

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

The title of the Senate bill was amended so as to read: "A bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and for other purposes". A motion to reconsider was laid on the table. A similar House bill (H.R. 2218) was laid on the table.

Calendar No. 161

96TH CONGRESS
1ST SESSION

S. 1143

[Report No. 96-151]

To extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes

IN THE SENATE OF THE UNITED STATES

MAY 15 (legislative day, APRIL 9), 1979

Mr. CULVER, from the Committee on Environment and Public Works, reported the following bill, which was read twice and ordered placed on the calendar

A BILL

To extend the authorization for appropriations for the Endangered Species Act of 1973, 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 section 7(q) of the Endangered Species Act of 1973 is
- 4 amended by striking, "not to exceed \$600,000 for fiscal year
- 5 1979, and not to exceed \$300,000 for the period beginning
- 6 October 1, 1979, and ending March 31, 1980." and inserting

1 in lieu thereof, "not to exceed \$600,000 for each of the fiscal
2 years 1979, 1980, 1981, and 1982."

3 SEC. 2. Section 15 of such Act is amended to read as
4 follows:

5 "Sec. 15. (a) Except as authorized in sections 6 and 7
6 of this Act, there are authorized to be appropriated—

7 "(1) not to exceed \$23,000,000 for the fiscal
8 years 1979 and 1980; not to exceed \$25,000,000 for
9 fiscal year 1981; and not to exceed \$27,000,000 for
10 fiscal year 1982 to enable the Department of the Interior
11 to carry out such functions and responsibilities
12 it may have been given under this Act;

13 "(2) not to exceed \$2,500,000 for the fiscal years
14 1979 and 1980; not to exceed \$3,500,000 for fiscal
15 year 1981; and not to exceed \$4,000,000 for fiscal
16 year 1982 to enable the Department of Commerce to
17 carry out such functions and responsibilities as it may
18 have been given under this Act.

19 "(b) There are authorized to be appropriated not to
20 exceed \$500,000 for the Department of the Interior to imple-
21 ment the recovery program for the California condor."

22 SEC. 3. (a) Section 3(1) is amended by striking "would
23 (A) jeopardize" and inserting in lieu thereof "is likely to (A)
24 jeopardize".

1 (b) Section 7(g)(1) is amended by striking "may jeopardize"
2 and inserting in lieu thereof "is likely to jeopardize".

3 SEC. 4. (a) Section 4(f)(2)(C)(ii) is amended by striking
4 "120-day period" each time it appears and inserting in lieu
5 thereof "one-year period".

6 (b) Such section is further amended by adding at the end
7 thereof the following new sentence: "If at any time after is-
8 suing an emergency regulation the Secretary determines on
9 the basis of the best scientific and commercial data that sub-
10 stantial evidence does not exist to warrant such regulation,
11 he shall withdraw it."

12 SEC. 5. (a) Section 7(c) is amended by adding at the end
13 thereof the following new sentence: "If an exemption appli-
14 cant desires to seek a permanent exemption pursuant to sub-
15 section (b)(2) of this section, he may conduct a biological as-
16 sessment pursuant to this subsection."

17 (b) The first sentence of section 7(h)(2)(B) is amended to
18 read as follows:

19 "(B) An exemption shall not be permanent under sub-
20 paragraph (A) if the Secretary finds, based on the best scien-
21 tific and commercial data available, that such exemption
22 would result in the extinction of a species that was not the
23 subject of consultation or identified in a biological assessment
24 prior to or in conjunction with the Committee's consideration
25 of such exemption".

1 SEC. 6. (a) Sections 7(a), 7(b), 7(c), and 7(d) are amend-
2 ed by striking "any endangered or threatened species" wher-
3 ever it occurs and inserting in lieu thereof "any listed or
4 proposed endangered or threatened species".

5 (b) Section 4(f) is amended by adding a new paragraph
6 (6) to read as follows:

7 "(6) Notwithstanding the requirements of subsection
8 4(b) and of paragraphs (1) through (5) of this subsection, if
9 the Secretary determines pursuant to section 7 that an
10 agency action is likely to jeopardize the existence of an en-
11 dangered species or threatened species proposed pursuant to
12 this section, or adversely modify the proposed critical habitat
13 of such species, the Secretary shall within 90 days of such
14 determination either publish in the Federal Register a final
15 regulation adding such species or critical habitat to the list
16 published pursuant to subsection (c) of this section, or with-
17 draw the regulation proposing such listing."

18 SEC. 7. Section 7(g)(2)(A) is amended by striking "not
19 later than 90 days after the completion of the consultation
20 process." and inserting in lieu thereof, "not later than 90
21 days after the completion of the consultation process, or, in
22 the case of a permit or license applicant, not later than 90
23 days after final agency action has been taken on the permit
24 or license application."

ENDANGERED SPECIES ACT AUTHORIZATIONS

MAY 15 (legislative day, APRIL 9), 1979.—Ordered to be printed

Mr. CURTIS, from the Committee on Environment and Public Works,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1143]

The Committee on Environment and Public Works, reports an original bill (S. 1143), to extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes and recommends that the bill do pass.

GENERAL STATEMENT

1973 LAW

The Endangered Species Act of 1973 was the first statute to authorize a comprehensive national program for the conservation of endangered or threatened species of fish, wildlife, and plants. Under this statute, an endangered species is one which is in immediate danger of extinction; a threatened species is one which is likely to become endangered in the foreseeable future.

The Secretary of the Interior and, for marine species, the Secretary of Commerce are directed to list and issue regulations for the protection of endangered and threatened species. The Secretary is to enter into cooperative agreements with, and provide technical and financial assistance to, qualified States for species conservation programs.

Since protection of habitat is a key element in the protection of all species, the act authorizes the Secretary of the Interior and the Secretary of Agriculture to acquire land for the conservation and propagation of affected plants and animals. Furthermore, section 7 of the act

directs each Federal agency to insure that its actions do not jeopardize listed species or result in the destruction or adverse modification of their critical habitat.

1978 AMENDMENTS

Last year Congress approved the Endangered Species Act Amendments of 1978 (Public Law 95-632) which extends through March 31, 1980 the budget authority for the Secretary of the Interior and the Secretary of Commerce to carry out their responsibilities to protect endangered species. While the Senate version of last year's bill contained a 3 year authorization, the conferees accepted the House proposal for a 1½ year extension. The budgetary levels authorized by Public Law 95-632 were \$23 million for the Department of the Interior and \$2.5 million for the Department of Commerce for fiscal year 1979, and \$12.5 million for each agency from October 1 through March 31, 1980, when the authorization expires.

Last year's amendments also made substantive changes in the law, which were intended to provide a mechanism for the resolution of irresolvable conflicts arising between the act's mandate in section 7 to protect endangered species and other Federal activities. Testimony presented at subcommittee hearings during July 1977 and April 1978 indicated, because of the rigid nature of the act, these conflicts would increase in the future.

To provide the needed flexibility, the amendments established a seven-member Endangered Species Committee, composed of the Secretaries of the Interior, Agriculture, the Army, and the Administrators of the National Oceanic and Atmospheric Administration and the Environmental Protection Agency, the chairman of the Council of Economic Advisors, and a representative of the Governor of the State or States affected by the proposed Federal action. The committee is authorized to review each conflict and determine, based on a number of criteria set forth in the law, whether the project should be exempted, modified or terminated.

Before a proposed agency action can be considered by the committee, however, a review board must determine that the agency proposing the action has consulted in good faith with the Fish and Wildlife Service or the National Marine Fisheries Service, and that all other alternatives have been examined. This provision essentially codified existing procedures concerning consultation requirements.

In its first action in a special expedited process set up by the 1978 amendments, the Endangered Species Committee decided, unanimously, to exempt the Grayrocks Dam and Reservoir project on the Laramie River in Wyoming, a project sponsored by the Rural Electrification Administration and the Missouri Basin power project after imposing mitigating and enhancement measures to ensure that the project would not destroy the critical habitat of the endangered whooping crane. At the same time the committee agreed, again unanimously, not to exempt the Tellico dam and reservoir, a Tennessee Valley Authority project located in Tennessee.

Other provisions of the 1978 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 analyzing the economic impact of critical habitat designations.

SECTION BY SECTION ANALYSIS

Because the current authorization expires in the middle of fiscal year 1980, the Committee on Environment and Public Works must report reauthorization legislation by May 15, 1979. On April 3, 1979, the Subcommittee on Resource Protection conducted a hearing to determine the necessary reauthorization amounts. Testimony was received from officials from the Department of the Interior, the Department of Commerce and the General Accounting Office, as well as from several national conservation groups.

SECTIONS 1 AND 2. REAUTHORIZATION

Section 1 continues through fiscal year 1982 the current annual authorization of \$600,000 for the Endangered Species Committee.

Section 2 extends the authorization for the Endangered Species Act at a level of \$23 million in fiscal year 1980, \$25 million in fiscal year 1981 and \$27 million in fiscal year 1982 for the Department of the Interior. The Commerce Department authorization totals \$2.5 million in fiscal year 1980, \$3 million in fiscal year 1981 and \$3.5 million in fiscal year 1982. It should be noted that the amounts authorized for both agencies in fiscal year 1980 are \$2.5 million below those recommended by the committee in its March 15 report to the Senate Budget Committee.

The administration has recommended an authorization of \$19.3 million for the Interior Department and \$2.4 million for the Commerce Department in fiscal year 1980, and such sums as may be necessary for both agencies in fiscal year 1981 and fiscal year 1982. Because the administration's budget request was prepared subsequent to the enactment of the 1978 amendments, this request does not contain sufficient funds for the Fish and Wildlife Service or the National Marine Fisheries Service to carry out the new responsibilities for consulting with the other Federal agencies, analyzing economic impacts of habitat and species listing, and implementing species recovery plans, all of which are mandated in the 1978 amendments. The authorization levels contained in the committee's bill reflect the committee's estimates for funds needed by the two agencies to meet these new mandates.

During the subcommittee's reauthorization hearing, it was learned that the FWS fiscal year 1980 budget does not contain sufficient funds to carry out a proposed recovery plan for the California condor, one of America's outstanding endangered species. This recovery plan has been developed pursuant to a report produced jointly by the National Audubon Society and the American Ornithologists Union. The study concludes that not more than 40 of the creatures remain and that an intensive program of research, habitat protection and captive propagation is the sole hope for saving North America's largest bird. Therefore, section 2 specifically authorizes the necessary funds because of the importance of the program.

SECTION 3. CONFORMING AMENDMENTS

A biological opinion issued by the FWS or NMFS concerning the potential impact of a Federal action on a threatened or endangered species or its critical habitat speaks in terms of whether the action "is

likely to jeopardize" the species or its critical habitat. The term "likely to jeopardize" is used because the fundamental obligation of section 7(a) of the act is that Federal agencies insure their actions do not jeopardize the continued existence of an endangered or threatened species. Thus, completion of a proposed action by a Federal agency would be inconsistent with its section 7 obligation of the act if the action is likely to jeopardize the continued existence of a species.

Therefore, in addressing the subject of these potential conflicts, the term "is likely to jeopardize" was generally adopted throughout the 1978 amendments. For instance, section 7(c) requires Federal agencies to conduct a biological assessment of a proposed action to determine if the action "is likely to jeopardize" any threatened or endangered species. Two provisions of Public Law 95-632, however, do not conform to the rest of the act in this regard. In section 3 (11) the term "irresolvable conflict" is defined as a situation where a federal action would jeopardize a species or critical habitat. Similarly, section 7(g) (1) states that qualified applicants may apply for an exemption if the Secretary issues a biological opinion stating that the Federal action involved may jeopardize a species or its habitat.

In order to avoid confusion resulting from the use of different terms, the committee bill changes both of these phrases to is likely to making them consistent with other provisions of existing law.

The committee recognizes that data concerning a potential jeopardy situation may not be as complete in some situations as it is in others, the basis of the best scientific and commercial data available to him at the conclusion of the consultation period.

SECTION 4. EMERGENCY RULEMAKING

Currently the act permits the Secretary to list a species or critical habitat on an emergency basis if a situation exists which poses a significant risk to the continued existence of such species. Any such emergency designation expires after 120 days unless confirmed through the normal rulemaking procedures.

As a result of the new requirements set forth by Public Law 95-632, the average time required for rulemaking now totals from 9 months to 1 year, far longer than the 120 day limit. Therefore, section 4 of the bill makes an emergency designation effective for 1 year, except that the Secretary would be required to withdraw the listing if he finds at any time, based on substantial showing using the best scientific and commercial data available, that the emergency condition no longer exists or that the species should not in fact be listed.

SECTION 5. PERMANENT EXEMPTION

Under the 1978 amendments, when an exemption is granted by the Endangered Species Committee, the exemption is a permanent, blanket exemption for all species for purposes of completing the action, provided that a biological assessment has been conducted under section 7(c). Section 7(c) requires a Federal agency to conduct a biological assessment for an action for which no construction had begun when the amendments became effective.

Under present law, however, if the Secretary finds that such a permanent exemption would result in the extinction of a species, the Endangered Species Committee would have 30 days to determine whether the exemption should be granted, notwithstanding the Secretary's determination.

Legislative history clearly states that it was the intent of Congress that this provision should apply to both new and ongoing projects. In addition, Congress intended that the permanent exemption would be reconsidered only in instances where the permanent exemption would cause the extinction of a species which was (1) discovered subsequent to the time the permanent exemption was granted, and (2) was not the subject of consultation or had not been identified in the biological assessment. This intent, however, is not clear in Public Law 95-632. Accordingly, the committee bill clarifies these points. It also authorizes the preparation of biological assessment on actions for which a biological assessment is not currently required.

It is important that before it grants a permanent exemption the Endangered Species Committee be fully aware of the impacts of the Federal action on all listed species. It is essential, therefore, that a Federal agency's biological assessment and consultation with the FWS and NMFS be as complete as practicable, so as to provide the committee with all relevant information concerning listed species in the area impacted by the activity and the anticipated impacts. For the same reason, it is essential that all reasonable and prudent alternatives to the project be considered during the course of the consultation process. Although a permit or license applicant should be given an opportunity to participate in the consultation process, the committee recognizes that the ultimate responsibility for compliance with section 7 remains with the Federal agency.

SECTION 6. CONSULTATION ON PROPOSED AND CANDIDATE SPECIES

During the subcommittee's hearings, the General Accounting Office recommended that Federal agencies be required to consult with FWS and NMFS not only on species which have been officially listed as threatened or endangered, but also on species which have been proposed for listing, and on candidate species which the Service has been petitioned to consider for listing. Consultation results in the issuance of a biological opinion by FWS or NMFS which states whether the proposed Federal action is likely to jeopardize the existence of the species. If a finding of jeopardy is made, the project agency may make no irreversible or irretrievable commitment of resources unless consultation yields an acceptable way to complete the proposed action, or until the section 7 exemption process is completed.

While the intent of the GAO amendment is to insure early identification of potential species/Federal action conflicts, mandating consultation on all candidate species is impractical, since the service receives hundreds of petitions to list species, many or most of which do not need the protection provided by the Endangered Species Act and are therefore never listed.

It is reasonable, however, to require consultation on proposed species, since such species will have been the subject of substantial review and consideration by the Secretary and there is some likelihood that

they will be formally listed as endangered or threatened. It is essential, however, that work on a project not be unduly delayed while the Secretary decides whether to list the proposed species. Therefore, the committee bill requires consultation on proposed species, but requires that if jeopardy is determined, the Secretary must within 90 days either complete or withdraw the proposed listing and critical habitat designation notwithstanding the requirements contained in section 4(b) (4) and 4(f). Nonetheless, it is expected that the Secretary comply with these requirements to the fullest extent practicable given the 90-day limitation.

SECTION 7. SUBMISSION OF AN EXEMPTION APPLICATION

The act presently states that an exemption application to be submitted to the Secretary within 90 days after consultation has been completed and a biological opinion issued. Applications eligible for reviews by the Review Board and the Endangered Species Committee would be those which in the Secretary's judgment meet the criteria for an eligible application set forth by the Secretary pursuant to section 7(f). When a permit or license is involved, however, the 90 day limit could expire before the permitting agency decides to deny the application, thereby foreclosing the applicant's opportunity to apply for an exemption. The committee bill clarifies that where a permit or license is involved, the exemption applicant has 90 days after final agency action on a permit or license to apply for an exemption. This provision is intended to clarify provisions of existing law with respect to the timeliness of an exemption application where a permit or license applicant is involved. A permit or license applicant, as defined by section (3) (12) of the act, is any person whose application for a permit or license has been denied primarily because of the application of section 7.

It is not the committee's intent in this amendment to permanently preclude the review of any exemption application currently pending before the Endangered Species Committee or the Review Board. The committee reiterates, however, the intent of the 1978 amendments that an application shall not be considered by the Review Board until final agency action has been taken on the permit or license application.

OTHER POINTS

There are several points concerning the Endangered Species Act which should be addressed. Although these matters do not warrant amendments to the law, some clarification would be useful.

LISTING OF POPULATIONS

In testimony before the Resource Protection Subcommittee on April 3, officials from the General Accounting Office recommended that the subcommittee consider an amendment to the definition of species currently contained in the act which would prevent the FWS from listing geographically limited populations of vertebrates as threatened or endangered. It is the GAO's contention, based on a draft report which it has conducted on the administration of the act, that FWS has interpreted the term "species" to include any population of the animal,

regardless of its size, location or total numbers. According to the GAO, this could result in the listing of squirrels in a specific city park, even though there is an abundance of squirrels in other parks in the same city, or elsewhere in the country.

The FWS and NMFS, on the other hand, oppose such a change on the basis that it would severely limit their ability to require the appropriate level of protection for a species based on its actual biological status. For instance, under the GAO proposal FWS would be required to provide the same amount of protection for the bald eagle population in Alaska, which is healthy, as for the bald eagle population in the contiguous states, which is endangered. One of the weaknesses of the 1969 act which was corrected in the 1978 amendments was the inability of the FWS to adopt different management practices for healthy, threatened or endangered populations.

The committee agrees that there may be instances in which FWS should provide for different levels of protection for populations of the same species. For instance, the U.S. population of an animal should not necessarily be permitted to become extinct simply because the animal is more abundant elsewhere in the world. Similarly, listing of populations may be necessary when the preponderance of evidence indicates that a species faces a widespread threat, but conclusive data is available with regard to only certain populations.

Nonetheless, the committee is aware of the great potential for abuse of this authority and expects the FWS to use the ability to list populations sparingly and only when the biological evidence indicates that such action is warranted.

TULLICO DAM

The committee did not approve an amendment which was introduced during markup on May 9, 1979 to exempt from the Endangered Species Act the Tullico Dam and Reservoir, located on the Little Tennessee River near Tullico Plains, Tenn.

The Tennessee Valley Authority (TVA) initiated construction on the Tullico Dam in 1968. In March 1977, however, the 6th Circuit Court of Appeals ruled in *Hill v TVA* that work on the project, which was 90 percent complete, would have to be terminated since its completion would destroy the critical habitat of the snail darter, an endangered fish. This decision was upheld by the Supreme Court in June, 1978.

In its first action under a special, expedited review procedure established by Public Law 95-632, the Endangered Species Committee, by unanimous vote, ruled that the Tullico Dam could not be completed as originally planned by TVA, because the project did not qualify for an exemption under the criteria set forth in the law. As a result of the Endangered Species Committee's actions, an amendment to exempt the dam from the act was proposed during committee markup.

The law requires that before the Endangered Species Committee may grant an exemption for a Federal action, it must determine, first, that there are no reasonable and prudent alternatives to the action, and second, that the benefits of the action clearly outweigh the benefits of alternative courses of action which are consistent with conserving the species. In a December 1978 report entitled "Alternatives for Completing the Tullico Dam," TVA identified a reasonable and prudent alternative to the dam, known as the river development proposal. Under this plan, a portion of the dam would be removed and the river

would remain free-flowing. The river basin could then be developed for agriculture, forestry, light industry, and other uses compatible with the conservation of the snail darter.

Furthermore using largely TVA's own calculations, which had been confirmed by outside sources, the Endangered Species Committee determined that the annual benefits of the dam, set at -.72, did not clearly outweigh the benefits of the river development alternative, determined to be -1.2. For these reasons, the Endangered Species Committee determined that the dam did not meet the requirements set forth by law and therefore denied the exemption.

Proponents of the dam claim the Endangered Species Committee did not accurately calculate the costs and benefits of the Tellico Dam and the river development alternative. Those who support the Endangered Species Committee's decision, on the other hand, point out that the benefit-cost information contained in the Endangered Species Committee's staff report, which formed the basis for the Tellico decision, was derived largely from TVA's own calculations. Furthermore, before it was presented to the Endangered Species Committee, the report was reviewed and concurred in by the staffs of each permanent committee member, including that of Charles Schultz of the Council of Economic Advisors. The report has since been circulated to and has been praised by numerous economists throughout the country. Proponents of the dam also argue that a viable population of snail darters has been established on the Hiwassee River and that the fish is thus no longer endangered. This assertion, however, is disputed by biologists from the Fish and Wildlife Service.

It is the view of the committee that these matters were considered adequately and fully by the Endangered Species Committee during their deliberations on the Tellico exemption. Furthermore, section 7(n) of the Endangered Species Act, which provides for judicial review of decisions made by the Endangered Species Committee, anticipated that the courts, and not the Congress, would be the appropriate forum for addressing these concerns. A petition for review of the Tellico decision has already been filed with the 6th Circuit Court of Appeals in Cincinnati.

Congress developed the exemption process pursuant to Public Law 95-632 after 2 years of intensive consideration and debate, during which time it was established that conflicts between Federal actions and endangered species would very likely increase in the future. It is essential to avoid ad hoc congressional review of, and specific expertise to evaluate the many biological, engineering, economic, and other technical issues connected with the consideration of an exemption. Perhaps the strongest aspects of the new process is that it mandates close cooperation between a Federal action agency on the one hand, and the FWS and NAFS on the other hand, since an action can not be considered for an exemption unless every effort has been made to resolve the conflict.

Had the Environment and Public Works Committee approved an exemption for the Tellico Dam, thereby nullifying the decision of the Endangered Species Committee, it would have seriously undermined the new process before it had been given a reasonable chance to work, and would have discouraged good faith attempts by Federal agencies

to minimize these conflicts. The action of the Endangered Species Committee on the Tellico project has not been shown to have strayed from the statutory mandates under which it operates so as to justify congressional revision of the decision. For these reasons, the Committee decided not to approve the exemption.

ROLLCALL VOTES

Section 133 of the Legislative Reorganization Act of 1970 and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

There was one rollcall vote during the committee's consideration of the bill. This was on an amendment to exempt the Tellico Dam from the Endangered Species Act. The amendment was defeated by a vote of 10-3.

EVALUATION ON REGULATORY IMPACTS

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill does not add to or reduce the regulatory authority provided by existing law.

The bill has no impact on the personal privacy of individuals.

The bill has no impact on paperwork of Federal agencies.

There is no specific economic impact of the bill.

The bill has no impact on recordkeeping requirements.

ESTIMATE OF COSTS

Section 252(a) (1) of the Legislative Reorganization Act of 1970 requires publication in this report of the committee's estimates of the costs of the reported legislation, together with estimates prepared by any Federal agency. S. 2899 provides a total authorization of \$75 million for the Department of the Interior, \$9 million for the Department of Commerce and \$1.8 million for the Endangered Species Committee for fiscal years 1980-1982. This compares to an estimate of \$19.3 million by the Interior Department, \$2.4 million by the Commerce Department, and \$800,000 by the Endangered Species Committee for fiscal year 1980, and such sums as may be necessary for fiscal year 1981 and 1982.

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. The report follows:

CONGRESSIONAL BUDGET OFFICE,

U.S. CONGRESS,

Washington, D.C., May 11, 1979.

Hon. JENNINGS RANDOLPH,

Chairman, Committee on Environment and Public Works, U.S. Senate, 4202 Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for the Endangered Species Act Amendment of 1979.

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

ALICE M. RYLEN, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: Not yet assigned.
2. Bill title: The Endangered Species Act Amendment of 1979.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 9, 1979.

4. Bill purpose: The bill authorizes the appropriation of \$600,000 for the Endangered Species Committee for each of the fiscal years 1980, 1981 and 1982. This committee reviews applications from federal agencies to determine whether to approve a Federal action that jeopardizes the continued existence of any endangered species or results on the destruction of the endangered species' habitat.

The bill authorizes the appropriation of \$23.5 million for fiscal year 1980, \$25 million for fiscal year 1981 and \$27 million for fiscal year 1982 for the U.S. Fish and Wildlife Service (USFWS) to carry out its responsibilities under the Endangered Species Act. These responsibilities include the determination of endangered species, the development and implementation of plans for the survival of endangered species, and the determination of whether a Federal action jeopardizes the existence or habitat of an endangered species. The National Oceanic and Atmospheric Administration (NOAA) is also authorized \$2.5 million for fiscal year 1980, \$3.5 million for fiscal year 1981 and \$4.0 million for fiscal year 1982.

In fiscal year 1979, \$600,000 was authorized for the Endangered Species Committee, \$23 million for the USFWS and \$2.5 million for the NOAA activities covered by this bill.

5. Cost estimate:

Net additional authorization:

Fiscal year:	Millions
1980	1.3
1981	29.1
1982	31.6
1983	
1984	

Estimated outlays:

Fiscal year:	Millions
1980	1.2
1981	26.3
1982	31.3
1983	3.2
1984	

The costs of this bill fall within budget function 300.

6. Basis of estimate: For fiscal year 1980, the net additional authorization represents the net change to authorizations already existing. The bill increases the 1980 authorization for the USFWS from \$12.5 million to \$23 million, and for the Endangered Species Committee from \$300,000 to \$600,000. The \$2.5 million authorized in this bill for NOAA in fiscal year 1980 represents a decrease from the existing authorization of \$12.5 million. (The 1979 NOAA appropriation for this

purpose is \$2.3 million; the President's budget request for 1980 is \$2.4 million.) The 1980 authorization level also includes \$500,000 for implementation of the recovery program for the California condor.

For the purpose of this estimate, it is assumed that the full amounts authorized will be appropriate. Outlays are estimated by applying a 2-year spendout rate to the level of appropriations authorized for NOAA, USFWS and the expenses of the review committee. The 2-year spendout is estimated to be 90 percent the first year and 10 percent the second year, based on consultation with NOAA and USFWS.

7. Estimate comparison: None.

8. Previous CBO estimate: A cost estimate was prepared on May 9, 1979 for the corresponding House bill, HR. 2218, as ordered reported by the House Committee on Merchant Marine and Fisheries. That bill provided a higher authorization level in fiscal year 1980, but lower authorizations for fiscal years 1981 and 1982.

9. Estimate prepared by: Jim Manaro.

10. Estimate approved by:

C. G. NICKORS
(For James L. Blum,
Assistant Director for Budget Analysis).

ADDITIONAL VIEWS OF MR. BAKER

Over the last few years the Endangered Species Act has occupied a considerable amount of the working time of the Environment and Public Works Committee's Subcommittee on Resource Protection. I have been particularly interested in the action of the committee on this subject due to the act's impact on the Tellico Dam project located in my home State of Tennessee and because I am convinced that unless some reasonable flexibility is incorporated into this legislation that it will be misused in the future. Such misuse may well jeopardize the ability of the act to meet its legitimate objectives.

Legislation sponsored by Senator Culver and me—and enacted by the Congress late last year—established a review committee to rule on the relative merits of construction projects and endangered species in cases where there was an "irresolvable conflict" between the two.

One such controversy arose in Tennessee 4 years ago, pitting the Tellico Dam—already 80 percent complete at the time—against the newly-discovered snail darter, which was then thought to exist in only a single stretch of the Little Tennessee River.

Evidence gathered since this issue was first joined indicates that the "irresolvable conflict" between the dam and the snail darter turns out not to be irresolvable at all.

The snail darter was found to thrive in at least two other locations in Tennessee. Indeed, he seems to be doing much better in the two other locations than in the one where he was first discovered.

Let me stress that this is fine with me. I have nothing personal against any snail darter. May their tribe increase. But just as the snail darter became a symbol of the inflexibility of the Endangered Species Act and led to the establishment of this review committee in the first place, the snail darter has now become the symbol of the excessive latitude which the review committee has claimed for itself.

The committee undertook to decide this case despite the evidence of studies by the Tennessee Valley Authority and the U.S. Fish and Wildlife Service which found that the Tellico Dam site is not the only habitat in which the snail darter now thrives. This information should, if objectively considered, have indicated that no irresolvable conflict thus exists, and therefore that the jurisdiction of the review committee should not apply in this case.

Having ignored or at best given only a summary analysis to this information and claimed that jurisdiction anyway, the review committee then ruled that the Tellico Dam should not be completed—even though it is 95 percent complete already. The reasons the committee cited were not environmental reasons but economic reasons—and that reasoning was in itself false. The "river alternative" recommended by the committee will cost more to complete than the dam project as planned, and will provide fewer benefits.

Clearly the committee has exceeded its charter in this case. Clearly the Congress did not intend that the committee should rule on the general economics of public works projects even after environmental concerns had been satisfied. Clearly we must establish the limits of this committee's power—and the formal removal of the Tellico Dam case from the committee's jurisdiction is the most obvious first step in that process.

I am seriously concerned that if present trends continue, the Endangered Species Act will be diverted from its original intent as the means of protection and management of endangered species and be used instead as a convenient device to challenge any and all federal projects.

The science of taxonomy, as we have learned too late, offers opponents of Federal public works projects a virtually limitless arsenal of weapons with which to do battle.

We who voted for the Endangered Species Act with the honest intention of protecting such glories of nature as the wolf, the eagle, and other natural treasures have found that others with wholly different motives are using this noble act in conjunction with sciences present inability to place a relative value on any particular species for merely obstructive ends.

That is precisely what has happened in the case of *Snail Darter v. Tellico Dam* and if this perversion of the law is allowed to continue, the law itself will soon stand in jeopardy.

We must not let that happen. It need not happen if rigidity gives way to reason and if authority is exercised with prudence and restraint. These were my goals in offering in committee my amendment to exempt the Tellico Dam. I am sure that many of my colleagues in the Senate share my concerns and would agree that if the Endangered Species Committee could not after their review exempt the Tellico project that few if any of the so-called irresolvable conflicts which are certainly going to arise in the implementation of this act are going to be given fair and reasonable consideration for an exemption. I think that my amendment would send a message to the Endangered Species Committee that the Congress intends this type consideration in the future.

HOWARD H. BAKER, JR.

CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary to dispense with the requirements of subsection (f) of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

[From the Congressional Record, June 13, 1979]

SENATE CONSIDERATION AND PASSAGE OF S. 1143

ENDANGERED SPECIES ACT AUTHORIZATIONS

The Presiding Officer. Under the previous order, the Senate will now proceed to the consideration of S. 1143, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (S. 1143) to extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes.

The Senate proceeded for the consideration of the bill.

The Presiding Officer. Debate on this bill is limited to 1 hour, to be equally divided and controlled by the Senator from Iowa (Mr. Culver) and the Senator from Tennessee (Mr. Baker), with 30 minutes on any amendment in the first degree, with 20 minutes on any amendment in the second degree, and with 15 minutes on any debatable motion, appeal, or point of order.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that no call for the regular order bring this bill down.

The Presiding Officer. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to proceed for 2 minutes on other matters.

The Presiding Officer. Without objection, it is so ordered.

Mr. CULVER. Mr. President, the pending legislation before the Senate is one, I am afraid, which is threatening to become an annual event, the reauthorization of the Endangered Species Act.

Although the Senate provided a 3-year authorization last year, the conference committee accepted the House proposal for a 1½-year extension. Because funds expire halfway through fiscal year 1980, reauthorization legislation must, therefore, be considered again this year.

This bill, S. 1143, would provide for a 3-year extension at levels of \$23 million in fiscal year 1980, \$25 million in fiscal year 1981, and \$27 million in fiscal year 1982 for the Department of the Interior.

The Commerce Department authorization totals \$2.5 million for fiscal year 1980, \$3 million in fiscal year 1981, and \$3.5 million in fiscal year 1982.

In addition, the legislation continues through fiscal year 1982 the current annual authorization of \$600,000 for the Endangered Species Committee. Hopefully, the ink will be dry on this bill before we once again debate this issue.

The Endangered Species Act is one of the most significant and profound laws, in my judgment, ever to be adopted by our Nation. Its passage was a recognition, and a woefully late one, that our development activities were responsible for destroying forms of life which were present as a result of a process which began with the first appearance of life on Earth 3½ billion years ago.

All species present today have been shaped by those forces, and they have evolved and developed over a period of time in which mankind's existence has only been a recent development.

Species and life forms appear, flourish for a time, and then disappear forever. This is a natural process and one we must recognize as we

consider this legislation today. Events shaped by our industrialization over the past few hundred years have, however, led to a sharp acceleration in the rate of extinction to the point where the natural processes may be increased by a factor of hundreds or even thousands.

The chilling tragedy of this massive loss of species from our ecosystems and biosphere will never be fully understood, lost are some whose existence we never realized, and whose contributions to science and mankind will never be known.

The Endangered Species Act is a first, a belated, and a noble attempt to reduce those losses by requiring that our citizens and our Government be aware of threatened or endangered species, and that they plan future activities to prevent these losses. The act has without question already had a positive effect in this regard. In the past 5 years, it has probably been responsible for saving several species from extinction.

The Endangered Species Act was reauthorized last year after considerable debate, both in the Committee on Environment and Public Works and on the Senate floor. The act was substantially amended, resolving the act's shortcomings while leaving it strong and viable.

As my colleagues may recall, one of the principal amendments adopted provided a rational and responsible mechanism for resolving intractable conflicts under section 7 of the act. This section requires consultation between the construction agency and the U.S. Fish and Wildlife Service (FWS), which implements the Endangered Species Act. This consultation mechanism has led to the resolution of most potential conflicts which have arisen under the act since 1973.

However, a limited number of conflicts has not been resolved through consultation, and it appears likely that this will continue to be the case. In anticipation of the intensifying pressure on Congress to weaken or repeal the act as a result of these problems, Senator BAKER and I cosponsored last year an amendment to equitably resolve intractable conflicts while at the same time assuring maximum protection for all endangered species.

Briefly, the Culver-Baker amendment established a seven-member Endangered Species Committee composed of the heads of six Federal agencies and a representative of the affected State or States. The committee arbitrates those conflicts which cannot be resolved through consultation.

It does not interfere with the consultation process set up in the 1973 act. Only those conflicts which cannot be resolved by consultation are brought before the Endangered Species Committee.

The Endangered Species Committee can exempt a project from compliance only if certain criteria have been met. These criteria require the committee to evaluate social, cultural, economic, and other benefits of the project as well as the ecological, educational, scientific, and other benefits of alternatives which would conserve the species. The provision is careful not to undermine existing mechanisms to resolve conflicts and in fact stimulates the resolution of impasses by requiring good faith consultation between the action agency and the U.S. Fish and Wildlife Service.

I am pleased to announce that this process is working well. The Endangered Species Committee has met to consider exemptions for two projects, the Graylocks Dam in Wyoming and the Teltlow Dam in Tennessee. After careful consideration the committee voted unani-

mously to exempt the Grayrocks project, provided certain measures are taken to protect the affected species, the whooping crane. The committee also voted unanimously not to exempt the Tellico Dam, finding that the benefits of completing the project did not clearly outweigh the benefits of alternatives which were consistent with protecting the endangered snail darter.

The Endangered Species Committee is providing just what it was intended to—a rational mechanism for resolving conflicts between protection of endangered and threatened species and other legitimate national goals and priorities. And, it provides a general solution to these problems, thereby avoiding ad hoc exemptions and the emasculating of the act as a result of the short-term pressures which, overlook the importance of this law and the species it protects.

Mr. President, it is not possible to overstate the importance of keeping the Endangered Species Act strong. Enlightened self-interest requires that we do our best to preserve these species, which have evolved over billions of years.

I wish before concluding, Mr. President, to express my appreciation to all members of the subcommittee who have worked on this reauthorization effort, but particularly to single out the distinguished Senator from Rhode Island (Mr. CHAFEE), who has been indispensable in the way he has conscientiously involved himself in this subject matter over the last 2 years, and particularly valuable in the contribution he has made in fashioning the legislation before us today.

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

The PRESIDENT: I recognize the Senator from Rhode Island.

Mr. CHAFEE: Mr. President, first I would like to pay tribute to the chairman of our subcommittee, the senior Senator from Iowa (Mr. CULVER). He has really been a rock in his steadfastness, his consistency, and his intense interest in this Endangered Species Act. I think all of us in the Senate, and indeed in the country, owe him a debt of gratitude for his tremendous interest in this field, which, as he mentioned, is so important not just to us but to future generations.

Mr. President, only 8 months have passed since Congress last reauthorized the Endangered Species Act. I must say that for me and to others, I am sure, the 1978 amendments were somewhat of a painful process. As Senators will recall, the chief action we took last year was to provide a mechanism under section 7 of the act for the resolution of these seemingly irresolvable conflicts between, on the one hand, the endangered species, whether it is a flora, a fauna, or whatever it might be, a magnificent conch or a tiny snail darter, and Federal actions, particularly construction projects, such as a reclamation project, dam, or whatever it might be. A seven-member Endangered Species Committee, composed of Federal agency heads—Departments of the Interior, Agriculture, Defense, Commerce, EPA, Council of Economic Advisors—and a representative of the States involved, was established to review each conflict and determine whether the project should be exempted, modified, or terminated. Before a project can be considered by the committee, a review board must determine that the construction agency has consulted with the Fish and Wildlife Service or the National Marine Fisheries Service, and that all alternatives have been examined.

During consideration of last year's bill, I offered amendments to the Endangered Species Exemption Committee proposal, to tighten up the

process. Some suggestions were voted down, but others were accepted in our Environment and Public Works Committee. I felt strongly at that time, and still do, that a strong Endangered Species Act is absolutely necessary, whether we are talking about spindly legged spiders or the majestic, easily admired bald eagle.

The Congress having gone through this detailed reauthorization process late last session, I firmly believe that we need to give the 1978 changes a chance to work. Indeed, this is the spirit of the committee bill pending before us, as ably summarized by subcommittee Chairman Culver in his opening statement.

The Endangered Species Act Amendments of 1978 extended through March 31, 1980, budget authorization for the Secretary of the Interior and the Secretary of Commerce to carry out their responsibilities to protect endangered species. The bill now before us extends authorization for the act through fiscal year 1982. It would provide \$23.5 million for fiscal year 1980, \$25 million for fiscal year 1981, and \$27 million for fiscal year 1982 for Interior's Fish and Wildlife Service to administer its responsibilities under the act.

The Commerce Department authorization under this bill comes up to \$2.5 million in fiscal 1980, \$3 million in fiscal 1981, and \$3.5 million in 1982. Is it not refreshing, Mr. President, that when we say \$3.5, we are not talking \$3.5 billion, but we are talking about \$3.5 million?

Finally, the current annual authorization of \$600,000—imagine this, what small potatoes we come in for—for the Endangered Species Committee is continued through fiscal year 1982.

The Environment and Public Works Committee believes that all of these authorization levels are necessary to carry out both the act's original mandates and the new requirements under the 1978 amendments. One of the new responsibilities under the 1978 amendments is the implementation of the species recovery plans. I think this is of some interest, Mr. President, particularly for those from the West. During the reauthorization hearings we learned that additional support is needed to carry out a proposed recovery plan for one of America's great species, the California condor. I was astonished to discover that not more than 40 of these magnificent birds still remain. I think they have a wingspread of something like 12 feet.

It is my firm belief that an intensive program of habitat protection and captive breeding is necessary to save North America's largest bird. Senator Culver and I have both received letters from interested ornithologist groups all over the world regarding the plight of the condor. We had testimony before the committee from the National Audubon Society. I am pleased to state that section 2 of the bill before us specifically authorizes the necessary funds for a recovery plan directed toward this species, namely, the California condor.

Since enactment of the 1978 amendments, the Endangered Species Committee has taken two actions, both of which the chairman touched on briefly. On February 7, 1979, they voted unanimously to exempt the Grayrocks Dam and Reservoir project on the Laramie River in Wyoming, and at the same time they voted unanimously not to exempt the TVA Tellico Dam from the Endangered Species Act.

I must say that exemptions, in general, from the Endangered Species Act cause me concern. But I do believe that the Endangered Species Committee process is a preferable one to individual congressional exemptions. I do not think every exemption should come here to the floor

of the Senate, project by project. Consultation requirements and other criteria are better maintained under the committee process.

So along with our distinguished chairman, Senator Randolph, and our subcommittee chairman, the distinguished Senator from Iowa, Senator Culver, I urge my colleagues to favorably consider this re-authorization legislation for a most important program. I reserve the remainder of my time, Mr. President.

AMENDMENT NO. 248

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

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

The Senator from Iowa (Mr. CURVER) proposes an unprinted amendment numbered 248.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is as follows:

On page 2, line 14, strike "\$3,500,000" and insert in lieu thereof "\$3,000,000" and on line 15, strike "\$4,000,000" and insert in lieu thereof "\$3,500,000." On page 2, line 19, insert after "appropriated" a comma and the phrase "beginning October 1, 1979," and on line 21, after the word "condor" and before the period, insert ", which sum shall be available until expended." On page 4, line 8, strike "4(B) (4)".

Mr. CURVER. Mr. President, this is a committee amendment, perfecting and technically correcting certain aspects of the bill in three places. The first part of the amendment corrects two errors in the authorizations for the Commerce Department. In the bill, the Commerce Department authorization is \$3.5 million for fiscal year 1981 and \$4 million for fiscal year 1982. The correct amounts, which appear in the committee report on this bill, are both \$500,000 lower, \$3 million for 1981 and \$3.5 million for 1982.

The second part of this committee amendment is a technical change making it clear that the California condor authorization is for fiscal year 1980 and subsequent years until the money is expended. As the language appears in the bill, it could have been interpreted to mean that the authorization was for fiscal year 1979 only.

Finally, Mr. President, the third part of the amendment corrects a reference in the bill. As printed, the bill would allow the Secretary to make an emergency listing of a species without notifying the States or allowing them to comment. This was not the intent of the committee. The committee intended only that the Secretary be exempt under these circumstances from paragraph 4(B) (4), which requires that an economic analysis be done before determining critical habitat.

Mr. President, I know of no objections to the amendment. The PRESIDING OFFICER. Is there objection?

Mr. CHAFFER. I have no objection.

Mr. CURVER. I yield back the remainder of my time on the amendment and move the amendment.

The PRESIDING OFFICER. Does the Senator from Rhode Island yield back the remainder of his time?

Mr. CHAFFER. I do, Mr. President.

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

The amendment was agreed to.

The PRESIDING OFFICER. The Senator from Tennessee.

AMENDMENT NO. 249

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), for himself and Mr. SASSER, proposes an unprinted amendment numbered 249.

On page 4, after line 24, insert the following new section: Sec. 8. Section 7 of the Endangered Species Act (16 USC 1536) is amended, by adding at the end thereof a new subsection (F) to read as follows:

"TELLICO DAM AND RESERVOIR PROJECT

"(F) The provisions of this Act shall not apply with respect to the construction and operation of the Tellico Dam and Reservoir Project in Tennessee. The harassment, harm, killing, or wounding, if any, of any endangered species or threatened species attributable to the construction or operation of such project shall not be deemed to be a taking of any endangered species within the meaning of section 9(a) (1) of this Act or the taking of any threatened species if a prohibition against the taking thereof is imposed by regulations pursuant to section 4(d) of this Act."

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. Mr. President, this is a stay order amendment. I will not take a long time. This is the language of the exemption provision for the Tellico Dam in Tennessee that was adopted last year in the House of Representatives during their consideration of the Endangered Species Act.

We did not take this approach on the Senate side but instead decided to set up a review committee to consider the relative merits of the endangered species versus the continuation of a particular Federal project. I now believe I made a mistake in taking that approach and I am standing here to say so.

In the final analysis, what that committee did when it made its decision on Tellico, in my judgment, was plain foolish. They did not make a balancing judgment between the alleged endangered species and the project. They chose to ignore the status of the dammer and base their decision on the economic desirability of the project.

The same authority of the Congress that set up the review board, of course, could abolish the review board. Frankly, that was my first intention because I think they did act in a way contrary to the intention of the Congress. But I was persuaded, based on their performance in one other case, that there was some usefulness in continuing that review procedure. However, in the case of Tellico I have no alternative except to return to the original source of authority, which is the Congress itself, and address the question exactly as our friends in the House of Representatives did last year. That is to exempt the dam.

Mr. President, some may say, "Why should the Tellico Dam have special treatment?"

I suppose that is the fundamental question I certainly would ask that question if I were not familiar with the project. Let me outline a few circumstances.

To begin with, the Tellico Dam was authorized before the Endangered Species Act was even a gleam in anybody's eye.

Much of the appropriation for this project was made before the Endangered Species Act was ever thought of, as far as I know. The dam was put to contract and under construction and, I believe, some 80 percent completed when the act was originally passed. The dam was 80 percent complete at the time the Endangered Species Act was passed! What we should have done, I suppose, was put a grandfather clause in the act so it did not cover things like dams or projects that were already over 80 percent completed, playing under the old rules. But we did not do that. That was a mistake, too.

Oddly, enough, nobody ever heard of the snail darter, either, at the time this dam was started. When the snail darter was discovered somebody—I rather suspect intentionally—set out to find a species to stop this dam using this act.

Thus, the snail darter was discovered after this dam was 95 percent complete—more specifically the species was listed and its critical habitat was designated at the time this dam was 95 percent complete.

So I have the anomaly before me of a dam that was authorized, the money appropriated, construction undertaken, 80 percent complete before the act was passed, and 95 percent complete before they got around to discovering the snail darter. What I am trying to do, in effect, is grandfather the project. What I am doing is what that review committee should have done. One of the most distinguished daily newspapers in this city said that Senator Baker was mad about the result of the review committee that he established. Mr. President, they do not have any idea how upset I got about that decision, because I was the one responsible for it. I do not like admitting I made a mistake, but I flat made a mistake. I should have done what the House of Representatives did overwhelmingly; that is, simply exempt the dam.

However, I am here to say, Mr. President, that I support the Endangered Species Act, I am going to vote for final passage. I helped write the thing. I have served since the day I came to the Senate on the Committee on Environment and Public Works. I do not think I have to apologize to anybody for my environmental record, and I have the scars and bruises to prove it.

At times such as this I am reminded of what one of my staff said to me, after we passed the strip mining bill, "Senator Baker, you have some of the maddest of friends and some of the strangest new ones I ever saw."

Mr. President, I have no apology to make for my commitment to environmental legislation, or for my actions with regard to this set. But I simply cannot stand idly by and see a stultification of commonsense, to see this act stop a dam that was finished, virtually, before the act was passed and before the fish was discovered. I am not going to be labor the issue. I think that is the whole point. I think the dam ought to be exempted. I think we ought to keep the review committee for reviewing future conflicts, I think we ought to keep the act. But the review committee ought to understand that when a dam was started

before this act was passed, we ought to have a consideration of practicality and commonsense.

Goodness knows, there is little enough commonsense in this Government of ours without haunting our failures to act where we give them the statutory opportunity.

I see my colleague from Tennessee (Mr. Sasser) on the floor. Before I use up my time, if I have not already, I should like to yield to him if he cares to speak.

Mr. Sasser, I thank my distinguished colleague for yielding to me, Mr. President. I wish to associate myself with the remarks he has made here this afternoon.

Mr. President, I speak in support of Senator Baker's amendment to this bill to reauthorize the Endangered Species Act. I share my colleague's support and recognition of the benefits of this act. I fully appreciate the need for the continuation of this act to protect certain species of plants and animals which might otherwise become extinct. However, I continue to feel that the history surrounding the Tellico project in our State does not warrant the application of the Endangered Species Act.

Today's consideration of the Tellico project and the impact the Endangered Species Act should have over its future marks a major decision for this body. Several years ago, an earlier Congress passed the Endangered Species Act. This legislation was broadly written and has been broadly interpreted to halt the construction of public works projects which were already underway at the time that act was signed into law. I further point out that the same Congress and each succeeding Congress have passed appropriations bills which provide funds to continue and complete these projects.

While I was not a Member of that original Congress which approved the Endangered Species Act, I do not believe that most of the Members who voted for that bill ever intended it to be used to halt water resources development. I do not believe that those Members had any idea that the act would be used to halt congressionally mandated projects.

Last year, I supported the committee's amendment to the Endangered Species Act to create a committee to deal with conflict situations such as the Tellico project. In lending my support to this concept, I emphasized my view that the committee should give special consideration to the degree of completion of the project involved. I continue to feel that, as the state of completion of the project advances, it is not reasonable or prudent to consider certain alternatives as options in completion of the project. In the case of Tellico, I do not feel that the option to abandon the use of this dam for power and flood control should be considered an option.

I remind my colleagues that, during the last Congress, the reauthorization of the Endangered Species Act which was passed by the House of Representatives contained a specific exemption for the Tellico project. The basis for the House exemption was the advanced state of the project's construction at the time the act's requirements were applied to this project.

I want all of my colleagues here to be aware of the history of the Tellico project. The dam was begun in 1967, 6 years before the Endangered Species Act became law. The snail darter species which has

become such a familiar symbol in these debates, was not discovered in the Little Tennessee River until 1975, 8 years after the project had begun.

I agree with my colleague's observation that perhaps there was, indeed, an effort to discover something in order to stop, slow, or delay this project.

Today, the Tellico project stands 95 percent completed—with more than \$100 million of the public's money spent on the preparation of this dam and reservoir. The TVA has successfully transplanted the endangered snail darter to a similar habitat in the Hiwassee River. I might say parenthetically, Mr. President, that I have heard from a number of friends and farmers in the eastern part of Tennessee that there are snail darters of a similar variety in creeks all around.

And the project continues to have the support of the local area residents who originally gave up their land to the TVA for the benefit of the project.

Mr. President, I have supported the continuation of this project since coming to the Senate more than 2 years ago. I have also supported continuation of the beneficial aspects of the Endangered Species Act. I ask my colleagues to consider the factors I have outlined today in voting for Senator Baker's amendment. It is crucial that we get beyond this confrontation by providing an exemption for the Tellico project to stop this retroactive application of the Endangered Species Act.

Mr. BAKER. Mr. President, will the Senator yield to me long enough to ask for the yeas and nays?

Mr. SASSER. I yield to my distinguished senior colleague.

Mr. BAKER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SASSER. Mr. President, as a matter of fact, polls taken in the local area indicate that some 90 percent of the local residents support the Tellico Dam project.

I want to reaffirm what my colleague said with regard to the actions of the Endangered Species Committee. I was shocked, quite frankly, to read in the newspaper that this Commission took upon itself the responsibility of denying completion of this project, not based on the Endangered Species Act or not based on a species being endangered by the completion of the project, but rather, it denied continuation and completion of this project based on the theory that the cost-benefit ratio, as I understand it, was not satisfactory; that the project was not economically sound. Mr. President, I thought that those were decisions that we made here in Congress.

I strongly support my senior colleague's efforts to seek an exemption to the Endangered Species Act for the Tellico project.

I might say Mr. President, that I fully support the Endangered Species Act, and I intend to support it today. But I think we must also be governed by a rule of reason. This project was already started and underway well before the passage of the Endangered Species Act. As to the fact that the project is 95 percent completed, I think reason compels that we go forward with the ultimate completion.

Mr. HELMS. Will the Senator yield to me for just a minute?

Mr. SASSER. I yield to the Senator from North Carolina.

Mr. HELMS. Mr. President, I compliment both Senators from Tennessee. They have a clearly identifiable interest, in the geographical sense, in this matter, but those of us from North Carolina recognize the absolute essentiality of the completion of the Tellico Dam project.

Mr. President, completion of the Tellico Dam project is important for two major reasons.

First, there are significant benefits to derive from its completion. Proposed industrial development could add 7,900 jobs over a period of years to an area in desperate need of employment opportunities to halt its long history of outmigration. The shoreline would provide new desirable homesites and demand for housing, encouraging growth in that industry. In fact, TVA plans project 7,400 new housing units for the area. Other TVA plans call for 10,600 acres of forested lands to be managed on a sustained yield basis and for 2,000 acres of land for agricultural uses.

It is said that these benefits are all present in the TVA alternative river proposal. However, TVA studies have shown that the reservoir alternative includes more residential, industrial and forestry land use than the river alternative. These benefits are important, Mr. President, but crucial is the energy benefit—a benefit not available under the alternative. The average yearly production would be 200 million kilowatt hours of electricity, more electricity than is produced by about one-half of the dams on the TVA system.

This power would be generated by increased waterflow through the existing Fort Loudin turbines—turbines installed years ago with extra capacity in anticipation of the development of the Tellico Dam project. Therefore, this would be clean power utilizing already existing equipment to its fullest. How can we, in this energy resource crisis, refuse to allow TVA to develop such an ideal source?

Mr. President, the second reason the dam completion is important involves the role of the Endangered Species Committee in its decision not to exempt the dam from the Endangered Species Act.

The committee was created to rule on the relative merits of construction projects and endangered species in cases where there is an "irresolvable conflict" between the two. In the case of the Tellico Dam, the endangered species was the snail darter. In reviewing the conflict between the two, the committee apparently did not consider the fact that the snail darter is thriving—according to TVA and the U.S. Fish and Wildlife Service—in at least two other habitats in the State of Tennessee. That should have exempted the Tellico from the act because there is no longer any irresolvable conflict between the project and an endangered species. The committee, however, went on to decide that the dam project, 95 percent complete, should not be completed for economic reasons—even though the "river alternative" will cost more to complete than the dam project and will provide fewer overall benefits and no energy benefit.

Mr. President the committee was not established to rule on economic benefits of public works. When the environmental question was answered, the committee function should have ended.

We cannot allow committee power to expand to the point that it is used to challenge all Federal projects. We should, therefore, remove the Tellico Dam project from Endangered Species Committee jurisdiction in order to establish certain limits on the committee's power, limits intended at the time of its authorization.

Mr. President, I urge that we authorize the completion of this very important project.

Mr. BAKER. Mr. President, if I have any time remaining, I reserve the remainder of it.

The PRESIDING OFFICER. The Senator from Iowa has 15 minutes.

Mr. CURVER. Mr. President, I rise in opposition to the amendment. At the same time, I wish to express my respect for the distinguished Senator from Tennessee (Mr. Baker) for his very dedicated work on our Committee on Environment and Public Works, and also with regard to this issue. I share his expression that he in no way should feel obliged to apologize for what is a very outstanding record in environmental matters.

Nevertheless, Mr. President, I find myself in opposition to this amendment, because I do believe that its enactment would constitute a repudiation of the considered judgment of the Congress when we reauthorized this legislation last year.

The Culver-Baker amendment established a committee to consider those conflicts which were deemed to be irreconcilable after good faith efforts at consultation.

It was necessary to introduce this mechanism to give the act some flexibility.

Mr. President, we also provide in the final stages of the congressional session last October an agreement under which consideration of two projects, the Tellico Dam in Tennessee and the Grayrocks Dam project in Wyoming would be given expedited consideration by this newly established Endangered Species Committee.

Mr. President, this process was set up and constituted, and the reviews took place. In the one instance, with regard to Tellico, it was the unanimous finding by the Endangered Species Committee, 7 to 0, that the project must be stopped. In the Grayrocks decision the committee voted unanimously that the project could continue.

In the case of Grayrocks, it was found that mitigating measures could be taken which would protect the habitat of the endangered whooping crane. The project could go forward once those arrangements were complied with and agreements reached to carry them out.

In the case of Tellico Dam, the vote was unanimous to stop that project and to make other arrangements.

Mr. President, by approving the amendment offered by the distinguished Senator from Tennessee, we would be turning our backs on an equitable solution adopted just last year that is working, as the Senator from Rhode Island (Mr. Chafee), has stated. If we do this, we would immediately find ourselves in the situation where Congress will be petitioned by a proliferation of project applications and problems and be asked to resolve these conflicts through specific legislative action or fiat.

In view of the fact that these conflicts involve enormously complicated issues of fact and science, we set up the committee to provide a general and rational approach to their resolution.

The proper channel for redress on the issues raised by the distinguished Senator from Tennessee are the courts. It is my understanding, in fact, that there is a legal case already presented in a petition filed with the sixth circuit to review the Tellico decision and the issues raised by the Senator from Tennessee.

Mr. President, I have considerably more information on this issue which addresses the allegations about calculating the project cost-benefit ratios.

I think it is important to know that the Endangered Species Committee did take into account Tellico's advanced stage of completion. In fact, in calculating the project's cost-benefit ratio, it used only remaining costs, about 5 percent of total project costs, against the full range of benefits.

I think, Mr. President, that it is interesting to note here the statement by Mr. Charles Schultze, who, as chairman of the Council of Economic Advisers, was a member of the committee. He remarked: "The interesting phenomenon is that here is a project that is 95 percent complete and if one takes just the cost of finishing it against the benefits and does it properly, it doesn't pay, which says something about the original design."

Mr. President, I ask unanimous consent that the remainder of my statement be printed in the Record at this point.

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

The staff report to the Endangered Species Committee, dated January, 1979, set annualized benefits of the Tellico Dam at 652, as compared to annualized costs of 722, for a cost/benefit ratio of -72 . The annual benefits assigned to the river development alternative were 510, as compared with annual costs of 629, for a cost/benefit ratio of -12 . These estimates were concurred in by the staffs of each agency represented on the Endangered Species Committee, including the Corps of Engineers, the Council of Economic Advisors, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the Department of Agriculture, and the Department of the Interior.

In its decision concerning the exemption, the Endangered Species Committee said, "Although both the TVA and staff calculations show somewhat greater net economic benefits for the Tellico project, its total benefits do not clearly outweigh those of the River Development alternative, particularly when unmeasured benefits are also considered." Unmeasured benefits include preservation of archeological, cultural and historic sites; preservation of customary fish and wildlife values; and ecological, aesthetic and scenic values associated with preservation of the small darter.

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

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, in many ways, this amendment is a tribute to the popularity, the influence, the esteem and affection in which the senior Senator from Tennessee is held because, really, it is not a very good amendment. But we are giving it a lot of consideration because of the distinction of the proposer of it.

He argues so eloquently for it that it causes us to ponder a minute just what he has in mind here. But after we look it over, it is a poor amendment, Mr. President, even though great eloquence has been mustered behind it, not only by the senior Senator, but by the junior Senator from Tennessee, as well.

Just taking the amendment on its merits it was mentioned by Senator Sasser that \$116 million has been put into this dam and it seems such a shame to cancel that \$116 million of concrete.

The money is not all in concrete, Mr. President, there are 38,000 acres of land there that they have taken for the project and that will still be there. Actually, only \$22 million has been spent on the dam construction. This is not to slough off and say only \$22 million, but the way we round off in billions of dollars in the Senate, I suppose \$22.5

million is not that significant an amount, not when we think of what damage will be done if we go ahead with this project.

As was pointed out, some of the damage that will be done is the loss of the last major free-flowing stretch of river in eastern Tennessee; the loss of a renowned trout fishery; the loss of over 200—think of it, Mr. President—200 historic and prehistoric sites, including the sacred capital of the Cherokee Nation; and the flooding of this prime agricultural land.

Mr. President, they took 38,000 acres for the dam and reservoir. Sixteen thousand of it is going to be flooded. That is really a shame in this day and age when we are trying to preserve the land that we have.

I would like to refer once again to the statement Senator CURVER made about the finding of the Endangered Species Committee. All seven members voted not to exempt it, even the Representative from Tennessee. He did not even vote to exempt it. All seven were unanimous not to exempt it.

One of the members, Charles Schultze, Chairman of the Council of Economic Advisers, said:

The interesting phenomenon here is that here is a project that is 95 percent complete. And if one takes just the cost of finishing it against the benefits and does it properly it doesn't pay.

In other words, the cost-ratio, just with the 5 percent left of the dam's construction does not even justify finishing this dam.

As Mr. Schultze concluded, this says a good deal about the original design of the whole project.

So, Mr. President, despite the affection and esteem and admiration we all have for the sponsor of the amendment, despite the fact of his eloquence, it seems to me the amendment should be defeated, not only on its merits, but also because it sets a very bad precedent.

Any time anybody loses before the Endangered Species Committee on a project, are they going to then come before the Congress and ask us to reverse it?

I do not think that is the way we want to do these things. This is a good Endangered Species Committee. The Senate and House both voted for it. It has passed. It has rather broad representation. It has a representative from the State or States most directly affected. It has a representative from the Department of the Interior, Department of Agriculture, Department of Army, Department of Commerce, EPA, and the Council of Economic Advisers. No one can say they are all tilted toward the environment. I do not think the credentials of the Chairman of the Council of Economic Advisers has much to do with the environment, but he is there to look at one of the key points, which is this: Do the benefits of the project clearly outweigh the benefits of alternative courses of action?

So, Mr. President, for those reasons, I strongly urge that the amendment not be accepted.

Mr. SCHMITT. Mr. President, this matter has not been determined finally, or we would not be here today.

I never was particularly happy with the committee arrangement to make a decision Congress should have been able to make a year ago. Nevertheless, today we are faced with the issue again, and I must say that it is a small piece of a larger issue, the issue of survival, survival

of this country, in the face of impending threats from abroad to our energy supplies and impending threats to our economic development.

No one dam, Tello or otherwise, is necessarily going to be the straw that breaks our back; but the accumulation of nondecisions that this country is now making with respect to energy development, with respect to the development of our natural resources, are the kinds of decisions that will break our back.

Unfortunately, that may happen, unless we are willing to act with dispatch and decision on matters such as this.

The danger we face is the danger of the hand-wringers, the danger of the nay-sayers, the people who do not believe this country can protect its environment simultaneously with moving into the future aggressively and with the knowledge, with the very clear knowledge, that if we do not survive, the ideals this country represents will not survive.

That is a fairly broad basis upon which to argue for one dam and, in a sense, to argue against a certain endangered species. But I feel very strongly that this country must realize that the challenge is not to preserve any one environmental situation, but the challenge is to find a way to maximize environmental protection for preservation at the same time that we are maximizing our ability to survive in this world. It is going to be represented by individual decisions such as this, and I hope the Senate will support the distinguished Senators from Tennessee, a State for which I have great affection and in which I have very deep roots.

The PRESIDING OFFICER. Who yields time?

Mr. CURVER. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Iowa has 9 minutes on the amendment.

Mr. CURVER. Is there any time remaining on the other side?

The PRESIDING OFFICER. One minute on the other side.

Mr. CURVER. Are they prepared to yield back the time on the other side?

Mr. President, on my time, I point out to the Members of the Senate that this amendment was defeated in the Committee on Environment and Public Works by a vote of 10 to 3 against the amendment. I yield to the distinguished Senator from Rhode Island.

Mr. CHAFFER. Mr. President, there is no question that the distinguished sponsor of this amendment has one of the finest records in the Senate for concern and support for the environment. I refer particularly to his efforts in connection with the Clean Water Act as well as the whole history of environmental protection matters. He pointed out in his statement—and I should like to corroborate that statement and support it—that few people in the Senate have a finer environmental record than the distinguished senior Senator from Tennessee.

The PRESIDING OFFICER. Who yields time? The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.
Mr. CURVER. Mr. President, I yield back the remainder of my time on the amendment.

Mr. SCHMITT. Mr. President, on behalf of the distinguished Senator from Tennessee, I yield back the 1 minute remaining on the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Tennessee. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.
Mr. CHANNON. I announce that the Senator from Hawaii (Mr. Inouye), the Senator from South Dakota (Mr. McGovern), and the Senator from Montana (Mr. Baucus) are necessarily absent.

I further announce that the Senator from Nevada (Mr. Cannon) is absent on official business.

Mr. STEVENS. I announce that the Senator from Wyoming (Mr. Simpson) is necessarily absent.

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

The PRESIDING OFFICER (Mr. Stewart). Are there any Senators in the Chamber wishing to vote?

The result was announced—yeas 43, nays 52, as follows:

[Rollcall Vote No. 128 Leg.]

YEAS—43

- | | | |
|---------------------|------------|----------|
| Armstrong | Heflin | Nunn |
| Baker | Helms | Pryor |
| Bellmon | Hollings | Sasser |
| Boren | Huddleston | Schmitt |
| Bumpers | Humphrey | Schultz |
| Burdick | Jackson | Stennis |
| Byrd, Harry F., Jr. | Javits | Stevens |
| Byrd, Robert C. | Jepsen | Stewart |
| Cochran | Johnston | Thamonde |
| Ford | Kassabum | Thurmond |
| Garn | Laxalt | Tower |
| Glenn | Long | Warner |
| Goldwater | Lugar | Younge |
| Hatch | McClure | |
| Hayakawa | Morgan | |

NAYS—52

- | | | |
|-------------|------------|-----------|
| Bayh | Exon | Percy |
| Benjamin | Gravel | Pressler |
| Biden | Hart | Proxmire |
| Boschwitz | Haidfield | Randolph |
| Bradley | Heinz | Ribicoff |
| Chafee | Kennedy | Riegle |
| Chiles | Leahy | Roche |
| Church | Levin | Sarbanes |
| Cohen | Magnuson | Stafford |
| Cranston | Mathias | Stevenson |
| Culver | Matsunaga | Stone |
| Danforth | Melcher | Tsongas |
| DeConcini | Metzenbaum | Wallop |
| Dole | Moyrillan | Welcker |
| Donnell | Muskie | Williams |
| Durenberger | Nelson | Zorlasky |
| Durkin | Packwood | |
| Magleton | Pell | |

NOT VOTING—5

- | | | |
|--------|----------|---------|
| Baucus | Inouye | Simpson |
| Cannon | McGovern | |

So Mr. Baker's amendment (No. 249) was rejected.

Mr. CULVER. Mr. President, the distinguished chairman of the full committee, the senior Senator from West Virginia, would like to speak on the bill.

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

Mr. RANDOLPH. Mr. President, a little more than 2 years ago the reorganization resolution which restructured the committees in the Senate assigned several new subjects to the Committee on Environment and Public Works. One was fish and wildlife, another was nuclear regulation, and a third was endangered species.

Mr. President, the reauthorization of the Endangered Species Act has had very careful and continued study by the members of the Committee on Environment and Public Works.

There are 14 members of our committee. We have not had any surfacing of a political consideration of whatever the matter before our committee, from the standpoint of the Democratic or Republican parties within the committee. I express a very special appreciation to Senator Baker who is intensely interested in this bill, and who has presented an amendment in the committee and now again in the Senate.

But the tribute to Senate Baker, the minority leader of the Senate, expressed by Senator Chafee is one that is not just a pleasantry. It is one which, upon the facts of the Senator from Tennessee's record, is factual in every sense of the word.

Even though I could not support the amendment in committee or in the Senate, I join in my esteem, personal and official, for the integrity and the understanding of the able Senator from Tennessee, the floor leader of those who sit on the other side of the aisle.

Now, on the specific legislation which is before us, the Senator from Iowa (Mr. Culver) is effective and knowledgeable. He is always forceful in his presentation and in complex command of the subject matter. I consider him cooperative in the committee's work generally, but I have admired the tenacity with which he has pursued the issues in which he believes.

One of his leadership traits is to follow through, and he has done that in the presentation of this bill and in the hearings that were conducted by him and other members of the subcommittee. Senator Culver has guided the development of this legislation that, I think, provides a balanced and a workable approach in this important field. Senator Chafee is the minority floor manager on this bill, and we know him within the committee and the subcommittee on which he serves as a member who is very careful and does his homework long before he comes into the Chamber or into the committee or subcommittee when we are considering matters of importance.

This is true of the membership of the committee as a whole, all 14 members. I do not stand here in the Senate today just to speak well of my colleagues with whom I am privileged to work on that committee, but I do say that it is a committee with a massive amount of legislative concern. Legislation is before us dealing with a wide range of subject matter, and it is a committee in which the members work very diligently. The results, I think, when measures are brought to the Chamber, cause respect, although not always, and understandably so, unanimous support of the Members of the Senate.

Mr. President, turning to the bill itself, we are considering the reauthorization of the Endangered Species Act, S. 1143. In the last 2 years this act has been given serious and careful consideration by the members of the Senate Committee on Environment and Public Works, and by the Senate as a whole. It has been the subject of long hearings, extensive debate, and considerable amendment. As a result, the act's shortcomings have been eliminated at the same time the act has been left strong and viable for the protection of endangered species.

The Endangered Species Act recognizes that it is in man's own interest to protect endangered species and their genetic materials intact for generations to come. However, the act is also flexible enough to permit balancing the benefits of protecting species against other legitimate national goals such as energy, agricultural, and water development.

Flexibility was one of the positive additions to the Endangered Species Act provided by the last Congress. A seven-member Endangered Species Committee, composed of the Secretaries of Interior, Agriculture, and the Army, the Chairman of the Council of Economic Advisers, the Administrators of the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration and the affected State or States, was created to provide a national mechanism for resolving endangered species conflicts. The committee can exempt a project from compliance with the Endangered Species Act if certain criteria have been met. These criteria require the committee to balance the benefits of alternatives to the project which would also protect the species.

The Endangered Species Committee is working as it was intended. It has met to consider exemptions for two projects and has voted unanimously to exempt one, the Traylor's Dam project in Wyoming, from the provisions of the Endangered Species Act. It also voted unanimously not to exempt the Tellico Dam from the act, stating that the benefits of completing the project do not clearly outweigh the benefits of alternatives which are also consistent with preserving the endangered snail darter.

By avoiding a case-by-case congressional exemption procedure the Endangered Species Committee is providing a balanced approach to resolving endangered species conflicts.

The Endangered Species Act is landmark wildlife legislation. It protects plants and animal species for the enjoyment and benefit of our children and grandchildren in future generations. The bill before the Senate extends this program essentially as it was modified last year. This extension, for a total of 4 years, will provide us with extensive experience upon which any future modifications would be based.

AMENDMENT NO. 250

(Purpose: To require endangered and threatened species to have an economic or aesthetic value)

Mr. BELLMON. Mr. President, I call up an amendment which I have at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be read.

The second assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. Bellmon) proposes an unprinted amendment numbered 250.

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

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

The amendment is as follows:

At the end of the bill, add the following new section:
 Sec. 8. (a) Section 3(6) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1532(6)), is amended by inserting immediately after "means any species which" the following: "the Secretary has determined has an economic or aesthetic value to man and which".

Mr. BELLMON. Mr. President, this is a rather simple amendment, and I would hope that the manager of the bill and the assistant manager could see the merit of the amendment and accept it, though I am not too optimistic at the moment.

I think we are all well aware of the benefit of seeking to preserve the Bengal tiger, the sperm whale, and the whooping crane is a commendable goal of many worried about the extinction of various species on this planet. The preservation of all species may appear to be a virtuous act on its face, but preservation is not always in the best interest of nature or of mankind.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BELLMON. In retrospect, it is the supreme arrogance for man to conclude that the process of creation can be stopped in its tracks. Over the millennia, the Earth has lost many species because of natural selection due to a species' lack of adaptability in a changing environment. The various types of dinosaurs are the best known of these extinct lifeforms. Today, we cannot consider the loss of the dinosaur an extreme tragedy. The decline of these animals cleared the way for the Age of Mammals and eventually to the development of the homo sapiens species. This process continues and man, for all his egotism, cannot halt the orderly development of the universe or even our own planet.

Mr. President, scientists have identified and classified almost 1 million animal species and are discovering new ones each year. In addition, there are known to be more than 350,000 plant species and this number also grows day by day. Of these, 24 plant species are either endangered or threatened while 215 animal species are either endangered or threatened. Plainly, if the process continues to run its present course, the list will grow to paralyzing levels.

The popular trend today is to criticize man's technical progress and blame changes in the environment on man's callousness or thoughtlessness. I support endeavors to clean up our Nation's waterways and the air we breathe. In Oklahoma, we have seen progress that has improved living conditions both for man and for the creatures of the wild. Flood control and water supply dams have created thousands of lakes which have greatly enriched our once harsh environment. Not only man but migratory waterfowl, deer, wild turkey, bob-white quail, many kinds of fish and thousands of other species have benefited through these efforts to improve their environment.

Currently our laws direct protection for all endangered species except insect pests without serious consideration of its present or future

value. The fact is that these are species we can do without. I seriously doubt that the world needs rats or cockleburrs.

Mr. President, the amendment I am offering today would curb our overexuberance. It would suspend the act unless an economic or esthetic value can be shown to accrue from the species under consideration.

At the present time there is no provision for the use of any judgment as to whether or not a species has present or potential value. If it can be shown that the species is endangered, unless it is an insect pest, then those administering the act have no option except to call into play the full force and effect of the act and to conduct the operation of the act accordingly.

So, Mr. President, I feel that this is an essential complement to the act. It will not in any way lessen the ability of the administrators of the act to look after the species which most of us are concerned about, and yet it will make it possible for some of us to use some judgment and to apply the act in the most flexible manner.

Mr. CULVER. Mr. President, I rise in opposition to this amendment by the distinguished Senator from Oklahoma.

Senator Bellmon is introducing an amendment to require, in effect, that economic assessments be made by the Secretary before an endangered species can be listed, and to delegate the power to the Secretary of the Interior to make a subjective judgment as to what particular threatened species or endangered species may or may not possess esthetic value.

We all know that beauty is in the eyes of the beholder; and certainly it conveys an incredibly broad discretionary authority, in this instance, to that one official to make these decisions.

Mr. President, the important fundamental thing to acknowledge about the whole issue of endangered species and the reason for protecting them is that we believe there is a mystery to the design of the universe and to the role in the ecosystem or the biosphere of these various species and their value.

The important thing is that we do not know the value of these species. We do not know the value in terms of their potential scientific importance, their importance to medical research, to fighting diseases, to finding the solution to many of man's problems. How do you do an economic analysis on the esthetic, the cultural, or the scientific benefits of a species? How do you place a price tag on the medical contributions of the foxglove plant, for example, which is now so important in treating heart disease?

What if we had a Secretary of the Interior who said, "This thing is called a foxglove plant. Big deal. It looks like a weed to me." What if we went ahead and let it be destroyed? What about the victims of heart disease in this country who would not have the benefits of scientific and medical advances which have been made possible because we had the wisdom and foresight to protect this plant's continued existence? Who is going to put a price tag on the value of that plant? Someone might say, "It looks like a sinking weed. Let's bulldoze it over."

That would be thought of as progress. Fruit flies are one of the most important keys today in understanding genetic engineering. We

might have a Secretary of the Interior, a political appointee, go out and say, "Fruit flies are pests. Get rid of them all!"

If we get rid of them, we will pay a price. How can we do an economic analysis when that Secretary or, indeed any Member of the Senate, has no appreciation or no understanding at all of the potential scientific or medical value of that species?

Mr. President, what about the armadillo, which is used in leprosy research?

We just heard that it did not matter if one animal or another is not around. We get carried away with the bear or the eagle. In terms of the quality of life of the people on this planet, it may be the most insignificant and the most obnoxious species or life form that holds within it the secrets of medical breakthroughs that can extend life or that can improve the quality of life of our people.

What about sponges? Are sponges in the way? Are they unnecessary? Certain sponges are critically important today for viral research. What if we get a Secretary of the Interior who says, "Give me an economic cost-benefit analysis on whether I ought to list these sponges as endangered species? What is the esthetic value of this sponge? I cannot even find it under the water. I do not think it has any esthetic value," says the Secretary of the Interior who alone will make that objective determination. "And moreover, I do not think it has any real economic value so we ought to get rid of it." Or, he might say, "It has economic value because we have a sponge industry so we will keep it."

Mr. President, the value of plants and of animals is among the mysteries of the universe. Their value to mankind is absolutely incalculable.

Further, and this is important, under last year's amendment offered by the distinguished Senator from Idaho (Mr. McClure), we adopted section 4(b) (4) of this act. That does provide that economic impacts must be considered. When? When we designate critical habitat. That is the key thing. That is when we can start making a judgment as to how much to set aside or not. But if we just do it on the basis of an ad hoc guessimate on an individual species, plant or animal, there is no way we can do it.

Under the act today, economic impacts must be considered when critical habitat is designated. Since critical habitat must be designated "to the maximum extent prudent," when species are listed, the Bellmon amendment is clearly unnecessary.

In summary, it seems to me, Mr. President, that the Senator's concerns are really already covered by the Act. With all due respect for the Senator, and I know the Senator from Oklahoma too well to believe that he could not conceivably appreciate fully the implications of this amendment—and there are few Members of the Senate whom I hold in higher regard than the distinguished Senator from Oklahoma—quite honestly the potential consequences and implications of this amendment, if adopted, are indeed incalculable.

We preserve and set aside habitats for these endangered species because we do not know their value, and it is impossible to set an economic price tag on a species and decide what lives and what dies. As long as we can provide for their continued existence, then science has the opportunity to plumb further the mysteries of this universe. We have also set up a mechanism for the reconciliation in those

few instances—and they are very few—where we have not, through consultation, been able to work out to mutual satisfaction the continued existence of the species and the project. We have had a lot of talk about Tellico. We had some talk last year about the Grayrocks Dam. The fact of the matter is we have had some 4,500 cases, all of which have been resolved through consultation. The projects have been developed, accommodations and alternatives have been considered, and we preserved the species.

The only two conflicts that were not satisfied through consultation were Tellico and Grayrocks. We set up the Endangered Species Committee to take into account economics and a number of other factors. The committee unanimously said Tellico could not go completed. In the case of Grayrocks, the committee said unanimously it could be completed.

Last year's amendments introduced flexibility to the act. We are taking economic impact into account as a result of the amendment we adopted last year. It is being considered in the designation of critical habitat and not by attempting the impossible task of putting an economic or esthetic value on an individual endangered species. I yield to the Senator from Rhode Island.

Mr. BELMONT. Will the Senator yield?

Mr. CHAFFE. I yield.

Mr. BELMONT. I would like to respond briefly to the argument made by the distinguished Senator from Iowa.

The Senator from Iowa is concerned that the Secretary of the Interior should not be authorized by law to make a subjective judgment as to whether or not a plant or an animal species has economic or esthetic value. I would like to call the attention of the Senator to the definition of endangered species as it is in the law now. The law says that any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the class Insecta, determined by the Secretary to constitute a pest.

We already have the Secretary making subjective judgments as far as insects are concerned. The scientific value of research on insects is equally as great, or at least has the same potential, as the research on the plants that the Senator has referred to.

All I am doing in this amendment is extending the right of the Secretary to make the same subjective judgment he is required under law to make on insects, to extend that to plant and animal species. There is nothing different about this except that we are going the second and third step beyond where the act already goes.

I agree with the Senator that there are many plants known to have scientific value, and certainly they should be protected. I doubt that there is any danger that the Secretary would make a judgment on a plant or an animal until the scientific analysis and evaluations were carefully made.

To me, we have a law on the books now that says, for instance, if we found a way to exterminate the rats, we could not do that.

Mr. CHAFFE. Mr. President, in answer to the final point made by the very distinguished Senator from Oklahoma, I point out, as to that class of insect which is covered in this very section of the act which he referred to, that this act does give the Secretary permission to determine that a certain class of insect constitutes a class whose protection under the provisions of this act would present an overwhelming and overrid-

ing risk to man. As I understand it, that very provision was put in there so that, in case the boll weevil were in danger of being exterminated, somebody could not come forward and say, "Well, the boll weevil is an endangered species and we have to protect it."

As we know, there are limitations there. The Secretary cannot just go out and decide some insect should be eliminated; it is an insect whose protection would provide an overwhelming and overriding risk to man. Those same provisions do not cover the point it seems to me the Senator is making in his amendment. Let me point out something specific, if I might.

Under this very act we are considering here today, we are providing funds for the captive breeding of the California condor, of which there are only 40 left in the country. In line with that, let us consider this definition, as proposed by the Senator from Oklahoma, as to what constitutes an endangered species. To be an endangered species, under this amendment, the Secretary would have to determine that the species has an economic or an esthetic value to man. No one would suggest, I think, that the California condor has an economic value to man. It does not. So we cannot list it under that category.

We go then to the question, does it have an esthetic value to man? I just talked to one of our very distinguished colleagues about the condor, not in connection with this amendment, but in general. I said, "Have you ever seen one?" He said, "Yes, I have and it is the ugliest bird you have ever seen. It looks like some kind of buzzard."

Therefore, does the condor qualify as having esthetic value to man? I know this is taking rather an extreme example, but there are many who argue that the condor has neither economic—and I think that is easy, we cannot argue with that—nor does it have an esthetic value to man.

I just think that this amendment proposed by the Senator goes, really, to the very heart of this whole act. I think it goes much farther, I suspect, than the Senator proposed originally, or was thinking about. It seems to me it presents great, great difficulties to the whole Endangered Species Act and the whole theory of preserving some of these very minor, if you want to call them that, animals that do not really affect man very much. I think that if, perhaps in the future, he were worried about the rat, for example, perhaps some kind of special provision could be put in there like the insect provision. But this goes way beyond that.

Mr. President, I strongly urge that the amendment not be accepted. Mr. CUTLER. Mr. President, this amendment would really gut the Endangered Species Act. It does not merely extend the judgment being made for insects. The insects are the only exception given among all species. It is one of the considerations entered into at the time the act was originally passed in 1973, specifically aimed at boll weevils and other insects.

If there were no exceptions for insects, then the Secretary would have no way to stop sudden plagues of insects such as locusts, which may overrun plentiful one year, but, due to a sudden surge of breeding, may overrun croplands the next year. That was the one narrow exception.

The distinguished Senator from Rhode Island has offered additional arguments as to why this particular standard and criterion would be

so unworkable and would have such dangerous implications and consequences for the viability of this legislation and its value to mankind. Mr. BELLMON: Mr. President, I yield back the remainder of my time. Mr. CUTLER: Mr. President, I yield back the remainder of my time. Mr. BELLMON: Mr. President, I yield back the remainder of my time. The PRESIDING OFFICER: All time is yielded back. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRANSTON: I announce that the Senator from Hawaii (Mr. Inouye), the Senator from North Carolina (Mr. Morgan), and the Senator from Mississippi (Mr. Stennis) are necessarily absent.

I further announce that the Senator from Nevada (Mr. Cannon) is absent on official business.

I further announce that, if present and voting, the Senator from North Carolina (Mr. Morgan) would vote "nay."

Mr. STEVENS: I announce that the Senator from Arizona (Mr. Goldwater) and the Senator from Wyoming (Mr. Simpson) are necessarily absent.

The PRESIDING OFFICER: Are there Senators who have not voted who wish to vote on this rollcall?

The result was announced—yeas 14, nays 80, as follows:

[Rollcall Vote No. 129 Leg.]

YEAS—14

Baker	Heflin	Stevens
Bellmon	Helms	Talmadge
Boren	Johnston	Tower
Garn	Laxalt	Young
Hatch	McClure	

NAYS—80

Armstrong	Glenn	Nunn
Baucus	Gravel	Packwood
Bayh	Hart	Pell
Benenson	Hatfield	Percy
Biden	Hayakawa	Pressler
Boschwitz	Heinz	Proxmire
Bradley	Hollings	Pryor
Bumpers	Huddleston	Randolph
Burdick	Humphrey	Ribicoff
Byrd, Harry F., Jr.	Jackson	Riegle
Byrd, Robert C.	Javits	Roth
Chafee	Jepsen	Sarbanes
Chiles	Kassebaum	Sasser
Church	Kennedy	Schmitt
Cochran	Leahy	Schweiker
Cohen	Levin	Stafford
Cranston	Long	Stevenson
Culver	Luft	Stewart
Danforth	Magnuson	Stone
DeConcini	Mathias	Thurmond
Dole	Matsumaga	Tsongas
Donald	McGovern	Waldop
Durenberger	Melcher	Warner
Durkin	Metzenbaum	Weicker
Eagleton	Moyrinhau	Williams
Eixon	Muskie	Zorinski
Ford	Nelson	

NOT VOTING—6

Cannon	Inouye	Simpson
Goldwater	Morgan	Stennis

So Mr. Bellmon's amendment (No. 250) was rejected.

Mr. DORE: Mr. President, the Senator from Kansas supports this measure which will continue to protect and conserve the habitats and lives of the many endangered and threatened species of fish, wildlife, and plants in the United States.

Since its passage in 1973, the Endangered Species Act has provided the Nation with a comprehensive program for conservation of the endangered or threatened species of fish and wildlife living in the United States. It is estimated that there are between 3 and 10 million species of plants and animals in the world and today about 1,000 birds and mammals face a serious threat of extinction. Adding to this threat, over 200 species of wildlife in the United States alone are now listed as endangered. Among this list lies the symbol of America—the American bald eagle.

ENDANGERED SPECIES IN KANSAS

The loss to the environment of any species of animal cannot easily be calculated. The disappearance of a species can upset the entire ecosystem of the area, causing deterioration of the water quality and land compositions. Included in this Nation's endangered list is the American crocodile, the whooping crane, the ivory billed woodpecker, the California condor, and the black-footed ferret, which has established habitat in western Kansas.

The Senator from Kansas believes that the continuation of this measure will serve as the vanguard in prevention against other species entering onto the endangered or threatened lists of the future. In the State of Kansas lies one of the largest habitats for the prairie chicken. Because of these vast plains, located near the Flint Hills, Kansas is now one of the few States in the United States to allow the hunting of this animal. In addition, the cave areas near Galena, Kans., provide the habitat for an endangered salamander population and the Neosho River of Kansas provides the breeding grounds and habitat for the mineral catfish species known as the Mad Tom fish.

Another endangered fish species in Kansas, named after the city in which he exists, is the Topeka shiner. Of particular significance today is the future of the black-footed ferret, who is known to have a large habitat in western Kansas. This animal has been called the American weasel and to date, the residents of western Kansas have been unable to sight the mammal for several years. What is feared in Kansas, and nationwide, is the complete disappearance of this creature and the loss to the environment and mankind that will result.

NEED FOR ENVIRONMENTAL BALANCE

Mr. President, this Nation needs an environmental balance as much as an economic balance. The Endangered Species Act will provide the mechanisms to work for this balance and prevent the addition of species to the lists of endangered and hopefully halt the rate at which extinction has grown.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CURVER. Third reading, Mr. President.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

The PRESIDING OFFICER. Do the Senators managing the bill yield back their time?

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

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

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

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. Inouye) and the Senator from North Carolina (Mr. Morgan), are necessarily absent.

I further announce that the Senator from Nevada (Mr. Cannon), is absent on official business.

I further announce that, if present and voting, the Senator from North Carolina (Mr. Morgan) and the Senator from Nevada (Mr. Cannon) would each vote "yea."

Mr. SEEVERS. I announce that the Senator from Wyoming (Mr. Simpson) is necessarily absent.

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

The PRESIDING OFFICER (Mr. Bradley). Are there any Senators in the Chamber desiring to vote who have not done so?

The result was announced—yeas 91, nays 5, as follows:

[Rollcall Votes No. 130 Leg.]

YEAS—91

Armstrong	DeConcini	Johnston
Baker	Dole	Kassebaum
Baucus	Domestic	Kennedy
Bayh	Durenberger	Leahy
Belmont	Durkin	Long
Benken	Eagleton	Lugar
Biden	Eron	Magnum
Boren	Ford	Mathias
Boschwitz	Glenn	Matunaga
Bradley	Goldwater	McClure
Bumpers	Gravel	McGovern
Burdick	Hart	Melcher
Byrd, Harry F., Jr.	Hatch	Metzenbaum
Byrd, Robert C.	Hayakawa	Mohr
Chafee	Hein	Movslian
Chiles	Helms	Muskie
Church	Helms	Nunn
Cochran	Hollings	Packwood
Cohen	Huddleston	Pell
Cranston	Jackson	Perry
Culver	Javits	Presler
Danforth	Jepson	

YEAS—Continued

Proxmire	Schwelker	Tsongas
Pryor	Stafford	Wallop
Randolph	Stevens	Warner
Ribicoff	Stevenson	Wicker
Riegle	Stewart	Williams
Roth	Stone	Young
Sarbanes	Talmadge	Zoritsky
Sasser	Thurmond	
Schmitt	Tower	

NAYS—5

Garn	Humphrey	Stennis
Hatch	Laxalt	
	Nor	
	VOTING—4	
Cannon	Morgan	
Inouye	Simpson	

So the bill (S. 1143), as amended, was passed, as follows:

S. 1143

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7(g) of the Endangered Species Act of 1973 is amended by striking, "not to exceed \$600,000 for fiscal year 1979, and not to exceed \$800,000 for the period beginning October 1, 1979, and ending March 31, 1980," and inserting in lieu thereof, "not to exceed \$600,000 for each of the fiscal years 1979, 1980, 1981, and 1982";

Sec. 2. Section 15 of such Act is amended to read as follows:

"Sec. 15. (a) Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

(1) not to exceed \$23,000,000 for the fiscal years 1979 and 1980; not to exceed \$25,000,000 for fiscal year 1981; and not to exceed \$27,000,000 for fiscal year 1982 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act;

(2) not to exceed \$2,500,000 for the fiscal years 1979 and 1980; not to exceed \$3,000,000 for fiscal year 1981; and not to exceed \$3,500,000 for fiscal year 1982 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

(b) There are authorized to be appropriated, beginning October 1, 1979, not to exceed \$500,000 for the Department of the Interior to implement the recovery program for the California condor, which sum shall be available until expended."

Sec. 3. (a) Section 3(11) is amended by striking "would (A) jeopardize" and inserting in lieu thereof "is likely to (A) jeopardize";

(b) Section 7(g) (1) is amended by striking "would (A) jeopardize" and inserting in lieu thereof "is likely to (A) jeopardize";

Sec. 4. (a) Section 4(f) (2) (C) (ii) is amended by striking "120-day period" each time it appears and inserting in lieu thereof "one-year period";

(b) Such section is further amended by adding at the end thereof the following new sentence: "If at any time after issuing an emergency regulation the Secretary determines on the basis of the best scientific and commercial data that substantial evidence does not exist to warrant such regulation, he shall withdraw it."

Sec. 5. (a) Section 7(c) is amended by adding at the end thereof the following new sentence: "If an exemption applicant desires to seek a permanent exemption pursuant to subsection (1) (2) of this section, he may conduct a biological assessment pursuant to this subsection."

(b) The first sentence of section 7(h) (2) (B) is amended to read as follows: "Secretary finds based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation or identified in a biological assessment prior to or in conjunction with the Committee's consideration of such exemption."

(B) An exemption shall not be permanent under subparagraph (A) if the Secretary finds based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation or identified in a biological assessment prior to or in conjunction with the Committee's consideration of such exemption."

96th Congress } HOUSE OF REPRESENTATIVES
1st Session }

Report
No. 96-697

ENDANGERED SPECIES ACT AMENDMENTS

DECEMBER 11, 1979.—Ordered to be printed

Mr. MURPHY of New York, from the committee of conference, submitted
the following

CONFERENCE REPORT

[To accompany S. 1143]

Sec. 6. (a) Section 7(a), 7(b), 7(c), and 7(d) are amended by striking "any endangered or threatened species" wherever it occurs and inserting in lieu thereof "any listed or proposed endangered or threatened species".

(b) Section 4(1) is amended by adding a new paragraph (6) to read as follows:

"(6) Notwithstanding the requirements of subsection 4(b)(4) and of paragraph (1) through (5) of this subsection, if the Secretary determines pursuant to section 7 that an agency action is likely to jeopardize the existence of an endangered species or threatened species proposed pursuant to this section, or adversely modify the proposed critical habitat of such species, the Secretary shall within 90 days of such determination either publish in the Federal Register a final regulation adding such species or critical habitat to the list published pursuant to subsection (c) of this section, or withdraw the regulation proposing such listing."

Sec. 7. Section 7(g)(2)(A) is amended by striking "not later than 90 days after the completion of the consultation process," and inserting in lieu thereof, "not later than 90 days after the completion of the consultation process, or, in the case of a permit or license applicant, not later than 90 days after final agency action has been taken on the permit or license application."

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1143) to extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes, 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 to the text of the bill 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 2(a)(5) of the Endangered Species Act of 1973 (16 U.S.C. 1531(a)(5)) is amended by striking out "fish and wildlife," and inserting in lieu thereof "fish, wildlife, and plants."

Sec. 2. Section 3(11) of the Endangered Species Act of 1973 (16 U.S.C. 1532(11)) is amended by striking out "(A)" and all that follows thereafter and inserting in lieu thereof "violate section 7(a)(2)."

Sec. 3. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by amending subsection (b)(1) by striking out "him" and inserting in lieu thereof the following: "him after conducting a review of the status of the species";

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

"(i) not less than 60 days before the effective date of the regulation, shall publish—