

H. R. 14104

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 1978

Mr. LEGGERT (for himself, Mr. MURPHY of New York, Mr. DINGELL, Mr. RUPPE, Mr. FORSYTHE, Mr. BOWEN, Mr. OBERSTAR, Mr. DE LA GARZA, Mr. YOUNG of Alaska, Mr. AUCOIN, Mr. EMBRY, Mr. HUGHES, Mr. AKAKA, Mr. DORNAN, Mr. EVANS of Delaware, Mr. TRIBLE, and Mr. BOONEY) introduced the following bill, which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That this Act may be cited as the "Endangered Species Act*
- 4 *Amendments of 1978".*

2

1 Sec. 2. Section 4 of the Endangered Species Act of
2 1973 (16 U.S.C. 1533) is amended—

3 (1) by adding at the end of subsection (a)(1) the
4 following new sentence: "At the time any such regula-
5 tion is proposed, the Secretary shall also by regulation,
6 to the maximum extent prudent, specify any habitat of
7 such species which is then considered to be critical
8 habitat. The requirement of the preceding sentence
9 shall not apply with respect to any species which was
10 listed prior to enactment of the Endangered Species
11 Act Amendments of 1978.";

12 (2) by adding at the end of subsection (b) the fol-
13 lowing new paragraph:

14 "(4) In determining the critical habitat of any endan-
15 gered or threatened invertebrate animal species, the Secre-
16 tary shall consider the economic impact, and any other rele-
17 vant impacts, of specifying any particular area as critical
18 habitat, and he may exclude any such area from the critical
19 habitat if he determines that the benefits of such exclusion
20 outweigh the benefits of specifying the area as part of the
21 critical habitat."

22 (3) by amending subsection (c)(1) by striking out
23 "and shall", and by inserting immediately before the
24 period the following: "; and specify any critical habitat
25 within such range";

1 (4) by amending subsection (D)—

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

4 “(2)(A) In the case of any regulation proposed by the
5 Secretary to carry out the purposes of this section with re-
6 spect to the determination and listing of endangered or
7 threatened species and their critical habitats in any State
8 (other than regulations to implement the Convention), the
9 Secretary—

10 “(i) shall publish notice of the proposed regulation
11 (including the complete text of the regulation), not less
12 than 60 days before the effective date of the regula-
13 tion—

14 “(D) in the Federal Register, and

15 “(II) if the proposed regulation specifies any
16 critical habitat, in a newspaper of general circula-
17 tion within or adjacent to such habitat; and

18 “(ii) shall give actual notice of the proposed regula-
19 tion (including the complete text of the regulation),
20 and any environmental assessment or environmental
21 impact statement prepared on the proposed regulation,
22 not less than 60 days before the effective date of the
23 regulation to all general local governments located
24 within or adjacent to the proposed critical habitat;

25 “(iii) shall—

1 “(D) if the proposed regulation does not
2 specify any critical habitat, promptly hold a public
3 meeting on the proposed regulation, if request
4 therefor is filed with the Secretary by any person
5 within 45 days after the date of publication of
6 general notice under clause (i)(D), and

7 “(II) if the proposed regulation specifies any
8 critical habitat, promptly hold a public meeting on
9 the proposed regulation within the area in which
10 such habitat is located in each State, and, if re-
11 quested, hold a public hearing in each such State.

12 If a public meeting or hearing is held on any regulation, the
13 regulation may not take effect before the 60th day after the
14 date on which the meeting or hearing is concluded, and if
15 more than one public meeting or hearing is held, before the
16 60th day after the date on which the last such meeting or
17 hearing is concluded. Any accidental failure to provide actual
18 notice under clause (ii) to all general local governments re-
19 quired to be given notice shall not invalidate the proposed
20 regulation.”; and

21 (B) by adding at the end thereof the follow-
22 ing new paragraph:

23 “(4) Any proposed or final regulation which specifies
24 any critical habitat of any endangered species or threatened
25 species shall be based on the best scientific data available,

1 and the publication in the Federal Register of any such regu-
 2 lation shall, to the maximum extent practicable, be accompa-
 3 nied by a brief description and evaluation of those activities
 4 (whether public or private) which, in the opinion of the Secre-
 5 tary, if undertaken may adversely modify such habitat, or
 6 may be impacted by such designation."; and

7 (5) by adding at the end thereof the following new
 8 subsection:

9 " (g) RECOVERY PLANS.—The Secretary shall develop
 10 and implement plans (hereinafter in this subsection referred
 11 to as 'recovery plans') for the conservation or survival of en-
 12 dangered species and threatened species listed pursuant to
 13 this section. The Secretary, in developing and implementing
 14 recovery plans, may procure the services of appropriate
 15 public and private agencies and institutions, and other quali-
 16 fied persons. Recovery teams appointed pursuant to this sub-
 17 section shall not be subject to the Federal Advisory Commi-
 18 tee Act."

19 SEC. 3. Section 7 of the Endangered Species Act of
 20 1973 (16 U.S.C. 1536) is amended to read as follows:

21 "INTERAGENCY COOPERATION

22 "SEC. 7. (a) REVIEW BY SECRETARY.—The Secretary
 23 shall review all other programs administered by him and uti-
 24 lize such programs in furtherance of the purposes of this Act.

1 " (b) AGENCY CONSERVATION PROGRAMS.—Each Fed-
 2 eral agency shall, after consultation with and with the assist-
 3 ance of the Secretary, utilize its authorities in furtherance of
 4 the purposes of this Act by carrying out programs for the
 5 conservation of endangered species and threatened species
 6 listed pursuant to section 4.

7 " (c) AGENCY ACTION.—(1) Each Federal agency shall
 8 insure that any action authorized, funded, or carried out by
 9 the agency (hereinafter in this section referred to as an
 10 'agency action') does not result in species or habitat degrada-
 11 tion unless an exemption has been granted by the Endan-
 12 gered Species Committee under subsection (f) with respect to
 13 such agency action.

14 "(2) If any Federal agency—
 15 (A) considers that any agency action over which
 16 it has jurisdiction may result in species or habitat deg-
 17 radation; or

18 (B) is notified by the Secretary that the Secre-
 19 tary considers that such agency action may have such
 20 a result;

21 the Federal agency and the Secretary shall undertake imme-
 22 diate consultation with respect to the matter, including, but
 23 not limited to, consultation to determine if reasonable and
 24 prudent alternatives are available. Consultation under this
 25 paragraph with respect to any agency action shall be con-

1 eluded within 90 days after the date on which initiated or
 2 within such other period of time as is mutually agreeable to
 3 the Federal agency and the Secretary. Promptly after the
 4 conclusion of consultation, the Secretary shall provide to the
 5 Federal agency concerned a written statement setting forth
 6 the Secretary's opinion, and a summary of the information on
 7 which the opinion is based, detailing whether the agency
 8 action may result in species or habitat degradation and
 9 whether there are reasonable and prudent alternatives which
 10 would avoid species or habitat degradation which can be
 11 taken by the Federal agency in implementing the agency
 12 action.

13 "(3) To facilitate compliance with the requirements of
 14 paragraph (2)(A), each Federal agency shall, with respect to
 15 any action of such agency for which no contract for construc-
 16 tion has been entered into and for which no construction has
 17 begun on the date of enactment of the Endangered Species
 18 Act Amendments of 1978, request of the Secretary informa-
 19 tion whether any listed species may be present in the area of
 20 such proposed action. If the Secretary advises, based on the
 21 best scientific and commercial data available, that such spe-
 22 cies may be present, such agency shall conduct a biological
 23 assessment for the purpose of identifying any endangered
 24 species or threatened species which is likely to be affected by
 25 such action. Such assessment shall be completed before any

1 contract for construction is entered into and before construc-
 2 tion is begun with respect to such action. Such assessment
 3 may be undertaken as part of a Federal agency's compliance
 4 with the requirements of section 102 of the National Envi-
 5 ronmental Policy Act of 1969 (42 U.S.C. 4332).

6 "(4) After initiation of consultation required under para-
 7 graph (2), the Federal agency shall not make any irreversible
 8 or irretrievable commitment of resources with respect to the
 9 agency action which has the effect of foreclosing the formula-
 10 tion or implementation of any reasonable and prudent alter-
 11 native measures which would avoid species or habitat degra-
 12 dation.

13 "(d) APPLICATION FOR EXEMPTION AND CONSIDERA-
 14 TION BY REVIEW BOARD.—(1) A Federal agency, the Gov-
 15 ernor of the State in which the Federal agency action will
 16 occur, or a permit or license applicant may apply to the Sec-
 17 retary for an exemption for an agency action of such agency
 18 if after consultation under subsection (c)(2) the Secretary's
 19 opinion indicates that the agency action may result in species
 20 or habitat degradation. An application for an exemption shall
 21 be considered initially by a review board in the manner pro-
 22 vided in this subsection, and shall be considered by the En-
 23 dangered Species Committee for a final determination under
 24 subsection (f) after a recommendation is made by the review
 25 board.

1 “(2)(A) Any Federal agency, Governor, or permit or li-
 2 cense applicant seeking an exemption under this subsection
 3 shall submit a written application to the Secretary, in a form
 4 prescribed by the Secretary, not later than 90 days after the
 5 completion of the consultation process. Such application shall
 6 set forth the reasons why the Federal agency, Governor, or
 7 permit or license applicant considers that the agency action
 8 meets the requirements for an exemption under this
 9 subsection.

10 “(B) Upon receipt of the application for exemption re-
 11 ferred to in paragraph (1), the Secretary shall promptly notify
 12 the Governor or Governors of the affected States and request
 13 that they appoint a member of the review board to be estab-
 14 lished under paragraph (3) in accordance with the provisions
 15 of such paragraph.

16 “(3)(A) A review board consisting of three members
 17 shall be established for purposes of considering an application
 18 for exemption and making recommendations to the Endan-
 19 gered Species Committee under this subsection as follows:

20 “(i) The Secretary and the Governor of the affect-
 21 ed State shall each appoint one individual to the board
 22 not later than 15 days after a request is submitted pur-
 23 suant to paragraph (2). If more than one State is af-
 24 fected by the agency action, the Governors of such
 25 States shall appoint one individual collectively.

1 “(ii) The two individuals appointed under clause
 2 (i) shall appoint one individual not later than 15 days
 3 after both of them have been appointed.

4 “(B) Members of a review board who are full-time offi-
 5 cers or employees of the United States shall receive no addi-
 6 tional pay on account of their service on the board. All other
 7 members shall be entitled to receive an amount not to exceed
 8 the daily equivalent of the annual rate of basic pay in effect
 9 for grade GS-18 of the General Schedule for each day during
 10 which they are engaged in the actual performance of duties
 11 vested in the board. While away from their homes or regular
 12 places of business in the performance of services for a review
 13 board, members of the board shall be allowed travel ex-
 14 penses, including per diem in lieu of subsistence, in the same
 15 manner as persons employed intermittently in the Govern-
 16 ment service are allowed expenses under section 5703 of title
 17 5 of the United States Code.

18 “(4) The Secretary shall submit the application to the
 19 review board immediately after its appointment under para-
 20 graph (3), and the Secretary shall submit to the review
 21 board, in writing, his views and recommendations with re-
 22 spect to the application within 60 days after receiving a copy
 23 of any application under paragraph (2).

24 “(5) It shall be the duty of a review board appointed
 25 under paragraph (3) to make a full review of the consultation

1 carried out under subsection (c)(2), and within 60 days after
2 its appointment or within such longer time as is mutually
3 agreed upon between the agency and the Secretary, to make
4 a determination, by a majority vote, whether such agency
5 has—

6 “(A) carried out its consultation responsibilities in
7 good faith and made a reasonable and responsible effort
8 to develop and fairly consider modifications or reason-
9 able and prudent alternatives to its proposed action
10 which will avoid species or habitat degradation;

11 “(B) conducted any biological assessment required
12 of it by subsection (c)(3); and

13 “(C) refrained from making any irreversible or ir-
14 retrievable commitment of resources prohibited by sub-
15 section (c)(4).

16 Any determination by the review board that the agency has
17 not met the requirements of subparagraph (A), (B), or (C)
18 shall be considered final agency action for purposes of chap-
19 ter 7 of title 5 of the United States Code.

20 “(6) If the review board makes positive determinations
21 under subparagraphs (A), (B), and (C) of paragraph (5), it
22 shall proceed to consider the application for exemption. In
23 considering any application for an exemption, a review board
24 shall take into account the reasons for an exemption set forth
25 in the application of the Federal agency, Governor, or permit

1 or license applicant, the views of the Secretary submitted
2 under paragraph (4), and the views of other Federal and
3 State agencies and appropriate persons. The review board
4 shall recommend an exemption from the requirements of sub-
5 section (c)(1) for any agency action if, by a majority vote, it
6 determines on the record after an opportunity for a hearing
7 held in accordance with sections 554, 555, and 556 (other
8 than subsection (b)(3) of section 556) of title 5 of the United
9 States Code, that—

10 “(A) there are no feasible and prudent alternatives
11 to the agency action;

12 “(B) the benefits of such action clearly outweigh
13 the benefits of alternative courses of action consistent
14 with conserving the species or its critical habitat, and
15 such action is in the public interest; and

16 “(C) the action is of national or regional
17 significance.

18 The review board shall recommend to the Endangered Spe-
19 cies Committee whether or not to grant an exemption within
20 180 days after the hearing described in this paragraph is ini-
21 tiated, or within such other time as is mutually agreed upon
22 by the applicant and a majority of the review board. If the
23 review board recommends an exemption it shall include with
24 its recommendation any reasonable mitigation and enhance-
25 ment measures which should be considered by the Endan-

1 gered Species Committee under subsection (f). The review
2 board shall transmit the record of its proceedings and its rec-
3 ommendation to the Committee.

4 “(7) In carrying out its duties under this subsection, a
5 review board may, and any member of a review board if so
6 authorized by the review board, may—

7 “(A) sit and act at such times and places, take
8 such testimony, and receive such evidence, as the
9 review board deems advisable;

10 “(B) subject to the Privacy Act of 1974, request
11 of any Federal agency information necessary to enable
12 it to carry out such duties, and upon such request the
13 head of such Federal agency shall furnish such infor-
14 mation to the review board; and

15 “(C) use the United States mails in the same
16 manner and upon the same conditions as other Federal
17 agencies.

18 “(8) Upon request of a review board, the head of any
19 Federal agency is authorized to detail, on a nonreimbursable
20 basis, any of the personnel of such agency to the review
21 board to assist it in carrying out its duties under this section.

22 “(9) The Administrator of the General Services shall
23 provide to a review board, on a reimbursable basis, such ad-
24 ministrative support services as the review board may
25 request.

1 “(10) All meetings and records of review boards shall be
2 open to the public.

3 “(e) ESTABLISHMENT OF COMMITTEE.—(1) There is
4 established a Committee to be known as the Endangered
5 Species Committee (hereinafter in this section referred to as
6 the ‘Committee’).

7 “(2) The Committee shall be composed of six members
8 as follows:

9 “(A) The Secretary of Agriculture.

10 “(B) The Secretary of the Army.

11 “(C) The Secretary of the Interior.

12 “(D) The Administrator of the National Oceanic
13 and Atmospheric Administration.

14 “(E) The Chairman of the Council on Environ-
15 mental Quality.

16 “(F) The Governor of the State in which the Fed-
17 eral agency action for which an exemption is sought
18 under this section will occur (or in the case of any
19 agency action which will occur in more than one State,
20 the Governors of all such States who shall cast collec-
21 tively a single vote on the Committee).

22 “(3) The Chairman of the Council on Environmental
23 Quality shall be the Chairman of the Committee.

24 “(4) Members of the Committee shall receive no addi-
25 tional pay on account of their service on the Committee;

1 except that while away from their homes or regular places of
2 business in the performance of services for the Committee,
3 members of the Committee shall be allowed travel expenses,
4 including per diem in lieu of subsistence, in the same manner
5 as persons employed intermittently in Government service
6 are allowed expenses under section 5703 of title 5 of the
7 United States Code.

8 “(5) The Committee shall meet at the call of the Chair-
9 man or four of its members.

10 “(6) All meetings and records of the Committee shall be
11 open to the public.

12 “(7) The Committee may for the purpose of carrying out
13 its duties under this section hold such hearings, sit and act at
14 such times and places, take such testimony and receive such
15 evidence as the Committee deems desirable.

16 “(f) EXEMPTION.—The Committee shall make a final
17 determination whether or not to grant an exemption within
18 90 days of receiving the recommendation of the review board
19 under subsection (d)(6). The Committee shall grant an ex-
20 emption from the requirements of subsection (c)(1) for an
21 agency action if, by a vote of not less than four of its mem-
22 bers voting in person—
23 “(1) it determines on the record, based on the rec-
24 ommendation and the record of the review board and

1 on such other testimony or evidence as it may receive,
2 that—

3 “(A) there are no feasible and prudent alter-
4 natives to the agency action;

5 “(B) the benefits of such action clearly
6 outweigh the benefits of alternative courses of
7 action consistent with conserving the species or
8 its critical habitat, and such action is in the public
9 interest; and

10 “(C) the action is of regional or national sig-
11 nificance; and

12 “(2) it establishes such reasonable mitigation and
13 enhancement measures, including, but not limited to,
14 live propagation, transplantation, and habitat acquisi-
15 tion and improvement, as are necessary and appropri-
16 ate to minimize the adverse effects of the agency
17 action upon the endangered species, threatened species,
18 or critical habitat concerned.

19 Any final determination by the Committee under this subsec-
20 tion shall be considered final agency action for purposes of
21 chapter 7 of title 5 of the United States Code.

22 “(g) REVIEW BY SECRETARY OF STATE.—Notwith-
23 standing any other provision of this Act, the Committee shall
24 be prohibited from considering for exemption any application
25 made to it, if the Secretary of State, after a review of the

1 proposed agency action and its potential implications, and
 2 after hearing, certifies, in writing, to the Committee within
 3 60 days of any application made under this section that the
 4 granting of any such exemption and the carrying out of such
 5 action would be in violation of an international treaty obliga-
 6 tion or other international obligation of the United States.
 7 The Secretary of State shall, at the time of such certification,
 8 publish a copy thereof in the Federal Register.

9 “(h) COMMITTEE ORDERS.—(1) If the Committee de-
 10 termines under subsection (f) that an exemption should be
 11 granted with respect to any agency action, the Committee
 12 shall issue an order granting the exemption and specifying
 13 the mitigation and enhancement measures established pursu-
 14 ant to subsection (f) which shall be carried out and paid for by
 15 the Federal agency in implementing the agency action. All
 16 necessary mitigation and enhancement measures shall be au-
 17 thorized prior to the implementing of the agency action and
 18 funded concurrently with all other project features.

19 “(2) The Federal agency receiving such exemption shall
 20 include the costs of such mitigation and enhancement meas-
 21 ures within the overall costs of continuing the proposed
 22 action. Notwithstanding the preceding sentence the costs of
 23 such measures shall not be treated as project costs for the
 24 purpose of computing benefit-cost or other ratios for the pro-
 25 posed action. Any Federal agency may request the Secretary

1 to carry out such mitigation measures. The costs incurred by
 2 the Secretary in carrying out any such measures shall be paid
 3 by the agency receiving the exemption. No later than one
 4 year after the granting of an exemption, the agency to which
 5 the exemption was granted shall submit to the Council on
 6 Environmental Quality a report describing its compliance
 7 with the mitigation and enhancement measures prescribed by
 8 this section. Such a report shall be submitted annually until
 9 all such mitigation and enhancement measures have been
 10 completed. Notice of the public availability of such reports
 11 shall be published in the Federal Register by the agency pre-
 12 paring such reports.

13 “(i) JUDICIAL REVIEW.—Any person, as defined by
 14 section 3(8) of this Act, may obtain judicial review, under
 15 chapter 7 of title 5 of the United States Code, of any decision
 16 of the Endangered Species Committee under subsection (f) in
 17 the district court of the United States for any district wherein
 18 the agency action concerned will be, or is being, carried out
 19 by filing in such court within 90 days after the date of issu-
 20 ance of the decision, a written petition for review. Attorneys
 21 designated by the Endangered Species Committee may
 22 appear for, and represent the Committee in, any action for
 23 review under this subsection.

24 “(j) EXEMPTIONS IN PRESIDENTIALLY DECLARED
 25 DISASTER AREAS.—In any area which has been declared by

1 the President to be a major disaster area under the Disaster
 2 Relief Act of 1974, the President is authorized to make the
 3 determinations required by subsection (f) of this section for
 4 any project for the repair or replacement of a public facility
 5 substantially as it existed prior to the disaster under section
 6 401 or 402 of the Disaster Relief Act of 1974, and which the
 7 President determines (1) is necessary to prevent the recur-
 8 rence of such a natural disaster and to reduce the potential
 9 loss of human life, and (2) to involve an emergency situation
 10 which does not allow the ordinary procedures of this section
 11 to be followed. Notwithstanding any other provision of this
 12 section, the Committee shall accept the determinations of the
 13 President under this subsection.

14 “(k) SPECIAL PROVISIONS.—(1) An exemption decision
 15 by the Committee under this section shall not be a major
 16 Federal action for purposes of the National Environmental
 17 Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided*, That
 18 an environmental impact statement which discusses the in-
 19 pacts upon endangered species or threatened species or their
 20 critical habitats shall have been previously prepared with re-
 21 spect to any agency action exempted by such order.

22 “(2) Notwithstanding sections 4(d) and 9(a), or any reg-
 23 ulation issued to carry out such sections, no act or activity
 24 engaged in which is necessary to carry out any agency action
 25 for which an exemption is granted under this section shall be

1 considered to be a taking of any endangered species or
 2 threatened species.

3 “(l) AUTHORIZATION.—There is authorized to be ap-
 4 propriated to the Secretary to assist review boards and the
 5 Committee in carrying out their functions under subsections
 6 (d), (e), and (f) of this section not to exceed \$500,000 for
 7 fiscal year 1979, not to exceed \$500,000 for fiscal year
 8 1980, and not to exceed \$500,000 in fiscal year 1981.”

9 Sec. 4. Section 15 of the Endangered Species Act of
 10 1973 (16 U.S.C. 1542) is amended to read as follows:

11 “AUTHORIZATION OF APPROPRIATIONS

12 “Sec. 15. Except as authorized in section 6 of this Act,
 13 there are authorized to be appropriated—

14 “(1) not to exceed \$25,000,000 for the fiscal year
 15 ending September 30, 1977, and the fiscal year ending
 16 September 30, 1978, not to exceed \$23,000,000 for
 17 the fiscal year ending September 30, 1979, not to
 18 exceed \$25,000,000 for the fiscal year ending Septem-
 19 ber 30, 1980, and not to exceed \$27,000,000 for the
 20 fiscal year ending September 30, 1981, to enable the
 21 Department of the Interior to carry out such functions
 22 and responsibilities as it may have been given under
 23 this Act; and

24 “(2) not to exceed \$5,000,000 for the fiscal year
 25 ending September 30, 1977, and the fiscal year ending

1 September 30, 1978, not to exceed \$2,500,000 for the
 2 fiscal year ending September 30, 1979, not to exceed
 3 \$3,000,000 for the fiscal year ending September 30,
 4 1980, and not to exceed \$3,500,000 for the fiscal year
 5 ending September 30, 1981, to enable the Department
 6 of Commerce to carry out such functions and responsi-
 7 bilities as it may have been given under this Act."

8 SEC. 5. Section 3 of the Endangered Species Act of
 9 1973 (16 U.S.C. 1532) is amended—

10 (1) by inserting after paragraph (4) thereof the fol-
 11 lowing new paragraphs:

12 "(5) The term 'Federal agency' means any de-
 13 partment, agency, or instrumentality of the United
 14 States.

15 "(6) The term 'critical habitat' for an endangered
 16 species or threatened species means any air, land, or
 17 water area (exclusive of those existing manmade struc-
 18 tures or settlements which are not necessary to the
 19 survival and recovery of a listed species) and constitu-
 20 ent elements thereof, the loss of which would signifi-
 21 cantly decrease the likelihood of conserving such spe-
 22 cies"; and

23 (2) by striking out paragraph (13), as redesignated
 24 by paragraph (5) of this section, and inserting in lieu
 25 thereof the following:

1 "(13) The term 'species' includes any subspecies
 2 of fish or wildlife or plants, and any distinct segment of
 3 the population of any species of vertebrate fish or wild-
 4 life which interbreeds when mature";

5 (3) by striking out paragraph (15), as redesignated
 6 by paragraph (5) of this section, and inserting in lieu
 7 thereof the following:

8 "(15) The term 'State agency' means any State
 9 agency, department, board, commission, or other gov-
 10 ernmental entity which is responsible for the manage-
 11 ment and conservation of fish, plant, or wildlife re-
 12 sources within a State";

13 (4) by inserting at the end thereof the following
 14 new paragraphs:

15 "(19) The term 'species or habitat degradation'
 16 means either or both of the following effects:

17 "(A) The placing in jeopardy of the contin-
 18 ued existence of any endangered species or threat-
 19 ened species listed pursuant to section 4.

20 "(B) The destruction or adverse modification
 21 of any critical habitat of any endangered species
 22 or threatened species so listed.

23 "(20) The term 'permit or license applicant'
 24 means, when used with respect to an action of a Fed-
 25 eral agency for which exemption is sought under sec-

tion 7, any person whose application to such agency for a permit or license has been denied because of the application of section 7(c)(1) to such agency action;

(5) by redesignating paragraphs (5) through (16) as paragraphs (7) through (18), respectively, and by redesignating any references thereto accordingly.

SEC. 6. Paragraph (3) of section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended to read as follows:

“(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulations.”

SEC. 7. Section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) is amended—

(1) by inserting “(1)” after “(c)”;

(2) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively;

(3) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(4) by striking out “subsection” in the matter preceding subparagraph (A) (as so redesignated) and inserting in lieu thereof “paragraph”;

(5) by striking out “endangered species or threatened species” in subparagraph (D) (as so redesignated) and inserting in lieu thereof “endangered or threatened species of fish or wildlife”;

(6) by striking out “paragraphs (3), (4), and (5) of this subsection” in clause (i) (as so redesignated) and inserting in lieu thereof “subparagraphs (C), (D), and (E) of this paragraph”;

(7) by striking out “subparagraph (A) and this subparagraph” in clause (ii) (as so redesignated) and inserting in lieu thereof “clause (i) and this clause”;

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

“(2) 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 of plants. 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 paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative

1 agreement with the State for the purpose of assisting in im-
 2 plementation of the State program. In order for a State pro-
 3 gram to be deemed an adequate and active program for the
 4 conservation of endangered species of plants and threatened
 5 species of plants, the Secretary must find, and annually
 6 thereafter reconfirm such finding, that under the State
 7 program—

8 “(A) authority resides in the State agency to con-
 9 serve resident species of plants determined by the
 10 State agency or the Secretary to be endangered or
 11 threatened;

12 “(B) the State agency has established acceptable
 13 conservation programs, consistent with the purposes
 14 and policies of this Act, for all resident species of
 15 plants in the State which are deemed by the Secretary
 16 to be endangered or threatened, and has furnished a
 17 copy of such plan and program together with all perti-
 18 nent details, information, and data requested to the
 19 Secretary;

20 “(C) the State agency is authorized to conduct in-
 21 vestigations to determine the status and requirements
 22 for survival of resident species of plants; and

23 “(D) provision is made for public participation in
 24 designating resident species of plants as endangered or
 25 threatened; or

1 that under the State program—

2 “(i) the requirements set forth in subparagraphs
 3 (C) and (D) of this paragraph are complied with, and

4 “(ii) plans are included under which immediate at-
 5 tention will be given to those resident species of plants
 6 which are determined by the Secretary or the State
 7 agency to be endangered or threatened and which the
 8 Secretary and the State agency agree are most urgent-
 9 ly in need of conservation programs; except that a co-
 10 operative agreement entered into with a State whose
 11 program is deemed adequate and active pursuant to
 12 clause (i) and this clause shall not affect the applicabil-
 13 ity of prohibitions set forth in or authorized pursuant to
 14 section 4(d) or section 9(a)(1) with respect to the
 15 taking of any resident endangered or threatened
 16 species.”

17 SEC. 8. Section 11 of the Endangered Species Act of
 18 1973 (16 U.S.C. 1540) is amended—

19 (1) in the first and second sentences of subsection
 20 (a)(1) by striking out “or who knowingly commits an
 21 act in the course of a commercial activity which vio-
 22 lates” each place it appears and inserting in lieu
 23 thereof “and any person engaged in business as an im-
 24 porter or exporter of fish, wildlife, or plants who
 25 violates”;

1 (2) in the third sentence of subsection (a)(1) by
 2 striking out "\$1,000" and inserting in lieu thereof
 3 "\$500";
 4 (3) in subsection (b)(1) by striking out "willfully
 5 commits an act which" each place it appears and in-
 6 setting in lieu thereof "knowingly";
 7 (4) in subsection (b)(2) by inserting "a person to
 8 import or export fish, wildlife, or plants, or to operate
 9 a quarantine station for imported wildlife, or authoriz-
 10 ing" after "authorizing";
 11 (5) in subsection (a) by adding at the end thereof
 12 the following new paragraph:
 13 "(3) Notwithstanding any other provision of this Act, no
 14 civil penalty shall be imposed if it can be shown by a prepon-
 15 derance of the evidence that the defendant committed an act
 16 based on a good-faith belief that he was acting to protect
 17 himself or herself, a member of his or her family, or any other
 18 individual from bodily harm, from any endangered or threat-
 19 ened species.;"
 20 (6) in subsection (b) by adding at the end thereof
 21 the following new paragraph:
 22 "(3) Notwithstanding any other provision of this Act, it
 23 shall be a defense to prosecution if the defendant committed
 24 the offense based on a good-faith belief that he was acting to
 25 protect himself or herself, a member of his or her family, or

1 any other individual from bodily harm, from any endangered
 2 or threatened species."; and
 3 (7) in paragraph (4) of subsection (g) by striking
 4 out "any party" and inserting in lieu thereof "the pre-
 5 vailing party".
 6 Sec. 9. That portion of subsection (a) of section 5 of the
 7 Endangered Species Act of 1973 (16 U.S.C. 1534) which
 8 precedes paragraph (1) is amended to read as follows:
 9 "(a) The Secretary, and the Secretary of Agriculture
 10 with respect to the National Forest System, shall establish
 11 and implement a program to conserve fish, wildlife, and
 12 plants including those which are listed as endangered species
 13 or threatened species pursuant to section 4 of this Act. To
 14 carry out such a program, the appropriate Secretary—".
 15 Sec. 10. Section 9(b) of the Endangered Species Act
 16 (16 U.S.C. 1538) is amended by inserting "(1)" after "(b)"
 17 and by adding the following new paragraph:
 18 "(2)(A) This section shall not apply to—
 19 "(i) any raptor legally held in captivity or in a
 20 controlled environment on the effective date of the En-
 21 dangered Species Act Amendments of 1978; or
 22 "(ii) any progeny of any raptor described in clause
 23 (i);
 24 until such time as any such raptor or progeny is intentionally
 25 returned to a wild state.

1 “(B) Any person holding any raptor or progeny de-
 2 scribed in subparagraph (A) must be able to demonstrate that
 3 the raptor or progeny does, in fact, qualify under the provi-
 4 sions of this paragraph, and shall maintain and submit to the
 5 Secretary, on request, such inventories, documentation, and
 6 records as the Secretary may by regulation require as being
 7 reasonably appropriate to carry out the purposes of this para-
 8 graph. Such requirements shall not unnecessarily duplicate
 9 the requirements of other rules and regulations promulgated
 10 by the Secretary.”.

95TH CONGRESS
 2d Session

H. R. 14104

[Report No. 95-1625]

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 1978

Mr. LEGGETT (for himself, Mr. MURPHY of New York, Mr. DINGELL, Mr. RUPPE, Mr. FORSTNER, Mr. BOWEN, Mr. OBERSTAR, Mr. DE LA GARZA, Mr. YOUNG of Alaska, Mr. AUCOIN, Mr. EMERY, Mr. HUGHES, Mr. AKAKA, Mr. DOWNAN, Mr. EVANS of Delaware, Mr. TRIBL, and Mr. ROONEY) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

SEPTEMBER 25, 1978

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

A BILL

To authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the “Endangered Species Act
- 4 Amendments of 1978”.