 6 should help to insure the full implementation of the act by encouraging the full participation of State agencies.

Authorizations and appropriations of section 6, Endangered Species Act

Year	Authorizations	Appropriations
1974	2.5	0
1975	2.5	0
1976	2.5	2.0
1977	2.5	4.0
1978	1.4	4.0
1979	1.4	4.0
1980	1.4	4.0
1981	1.4	4.0

¹ Proposed in H. R. 6405.

STATES SIGNING COOPERATIVE ENDANGERED SPECIES AGREEMENTS

Arkansas, California, Colorado, Delaware, Florida, Maine, Maryland, Michigan, Missouri, New Jersey, New Mexico, New York, South Carolina, South Dakota, Virginia, Washington, and Wisconsin.

[From the Congressional Record, Oct. 18, 1977]

HOUSE CONSIDERATION AND PASSAGE OF S. 1316, AS AMENDED

Mr. MURPHY of New York. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1316) to authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973, a similar bill to H.R. 6405, and ask for its immediate consideration. The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1316

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6(1) of the Endangered Species Act of 1973 (16 U.S.C. 1535(1)) is amended to read as follows:

"(1) APPROPRIATION.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

- "(1) \$10,000,000 through the period ending September 30, 1977;
- "(2) \$9,000,000 to the Secretary of the Interior through the period ending September 30, 1980; and
- "(3) \$3,000,000 to the Secretary of Commerce through the period ending September 30, 1980."

MOTION OFFERED BY MR. MURPHY OF NEW YORK

Mr. MURPHY of New York. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MURPHY of New York moves to strike out all after the enacting clause of the Senate bill (S. 1316) and to insert in lieu thereof the provisions of H.R. 6405, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "To amend the Endangered Species Act of 1973 regard to the requirements for State cooperative programs thereunder and to authorize appropriations for State cooperative programs thereunder and to authorize appropriations through fiscal year 1981 to carry out such programs."

A motion to reconsider was laid on the table.

A similar House bill, H.R. 6405, was laid on the table.

Mr. FORSTNER. Mr. Speaker, I rise today in support of the legislation, H.R. 6405, which would authorize section 6 of the Endangered Species Act of 1973. This bill has three purposes. First, it would extend the authorization section for section 6 of the act from October 1, 1977, through September 30, 1981. Second, the bill would establish a funding level of \$16 million which would be authorized to be appropriated during the 4-year period October 1, 1977, through September 30, 1981. Third, it would amend section 6 of the act to facilitate development of cooperative and endangered species programs with the individual States.

H.R. 6405 has the broadest bipartisan support. Since 1973 we have made a great deal of progress as a nation under the Endangered Species Act in our efforts to provide a program for the protection of endangered and threatened species and the conservation of ecosystems on which endangered and threatened species depend. Much work remains to be done. In addition to extending the authorization period of the act, this bill concentrates its attention in an area which is very important to me.

The successful development of an endangered species program depends on a good working arrangement between Federal and State agencies. Federal agencies have broad powers and perspective to carry out their authority under the act. State agencies, however, must have the physical facilities and personnel to see that the policies which are set by State and Federal interaction are properly executed. Without this strong State role, no endangered species program will be fully effective.

However, one of the greatest impediments to the development of cooperative agreements between the States and Federal Governments has been the five requirements found in section 6(c) of the act. These requirements must be met before a State can qualify for a grant in aid funds. In essence these paragraphs require States to provide blanket protection for any species listed as endangered or threatened by the Secretary.

A number of States have failed to qualify for funds under section 6 because for internal policy reasons they have been unwilling to grant their State agency the broad authority required under the present wording of the act. Under H.R. 6405, States would be able to qualify for cooperative agreement funds if they met the requirement of present paragraphs 3, 4, and 5 under section 6(c) and if the State has a plan which would result in immediate attention being given to those species most urgently in need of conservation programs.

Mr. Speaker, I urge my colleagues to join with me in approving the authorization of these much-needed funds.

Mr. MURPHY of New York. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. Murphy) that the House suspend the rules and pass the bill H.R. 6405.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

95TH CONGRESS
1ST SESSION**S. 1316**

IN THE SENATE OF THE UNITED STATES

APRIL 20 (legislative day, February 21), 1977

Mr. CURVER introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 6 (i) of the Endangered Species Act of 1973
- 4 (16 U.S.C. 1535 (i)) is amended to read as follows:
- 5 “(i) APPROPRIATIONS.—For the purposes of this sec-
- 6 tion, there are authorized to be appropriated not to exceed
- 7 the following sums:
- 8 “(1) \$10,000,000 through the period ending Sep-
- 9 tember 30, 1977.
- 10 “(2) \$3,000,000 for each of the fiscal years end-
- 11 ing September 30, 1978, September 30, 1979, and
- 12 September 30, 1980.”

95TH CONGRESS
1ST SESSION**S. 1316**

Calendar No. 160

[Report No. 95-186]

IN THE SENATE OF THE UNITED STATES

APRIL 20 (legislative day, February 21), 1977

Mr. CURVER introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

MAY 16, 1977

Reported by Mr. RASPOLEPP (for Mr. CURVER) with an amendment

[Omit the part struck through and insert the part printed in *italics*]**A BILL**

To authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 6 (i) of the Endangered Species Act of 1973
- 4 (16 U.S.C. 1535 (i)) is amended to read as follows:
- 5 “(i) APPROPRIATIONS.—For the purposes of this sec-
- 6 tion, there are authorized to be appropriated not to exceed
- 7 the following sums:
- 8 “(1) \$10,000,000 through the period ending Sep-
- 9 tember 30, 1977.
- 10 “(2) ~~\$3,000,000~~ for each of the fiscal years end-

- 1 the September 30, 1978, September 30, 1979, and
- 2 September 30, 1980."
- 3 "(2) \$9,000,000 to the Secretary of the Interior
- 4 through the period ending September 30, 1980; and
- 5 "(3) \$3,000,000 to the Secretary of Commerce
- 6 through the period ending September 30, 1980."

Calendar No. 160

95TH CONGRESS } SENATE } REPORT
 1st Session } } No. 95-186

ENDANGERED SPECIES ACT AUTHORIZATIONS

MAY 16, 1977.—Ordered to be printed

Mr. RANDOLPH (for Mr. CURVER), from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1316]

The Committee on Environment and Public Works, to which was referred the bill (S. 1316), a bill to authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

GENERAL STATEMENT

The purpose of this bill is to extend until September 30, 1978 the authorization under section 6(i) of the Endangered Species Act of 1973.

This section currently provides an authorization of \$10 million to the Secretaries of the Interior and Commerce for assisting the States in the development of programs for the protection of threatened and endangered species of fish, wildlife, and plants. The Federal share may be as high as 66 percent for projects conducted by one State, or 75 percent for projects conducted by two or more States. To date, seventeen States have signed cooperative agreements with the Interior Department and are therefore qualified to receive grants under this provision. No State has received funding from the Commerce Department because funds have not been allocated to the National Marine Fisheries Service for this purpose.

S. 1316 would extend the authorization for section 6(i) programs through fiscal year 1980 at a rate of \$9 million for the Department of the Interior and \$3 million for the Department of Commerce. The

A BILL

[Report No. 95-186]

S. 1316

Calendar No. 160

95TH CONGRESS
1st Session

To authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973.

By Mr. CURVER

April 20 (legislative day, FEBRUARY 21), 1977
 Read twice and referred to the Committee on Environment and Public Works
 May 16, 1977
 Reported with an amendment