

ENDANGERED SPECIES ACT AUTHORIZATIONS

NOVEMBER 29 (legislative day, NOVEMBER 1), 1977.—Ordered to be printed

Mr. CULVER, from the committee of conference,
 submitted the following

CONFERENCE REPORT

[To accompany S. 1316]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the 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, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:
 In lieu of the matter proposed to be inserted by the House amendment insert the following:

That section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1536) 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:

“(i) 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.”

And the House agrees to the same.

JOHN CULVER,
 EDMUND S. MUSKIE,
 MALCOLM WALLOP,

Managers on the Part of the Senate.

JOHN M. MURPHY,
 ROBERT L. LEGGETT,
 DANIEL K. AKAKA,
 DAVID E. BONIOR,
 BO GINN,
 PHILIP RUPPE,
 EDWIN B. FORSYTHE,
 Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE
OF CONFERENCE

The managers on the part of the Senate and the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1316) authorizing appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973, submit the following joint statement to the Senate and the House in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The House amendment struck out all after the enacting clause and inserted a substitute text. The differences between the Senate bill and the House amendment are noted below, and the substitute agreed to in conference is discussed. Minor, technical and clarifying changes are not discussed.

REAUTHORIZATION OF THE SECTION 6 PROGRAM

Senate bill

The Senate bill is a simple extension of the State grant-in-aid program authorized under section 6 of the Endangered Species Act of 1973. A total of \$12 million through fiscal year 1980 is provided for this purpose. Of this amount, \$9 million is earmarked for the Secretary of the Interior and \$3 million to the Secretary of Commerce.

House amendment

Paragraph (1) of the House amendment provides a total of \$16 million through fiscal year 1981 for the section 6 program. No specific amount is made available to either the Secretary of the Interior or the Secretary of Commerce.

Conference report

The conferees agreed to adopt the House provision. According to administration estimates, a \$16 million authorization over a 4-fiscal-year period will best meet the States' projected funding needs for their endangered species conservation programs under section 6. In addition, a combined authorization for the Departments of Interior and Commerce will permit more flexibility in the expenditure of these funds.

The House and Senate conferees are dismayed that the Secretary of Commerce has not yet negotiated any cooperative agreements with the States for protecting threatened and endangered marine species under section 6. The Department of Commerce should intensify its efforts in this regard to promote increased cooperation with State programs for the conservation of threatened or endangered species. In addition, the conferees urge the Office of Management and Budget to assure that sufficient funding is provided in the budget for the Department to initiate and maintain such programs.

QUALIFICATION BY THE STATES FOR FINANCIAL ASSISTANCE

Senate bill

No provision.

House amendment

The House amendment contains language to facilitate qualification by the States for financial assistance under section 6 of the Endangered Species Act.

Before a State may enter into a cooperative agreement with, and receive financial assistance from, the Federal Government pursuant to section 6, it must have the authority to conserve all resident species of fish and wildlife which the Secretary determines to be threatened or endangered. A number of State fish and wildlife agencies do not possess such broad authority and are, therefore, not eligible for these benefits. In certain instances, a State conservation agency may have authority only to protect certain categories of species, such as vertebrates, rather than all species. Under the House amendment such a State could qualify for cooperative agreement funds if it satisfies all other requirements set forth in the act and has plans to devote immediate attention to those species most urgently in need of conservation programs.

Conference report

The conferees wish to assure that adoption of the House language does not have the effect of withdrawing protection for species listed by the Secretary. Therefore, the conference committee has agreed to a modification which guarantees that applicable prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1) of the Endangered Species Act with respect to the taking of resident endangered or threatened species remain in effect when a State enters into a cooperative agreement under the alternative language of the House amendment.

JOHN CULVER,
EDMUND S. MUSKIE,
MALCOLM WALLOP,
Managers on the Part of the Senate.

JOHN M. MURPHY,
ROBERT L. LEGGETT,
DANIEL K. AKAKA,
DAVID E. BONIOR,
BO GINN,
PHILIP RUPPE,
EDWIN B. FORSYTHE,
Managers on the Part of the House.

[From the Congressional Record, Nov. 29, 1977]

SENATE AGREEMENT TO CONFERENCE REPORT

ENDANGERED SPECIES ACT AUTHORIZATIONS—CONFERENCE REPORT

Mr. ROBERT C. BYRD, Mr. President, on behalf of the Senator from Iowa (Mr. Culver), I submit a report of the committee of conference on S. 1316, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.
The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1316) to authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs for the Endangered Species Act of 1973, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to. _____

[From the Congressional Record, Nov. 30, 1977]

HOUSE AGREEMENT TO CONFERENCE REPORT

CONFERENCE REPORT ON S. 1316, ENDANGERED SPECIES ACT
AUTHORIZATIONS

Mr. MURPHY of New York. Mr. Speaker. I ask unanimous consent for the immediate consideration of the conference report on the 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.

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

There was no objection.

Mr. MURPHY of New York. Mr. Speaker, I ask unanimous consent that the statement of the managers be read in lieu of the report.

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

There was no objection.

The Clerk read the statement.

The SPEAKER pro tempore. The gentleman from New York (Mr. Murphy) and the gentleman from New Jersey (Mr. Forsythe) will be recognized for 30 minutes each.

The Chair recognizes the gentleman from New York (Mr. Murphy).
Mr. MURPHY of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the conference report on S. 1316 adopts all of the provisions of the House-passed legislation with only one minor modification. As agreed by the conferees, the bill would authorize \$16 million over 4 years to fund State cooperative endangered species programs.

Under the Endangered Species 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 bald eagle surveys and propagating falcons for release into the wild.

In addition, S. 1316 amends the requirements that States must meet before they become eligible for these matching funds. This change in law was added by the House and agreed to by the conferees in an attempt to encourage participation in the endangered species program by the large number of States who have not signed agreements with the Federal Government.

The conferees have added only one small modification to the bill as passed by the House. This modification simply insures that the prohibitions in the Endangered Species Act will continue to apply to resident endangered and threatened species in those States qualifying for Federal funding under the new qualifying requirements specified in the bill. Without this modification, some endangered species could have been left unprotected by both the provisions of the Endangered Species Act and the provisions of the State endangered species program.

Mr. WITTEN. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from Mississippi.

Mr. WITTEN. Mr. Speaker, this comes at a time when we have not had much preparation for it. I do not know whether the committee went into the situation that we faced in the Public Works appropriation hearings and as well as in the Interior Committee appropriation hearings, but it developed upon those hearings that the present act, in my opinion, at least, the Department of the Interior or parts thereof had held species endangered without any evidence that it was a species and not a variety.

Further hearings disclosed that in the Tellico Dam they had to seek out the so-called snail darter, not to save the species, but to find one whereby they could stop a dam within 5 percent of being completed and which would have furnished energy to 30,000 homes. In the south end of my State where I live they held up an interstate highway because of the sandhill crane. It develops that the sandhill crane is in many parts of the United States. We have had them declared a species endangered without determining whether they are a species of a variety, as history will show, without any evidence that they might exist in other States, to see whether they were plentiful.

Down in Tennessee they went to the bottom of the stream and found a darter, where the citizens who filed an injunction could not identify or separate them from two other darters. The only thing we could see as Members of Congress was a little slight dot for two of them, what you would call a minnow. Nobody heard of them until they set out to stop the dam.

I wonder if the gentleman has made an effort to see what damage they are doing to the country's ability to look after itself in the name of protecting something that is worthwhile.

As I said earlier, we have had this endangered species from the time of the dinosaurs, or we would not be here.

They are not carrying out the law as it should be according to the evidence before us, so I have understood.

Can the gentleman give any information about what they have done and whether they are going to put the country back as it was at the time of the Indians?

Mr. MURPHY of New York. Mr. Speaker, I think the gentleman for bringing this up. Of course, the gentleman's inquiry refers to section 7 of the act and what we are dealing with here is section 6 of the act. We do not in any way in this legislation deal with the designation of critical habitat under section 7 of the Endangered Species Act. It is under section 7 that the Sixth Circuit Court of Appeals enjoined the completion of the Tellico Dam. This particular conference report has nothing to do with the problems that some public works projects face as a result of the Endangered Species Act.

Mr. WHITTEN. Mr. Speaker, if the gentleman will yield further, I have high regard for my friend, the gentleman from New York. I just wonder if the gentleman would not be better spending his time going to work on section 7 and straightening it out before we write some other sections?

Mr. MURPHY of New York. We have already started working on section 7. The committee has had the General Accounting Office do a study of the Tellico Dam situation. It has also directed a set of questions to the Department of the Interior in order to determine the potential impact of section 7 on public works programs across the country. We do plan to deal with the critical habitat question early next session.

Mr. WHITTEN. Mr. Speaker, if the gentleman will yield further, those things that are dear to us and valuable to us we are in favor of, but where this is being used to stop the development of this country, we cannot afford it, in view of the present situation.

PARLIAMENTARY INQUIRY

Mr. WHITTEN. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. WHITTEN. Mr. Speaker, does it require unanimous consent for the consideration of the conference report?

The SPEAKER pro tempore. The Chair is advised that unanimous consent has already been obtained for the consideration of the conference report.

Mr. WHITTEN. I am sorry, Mr. Speaker, I was not aware that was done here. I certainly would hope that the gentleman would defer this until we have a meeting of the minds between the committees that deal with it, because it is doing untold damage by being misconstrued in carrying out what I understand are the terms of the law.

Mr. MURPHY of New York. Mr. Speaker, I want the gentleman to know that we are specifically addressing ourselves to section 7. Next year the remainder of the Endangered Species Act including section 7 will be reauthorized. We want specific answers to the specific questions that the gentleman has just raised and this conference report has nothing to do with the inquiry of the gentleman.

Mr. WHITTEN. Mr. Speaker, I would like to insist that we read the statement on the part of the managers.

The SPEAKER pro tempore (Mr. Foley). The Chair wishes to advise the gentleman from Mississippi that unanimous consent was obtained for the consideration of the conference report, to read the statement of the managers in lieu of the report, and to dispense with further reading of the statement of the managers.

Mr. WHITTEN. I thank the Speaker.

Mr. WATKINS. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from Oklahoma.

Mr. WATKINS. Could the gentleman explain to me on the amendment here about the provision requiring an acceptable endangered species program be developed by the States? It has to be acceptable to whom, and to what group or agency?

Mr. MURPHY of New York. The States are required to initiate a conservation program for those species most in need of protection before than can qualify for matching funds.

Mr. WATKINS. If the gentleman will yield further, what concerns me about this provision is that, like the gentleman from Mississippi, I have a cousin or mutation of the snail darter, a black darter called the leopard darter, in my district which blocked construction of a dam. To our knowledge, it is a mutation, about three or four crosses away. We cannot figure out how it can be endangered. I am deeply concerned about who is saying what about this endangered species in my State, whether it is the Federal Government or whom.

Mr. MURPHY of New York. The Department of the Interior determines whether a species is threatened or endangered after input from biologists and the public at large.

I might say that we could use some cooperation from the Fish and Wildlife Service. They recently tried to transfer the snail darter upstream to another habitat where it probably could have survived but the Fish and Wildlife Service provided nets that were contaminated and they did away with the snail darters under transfer. That is the type of agency cooperation we are trying to prevent, but I want my colleague from Oklahoma, and also my colleague from Mississippi, to know that we understand this problem. We are not going to impede programs because some people may feel that a species is endangered. We are going into this whole question in section 7, and the entire House will have the opportunity next year in the authorization process to bring this up. We do not impact on those areas in this section 6 conference report.

Mr. WATKINS. I am deeply concerned about this because the power of this particular agency has grown here. I think there should be some very close scrutiny because they are about to stop any type of public works project or any program receiving Federal funds. There is a serious possibility that a mutation or long-distant cousin of the snail darter or something in my district will prevent any type of economic growth for our people.

Mr. MURPHY of New York. The intent is not to impede public works projects, but to protect bona fide endangered species. We are going into that whole question of endangered species and the definition of

them in section 7 next year. This conference report does not deal with that issue at this time.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield further?

Mr. MURPHY of New York. I will be happy to yield.

Mr. WHITTEN. As the gentleman knows, we had no advance notice, and of course in the closing days we are accustomed to that happening—otherwise, I would have been better prepared to have made an objection had I been on the floor. But, I would ask the gentleman if, in his contemplation, endangered species is something that is sought for under the provisions of the law so as to stop a dam which is 95 percent complete, and for which \$60 million has already been spent, to provide energy for 30,000 homes. In this instance, they went out and found something that was not known to exist.

I do not see how they could say it was endangered until they made a thorough survey over the United States.

And may I say, for the record, that the witness in the courtroom, when the judge issued the injunction, could not identify the snail from some others.

I just hope that we can call on our friend to help straighten this matter out so that our country can continue to exist and continue to prosper and to grow.

Mr. MURPHY of New York. In no way would the snail darter come under any aspect of this conference report, because we are dealing strictly with section 6. Section 7 will be dealt with separately next year in the authorization. The committee and the members of the committee from Tennessee were very careful to insure that this question was raised in the appropriate hearings.

Mr. FORSYTHE. Mr. Speaker, I rise in support of the conference report on S. 1316, a bill to amend the Endangered Species Act of 1973 regarding the requirements for State cooperative programs and to authorize appropriations through fiscal year 1981 to carry out such programs.

The Senate conferees have agreed to recommend that the Senate recede from its disagreement to the amendment of the House which enlarged and strengthened the role of States in our Nation's endangered species program. This is a very positive step, as the successful development of our Nation's overall endangered species program depends on the good working arrangement between Federal and State agencies. Without the strong State role added to the bill by the House, no endangered species program could ever be fully realized.

The only real change in the House-passed version of the bill which has come out of the conference is one which I can fully support. During the conference it became apparent that the protection of some species might be inadvertently lost when a State program became effective. The change brought about in conference will insure that all endangered species will continue to be protected.

Mr. Speaker, I urge my colleagues to join with me in approving this authorization so that funds are available for this much-needed program.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. FORSYTHE. I yield to the gentleman from Mississippi.

Mr. WHITTEN. I thank the gentleman for yielding.

Mr. Speaker, the Committee on Appropriations, may I say, has provided funds with which to transfer the so-called endangered species from one point to the other. And the act, as I interpret it—provides that they be protected and not used to prevent the development of the country. So if the act were carried out as it reads, if the courts would so interpret it, it would be one thing; but as I point out, when we have someone making a study, trying to find something to be used to stop a project, something that was not known to exist, something that there is no evidence now that it is not of a different variety, then we can see that the act itself is being misused.

Mr. Speaker, I hope the gentleman will devote his attention to seeing that this is carried out as it is now, and then we would not have anything like the damage that has occurred.

Mr. FORSYTHE. Mr. Speaker, that is the issue, and, as I say, that matter will apparently go all the way to the Supreme Court. But then the legislative process will follow that, as the chairman of the committee said, when we look at the rest of the legislation.

Mr. WATKINS. Mr. Speaker, will the gentleman yield?

Mr. FORSYTHE. I yield to the gentleman from Oklahoma.

Mr. WATKINS. Mr. Speaker, what concerns me is the fact that we have stated here that the States must develop an acceptable program. A program acceptable to whom? The Federal Government, the Federal bureaucracy, which has stopped many of us in the States flat in our tracks from developing opportunities for our people?

Mr. FORSYTHE. Mr. Speaker, for the State to get a cooperative program, it would deal with the Department of the Interior and the Department of Commerce, yes, where the species would be, for example, a marine mammal. There is a split jurisdiction by species, and obviously the Federal agency has to go by the Federal law in terms of this: Does that State cooperative agreement comply with the Federal statute?

But this piece of legislation even helps make that more possible, because one of the problems in the existing law, without this legislation, was that a State had to have a program to cover all species, whether they were resident or involved or not. This permits them to protect those species under an agreement with the Federal Government that are involved in that single State.

Mr. MURPHY of New York. Mr. Speaker, will the gentleman yield?

Mr. FORSYTHE. I yield to the chairman of the committee.

Mr. MURPHY of New York. Mr. Speaker, I want to assure my colleague, the gentleman from Oklahoma (Mr. Watkins), that the purpose of this legislation is to bring the 33 States into this program, and get them to take over the protection of resident endangered species. We have broadened the program, and we have added more money, so that the States will be able to protect endangered species and have the funds to do it. Thus they will not have to rely on what is minimal funding in many States.

That is the very thrust of this legislation, and it is not meant to impede any project. There is no project that would be impeded by this legislation.

As I assured the gentleman from Mississippi (Mr. Whitten)—and I refer to section 7—what we are doing is simply broadening the power of the States to, No. 1, get funding, and, No. 2, to be responsible for the endangered species within the States.

Mr. FORSYTHE. Mr. Speaker, will the gentleman yield further?

Mr. WATKINS. I yield to the gentleman from Oklahoma.

Mr. WATKINS. Mr. Speaker, the concern I have is that in the State of Oklahoma a water project was halted. Under the guise of the Endangered Species Act we were protecting two species, one called the snail darter and the other one called the leopard darter, a mutation. They stopped the project. They did this, we understood, to save the environment from the results of the project.

The choice was exercised by the Federal bureaucracy, and they did not allow this project to be completed. This was done by the choice of those individuals in the Federal Government and not by the choice of the people in that area of the country, that area of the State of Oklahoma, and it was impossible to continue that project.

Mr. FORSYTHE. Mr. Speaker, as the committee chairman has said, these issues are not dealt with in the legislation we are addressing today. Those are issues that will be dealt with when we look at the rest of the Endangered Species Act. That is the time we will be anxious to hear from the gentleman further.

Mr. LEXERT. Mr. Speaker, I urge the adoption of the conference report S. 1316. The conferees have agreed to all of the provisions of the legislation as passed by the House. They have merely added some modifying language which plugs a potential loophole in the law.

Under the existing law, when a State signs a cooperative agreement with the Federal Government covering resident wildlife, the prohibitions in the Endangered Species Act are waived. This makes a good deal of sense since the continuation of Federal prohibitions would only duplicate the protection afforded under the cooperative agreement.

S. 1316, however, changes the existing law slightly by no longer requiring blanket protection for each and every species listed by the Federal Government. Thus, in some instances, there may be a need for continued Federal protection for those species not covered by the cooperative agreement. The modification adopted by the conferees guarantees that those species not covered by the cooperative agreement will continue to receive protection under the Endangered Species Act.

Mr. MURPHY of New York. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

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 that the House recede from its amendment to the title of the Senate bill, S. 1316.

The motion was agreed to.

A motion to reconsider was laid

[From the Congressional Record, Dec. 7, 1977]

S. 1316 PRESENTED TO THE PRESIDENT

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, December 7, 1977, he presented to the President of the United States the following enrolled bills:

S. 1316. 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; and

* * * * *

ANNOTATED BIBLIOGRAPHY OF HEARINGS

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Fish and Wildlife Miscellaneous, Part 1. Hearings, 95th Congress, 1st session. Washington, U.S. Government Printing Office, 1977. 383 p. Hearings on Endangered Species Authorization held Mar. 22, 1977; hearings on Amendments held on Oct. 26, 1977. "Serial No. 95-18."

Hearings to consider six bills relating to various aspects of fish and wildlife conservation, including:

H.R. 4741, to extend through fiscal year 1980 Endangered Species Act of 1973 cooperative programs with State for endangered species conservation.

H.R. 4658, to exempt from Endangered Species Act of 1973 import prohibitions on antique articles composed of endangered or threatened species.

Hearing of March 22, 1977 includes submitted statements and testimony from: J. S. Gottschalk (IAFWA), L. A. Greenwalt (FWS), J. W. Gehring (NMFS).

Hearing of October 26, 1999 includes submitted statements and testimony from: L. Boggs (Rep, LA), G. A. Bertrand (CEO), L. A. Greenwalt (FWS), J. W. Gehring (NMFS).

U.S. Congress. Senate. Committee on Environment and Public Works. Subcommittee on Resource Protection. Authorization for the Endangered Species Act and for Three Wildlife Refuges. Hearings, 95th Congress, 1st session, Apr. 21, 1977. Washington. U.S. Government Printing Office, 1977. 59 p. "Serial No. 95-119."

Hearings to consider two bills including:
S. 1316, to extend authorization of appropriations through fiscal year 1980 for Federal-State cooperative programs under the Endangered Species Act of 1973.

Hearing testimony includes: L. A. Greenwalt (FWS), J. W. Gehring (NMFS), J. S. Gottschalk (IAFWA).

U.S. Congress. Senate. Committee on Environment and Public Works. Subcommittee on Resource Protection. Endangered Species Act Oversight. Hearings, 95th Congress, 1st session, July 20, 21, and 28, 1977. Washington, U.S. Govt. Print. Off., 1977. 1025 p. "Serial no. 95-H33"

Hearings in implementation of the Endangered Species Act of 1973, which authorizes a national program for conservation of endangered or threatened species of fish, wildlife and plants, and directs the Interior and Commerce Departments to identify endangered species and issue appropriate regulations for their protection.

Focuses on ESA Section 7 provisions requiring protection of critical habitat, and prohibiting damage to critical habitat by federally assisted projects. At time of hearing, the federally assisted TVA Tellico Dam Project completion on the Little Tennessee River, Tenn. had been interdicted by Interior Department as dam closure threatened critical habitat of the small darter fish.

Includes witnesses' prepared statements, submitted statements and correspondence, and submitted responses to questions, including:

- a. Michigan DNR, "Michigan's Endangered and Threatened Species Program" with annotated species lists;
 - b. TVA, weekly construction force reports, Tellico Dam Project, 1974-76.
 - c. TVA, "Tellico Project Economic Analysis" Sept. 22, 1971;
 - d. TVA, "Comments on Revised GAO Report on the Tellico Project" Aug. 1977;
 - e. TVA, "Small Darter Conservation Program Situation Assessment. Population Age Structure and Distribution: Little Tennessee and Hiwassee Rivers" Feb. 1977.
- Includes testimony from Tennessee Representatives, Administration and Government agency personnel, environmental organizations and others; and discusses arguments pro and con completing Tellico, and amending the Endangered Species Act.

PART IV

ENDANGERED SPECIES ACT AMENDMENTS OF 1978, PUBLIC LAW 95-632

BACKGROUND

The major purposes of this legislation were to reauthorize appropriations for implementation of the Endangered Species Act of 1973, and to amend the Act to establish a procedure for the application for, and review of, an exemption from the prohibition against agency actions which jeopardize endangered or threatened species or their critical habitat. Other provisions of the law were intended to improve the process whereby species or their critical habitats are designated. These include requirements for improved public notice and hearings, and analysis of the economic impact of critical habitat designations, and for the periodic review of previously listed species. Proposals to list any new species as threatened or endangered must now contain specification of critical habitat proposed for designation for final listing.

The appropriation authorization extension provided for in 1976 (PL 94-325) expired September 30, 1978. Oversight hearings held by the Senate Subcommittee on Resource Protection in July 1977 (Serial 95-H33) revealed additional substantive issues connected with the Act's administration which prompted amendment to the original Act. S. 2899 was introduced by Mr. Culver and others on April 12, 1978 and referred to the Senate Committee on Environment and Public Works. Hearings on the bill were held by the Subcommittee on Resource Protection on April 13 and 14 (Serial 95-60). Testimony indicated that a substantial number of Federal actions currently underway may result in irresolvable conflict within the provisions of the Act. It was feared that the number of such conflicts may increase significantly in the future as the Fish and Wildlife Service continued to list additional species and critical habitats. The Committee felt these circumstances illustrated the need for an amendment to the Act which would provide flexibility in its administration, while maintaining protection for threatened and endangered species. S. 2899 was reported out of committee with amendment on May 15, 1978 (S. Rept. 95-874). The bill was further amended during its three-day consideration on the Senate Floor, and was finally passed on July 19, 1978.

H.R. 10883, a bill to authorize appropriations to carry out the Endangered Species Act during fiscal years 1979 through 1981 was introduced on February 9, 1978 by Mr. Murphy of New York and others. This simple authorization measure was reported to the House by the Merchant Marine and Fisheries Committee on March 31, 1978. The Committee did not seek consideration of this measure in the House, however, until formal oversight hearings on the Endangered Species Act could be conducted.