

95TH CONGRESS } HOUSE OF REPRESENTATIVES } REPORT
 2d Session } } No. 95-1757

PROVIDING FOR THE CONSIDERATION OF H.R. 14104

OCTOBER 11, 1978.—Referred to the House Calendar and ordered to be printed

Mr. SISK, from the Committee on Rules,
 submitted the following

REPORT

[To accompany H. Res. 1423]

The Committee on Rules, having had under consideration House Resolution 1423, by a record vote of 7 to 5, report the same to the House with the recommendation that the resolution do pass.

[From the Congressional Record, Oct. 13, 1978]

HOUSE CONSIDERATION AND ADOPTION OF HOUSE RESOLUTION 1423
 PROVIDING FOR CONSIDERATION OF H.R. 14104, ENDANGERED SPECIES
 ACT AMENDMENTS OF 1978

Mr. SISK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1423 and ask for its immediate consideration. The Clerk read the resolution as follows:

H. Res. 1423

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 14104) to authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981 and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries, the bill shall read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from California (Mr. Sisk) is recognized for 1 hour.

Mr. SISK. Mr. Speaker, I yield 30 minutes to the gentleman from Mississippi (Mr. Lott) pending which I yield myself such time as I may consume.

Mr. SISK. Mr. Speaker, House Resolution 1423 provides for the consideration of H.R. 14104 (the Endangered Species Act Amendments of 1978).

This is a simple open rule. It provides for 1 hour of general debate with the time equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries. The bill is to be read for amendment under the 5-minute rule and any germane amendment would be in order.

The rule provides for a waiver of points of order against the bill for failure to comply with the provisions of section 402 (a) of the Congressional Budget Act. This section of the Budget Act prohibits the consideration of any bill which authorizes the enactment of new budget authority for a fiscal year unless the bill has been reported on or before May 15 preceding the beginning of the fiscal year.

Sections 3 and 4 of H.R. 14104 authorizes the enactment of new budget authority for fiscal year 1979. Since the bill was not reported until September 25, 1978, it would be subject to a point of order under the Budget Act.

However, a predecessor bill, H.R. 10883, an authorization measure very similar to H.R. 14104, was reported on March 31, 1978, and prior to the Budget Act cutoff. In order to facilitate orderly consideration of the measure, the Committee on Rules voted to grant a waiver for H.R. 14104 rather than complicate the amendment process for the originally reported bill.

Mr. Speaker, H.R. 14104 provides authorizations to carry out the provisions of the Endangered Species Act through fiscal year 1981. The bill authorizes \$25.5 million for fiscal year 1979; \$28 million for fiscal year 1980 and \$30.5 million for fiscal year 1981. The bill also provides a mechanism for the resolution of otherwise irreconcilable conflicts between the implementation of any federally permitted, licensed or funded activity and the protection of any endangered or threatened species and its critical habitat.

Mr. Speaker, while there has been controversy concerning the bill, I am not aware of any great opposition to the rule. I urge my colleagues to adopt House Resolution 1423 so that we may proceed to the consideration of H.R. 14104.

Mr. LOTT. Mr. Speaker, this is a 1-hour open rule permitting the consideration of the Endangered Species Act Amendments of 1978, H.R. 14104. The first reading of the bill is to be dispensed with, and section 402 (a) of the Congressional Budget Act (the May 15 reporting deadline) is waived.

The purpose of H.R. 14104 is to provide \$85.5 million in authorizations to enforce the Endangered Species Act for an additional 3 years. The bill establishes an Endangered Species Committee and requires the formation of review boards to examine the decisions of the Secretary of the Interior as to whether an agency's action would be hazardous to endangered species and their critical habitat area. Such a determination by the Secretary would prohibit the agency's action. Except in special cases, such as cases relating to international treaty obligations as determined by the Secretary of State or cases pertaining to disaster areas declared by the President, the Endangered Species Committee would make the final governmental decision by either approving or disapproving the agency's action. If an agency exemption is granted for pertinent reasons, any person may obtain judicial review of the decision.

Hardly any Member of Congress has escaped the effects of the Endangered Species Act. This well-intentioned law has served to delay and, in many instances, completely halt important public works projects with unimpeachable cost/benefit ratios. In my own congressional district, 40 birds (Mississippi sand hill cranes) have blocked for over 2 years the construction of an interchange on Interstate Highway 10, which is to serve the heaviest industrial area in my State.

Now, not all of us have small darters, furish louse-worts, or sand hill cranes in our districts; but we do have a vested interest in making the agency in charge of enforcing the provisions of the act conform to its original intent. There is an in-depth report by the General Accounting Office which is due to be published in March of 1979. It is my understanding that this report will reveal numerous problems with the manner in which the Fish and Wildlife Service is administering the act. The worst abuses, I am told, have occurred in the listing process whereby species of plants or animals have been listed as endangered without even a scintilla of adequate supporting evidence, while others that were listed at one time were withdrawn just as arbitrarily.

This proposed bill, although it makes many important and constructive changes in the Endangered Species Act, does not complete

the task. We need more review by the authorizing committee, and we need the benefit of GAO's report before we extend the act for another 3 years. I am advised that there will be an amendment to shorten the three year authorization contained in H.R. 14104. I urge the members to support this amendment and, in doing so, to realize they are taking a significant step in the direction of improvement.

Mr. Speaker, I have no objection to the adoption of the rule at this time.

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

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

Mr. WHITTEN. Mr. Speaker, am I right that this is really a rule which will help us to reenact the Endangered Species Act? Am I right in my recollection that the act expires in the absence of a new act?

Mr. LOTT. It would expire.

Mr. WHITTEN. Then what we are considering is whether to retain a program, and I have many questions to which I need answers, both from the Public Works Subcommittee and the Interior Subcommittee. How any Supreme Court or any other court can say that the clear intention of the Congress was to bring about the actions that have been taken, I cannot see.

Speaking from memory, the act requires the Secretary of the Interior to make a survey of the country, and from that to determine that the species does not exist in other areas. That has not been done.

Not only is that true, but the act provides that these endangered species shall be moved in many areas or in many sections. That has not been done. The gentleman's district is one example.

Through a private conversation with the Secretary of the Interior, we had his cooperation in relieving the highway which was cut in two, Highway No. 10 of the Interstate System. We got that matter resolved.

Therefore, if anybody reads this—and I refer to the courts—he will find that the act as we have it now clearly shows that Congress never intended that this act be used to stop the development of our country, in my opinion.

Not only that, but I have in my pocket a statement by the head of the fisheries and wildlife activity in the Department of the Interior which says that they are sick and tired of this act being used to stop the progress and the development of this country.

Mr. Speaker, I just wanted to make it clear that this is not a rule to amend the act. It is to reinstate the act. There is every reason in the world to study this act very carefully.

Mr. Speaker, I had a conversation with my good friend, the chairman of this committee, when this bill was up before. At that time I had an understanding that this act would correct the things I am talking about, and I can cite chapter and verse as well as questions and answers from the hearings had at that time.

I see here that in spite of the good intentions, we have not had a great degree of success. This matter could lend itself, as I said, to more of the very problems we have now, except that it could be stretched out much longer because there are more and more people to whom one talks who are for reenacting this bill and not correcting it.

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

Mr. LOTT. I yield to the gentleman from Alabama.

Mr. BUCHANAN. Mr. Speaker, I agree with the remarks of my colleague from Mississippi.

However, I would like to point out to the Members of this body that the appropriation authorization does not repeal the basic act.

Mr. LOTT. That is correct.

Mr. BUCHANAN. The committee has made essential improvements in the bill which they are recommending to us, and some of us are going to do our dead-level best to perfect it even further on the floor of the House.

Right now the city which I represent has a half billion dollars of orderly, even model, development threatened by two small minnow-like fish because of the very things my colleague from Mississippi is talking about.

I think the best chance to do something about that kind of situation in my district and elsewhere is to pass this rule, to move forward with this bill, and help some of us perfect it as we go along.

Mr. ANDERSON of Illinois. Mr. Speaker, will the gentleman from Mississippi yield?

Mr. LOTT. I yield to the gentleman from Illinois.

Mr. ANDERSON of Illinois. I thank the gentleman for yielding. I certainly want to associate myself with the remarks just made by the distinguished gentleman from Alabama and urge the adoption of the rule so that we can proceed to consider important legislation.

I realize that many of the complaints that have been pressed by those like the gentleman from Mississippi and others are justified, and that there has been a certain inflexibility in the administration of this act in the past since its adoption. I believe, in 1973, in the celebrated case of the small darter and the case of the furry bush lousewort, and some other matters of that kind that have led Members to think this is an action that should not be extended. But I think that they will find if we proceed to a discussion of the act that an exemption procedure has been wisely provided for in the amendment offered by the committee, the authorizing committee, and that the difficulties that have admittedly existed in the past with respect to the administration of this act can be cured by an amendment.

I, therefore, urge the adoption of the rule.

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

Mr. LOTT. I yield to the gentleman from Alabama.

Mr. FLOWERS. I thank the gentleman for yielding.

I am, of course, encouraged by what I have heard from my distinguished friend, the gentleman from Illinois, and my dear colleague, the gentleman from Alabama, and the problem he enumerated I share because our districts are joined where this problem occurs.

By the clock on the wall and the clock on my arm it is 10 minutes to 1 on the day we are supposed to sine die adjourn: is that not correct? And we are going to have a full, free, and fair discussion of this act here today, tonight, and tomorrow? And we are going to conference and are going to pass it and are going to come up with something fair and equitable? And we are going to rely on the bureaucrats down there to do what we ask them to do here in the dark of the night? You people have got more faith in the system than I do, I will tell you that.

Mr. LOTT. I would like to respond to the gentleman because this has gone on long enough, and it is late. Neither the gentleman nor I set this on this schedule at this time and we should not question it.

But I would like to make one further point now, a point made by the gentleman from Alabama. The act does not expire; the authorization expires; and there is a very strong likelihood that we would have some additional projects that would be held up without this legislation being passed because of the public works contracts that are included in the act.

This is not the best solution, but it certainly is better than what we have got on the books right now, and I would hope that if the rule is accepted and this legislation is passed, it is for a reduced period of time.

Mr. FLOWERS. Will the gentleman yield further?

Mr. LOTT. I will be glad to yield to the gentleman.

Mr. FLOWERS. I thank the gentleman.

Is the gentleman saying that we are going to get more in terms of reasonable decisionmaking by the bureaucrats by giving them an extension of time and more authorization for more bureaucrats and more money than by keeping them under the gun? That is what the gentleman is trying to do right now.

Mr. LOTT. If we accept this rule and go to general debate, as late as it is, there are a number of amendments that have been agreed to here, and others that are going to be passed tonight, that will improve the situation.

Mr. BEARD of Tennessee. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Tennessee.

Mr. BEARD of Tennessee. I thank the gentleman for yielding. I do not believe there has been anyone on the floor who has fought this bill as I have as far as its being inflexible with the law. As the Supreme Court ruled in the Tellico Dam case, it is totally inflexible with the law. They threw the ball back into the court where it belongs, and that is this Congress.

I have to reemphasize the point: There is no way we are going to solve any of the problems if we do not come up with this new piece of legislation. If we let the present act remain on the books as it is, which has been termed totally inflexible by the Supreme Court, then all of these problems under litigation now will not be solved at all for at least a year. We have got a 500-staff GAO report that will be forthcoming in February, and I hear this report points out many critical problems.

The committee has agreed not to ask for a third authorization but to accept an 18-month extension so that next year they can start and continue every oversight hearing with the results of the GAO report and, I think, with some amendments they have accepted that I am going to be introducing.

With the mood of the committee, we have at least got our foot on first base. We are striking out if this act remains on the books as it is written today.

So if you and I want to see the bill changed very much, I plead with you, let us get on with it.

Mr. LOTT. I have no further requests for time, and I yield back the remainder of my time.

Mr. SISK. Mr. Speaker, I yield myself 2 minutes, and I yield to my colleague, the gentleman from Texas (Mr. Brooks).

Mr. BROOKS. Mr. Speaker, I thank the gentleman very much.

One of the monsters we have not mentioned tonight, which has been the cause of a lot of difficulty in the Houston area in Texas, is called the Houston toad. I want you all to know they have not located it, but they know it is there. They are looking for it every night and they generally start hunting about 2 o'clock. I do not think they could see a toad by 2 o'clock in the morning if they had four of them staring at them. I just do not know if we pass this rule, is there any indication from the author of the bill and the manager of the bill that we might just possibly accept a few amendments that would cause the economic impact of these monsters that might be sneaking out at 4 o'clock in the morning?

Mr. MURPHY of New York. Mr. Speaker, I can assure the gentleman that will not be the case. I will be happy to join in the search.

Mr. WHITTEN. Mr. Speaker, if the gentleman will yield further, may I say there are many endangered species. I was going along with maintaining, preserving or protecting them but the evidence in this instance, and we can cite many instances where they have gone out and sought unknown species they never heard of to exist and sought to use them.

Let me quote one paragraph from the Director of the U.S. Fish and Wildlife Service:

As you know, people who find the need to stop projects they cannot stop in some other way will use the Act and the species involved to achieve that end which is a prostitution of the Act, and it denies the value of the creature involved, in my judgment.

I am reading from the answer given by Mr. Greenwalt, Director of the Fish and Wildlife Service, from the Congressional Record of June 16, 1978, page H5706.

We have let them go find something that they never knew existed, to stop the progress and the real environment of this country. I just wanted to bring it up to have a chance to consider these facts, if this bill is going to be before the Congress.

Mr. SISK. Mr. Speaker, as I indicated early on, there are a number of horror stories in connection with endangered species. I recognize this.

I understand this may be a little controversial.

Unless there is a desire on the part of my colleague to yield further time, Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

[From the Congressional Record, Oct. 14, 1979]

HOUSE CONSIDERATION AND PASSAGE OF H.R. 14104, WITH AMENDMENTS

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

Mr. BOWEN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 14104) to authorize appropriations

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

The Speaker pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. Bowen).

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 14104, with Mr. Sisk in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

The gentleman from Mississippi (Mr. Bowen) will be recognized for 30 minutes, and the gentleman from New Jersey (Mr. Forsythe) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. Bowen).

Mr. BOWEN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to comment briefly at this point that we have a statute which we have lived with since 1973. It was an attempt to balance environmental and developmental interest. I, frankly, am of the opinion that it has not been successful in that regard, and I think most of the Members of this House agree. For that reason, we have rewritten that legislation this year, and we have made a diligent effort to take into consideration more accurately the development needs of this Nation.

There are a number of things which this bill brings before the House which I think are substantial contributions in that direction. I guess it is often said that compromise is the soul of politics. And if that is true, certainly this bill has a great deal of soul, because it is very decidedly a compromise among a number of factors and forces. I would like to thank those representatives of what we might oversimplify by calling the environmental movement in the Nation, who have worked with us and tried to develop this bill, and, at the same time, those who represent the developmental interests of this country who have worked with Members and committee staff in order to devise a bill which does protect and preserve the endangered species of this Nation and at the same time provides an opportunity for human growth, development, and progress, which we feel is an absolutely vital consideration.

A number of questions which were raised last night during consideration of the rule were particularly directed in the area of what the bill does to insure that there can be economic growth and development in the country. I would like to direct my remarks in that direction. I know there will be others who will address other aspects of this legislation.

For the first time, we are going to have a bill which will provide actual notice to all local units of government. For the first time we are going to have a bill which will provide for publication of proposed listings. For the first time we are going to have mandatory public meetings and hearings. For the first time we are going to have current designation of critical habitat at the same time as the listings.

For the first time we are going to have proposed final regulations actually based on the best scientific data available—current, not old