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CONSERVATION, PROTECTION, AND PROPAGATION OF
ENDANGERED SPECIES OF FISH AND WILDLIFE

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HEARING

BEFORE THE

MERCHANT MARINE AND FISHERIES
SUBCOMMITTEE

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

S. 2217

A BILL TO PROVIDE FOR THE CONSERVATION, PROTECTION,
AND PROPAGATION OF NATIVE SPECIES OF FISH AND WILD-
LIFE, INCLUDING MIGRATORY BIRDS, THAT ARE THREAT-
ENED WITH EXTINCTION; TO CONSOLIDATE THE AUTHOR-
ITIES RELATING TO THE ADMINISTRATION BY THE SECRE-
TARY OF THE INTERIOR OF THE NATIONAL WILDLIFE
REFUGE SYSTEM; AND FOR OTHER PURPOSES

AUGUST 12, 1965

Serial 89-44

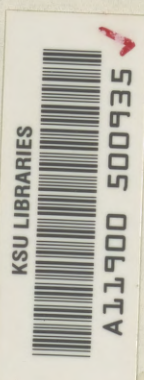
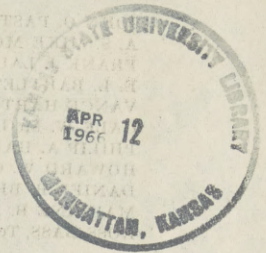
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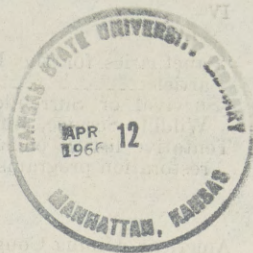
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Serial 89-44





CONTENTS

	Page
Text of S. 2217.....	1
Agency comments:	
Comptroller General of the United States dated August 17, 1965.....	14
Department of Agriculture dated July 15, 1965.....	13
Department of the Interior dated June 5, 1965, and December 1, 1965.....	4
Department of Justice dated July 15, 1965.....	14
Department of State dated July 19, 1965.....	13

ALPHABETICAL LIST OF WITNESSES

Statement of—	
Carver, Hon. John A., Jr., Under Secretary of the Interior, Department of the Interior, Washington, D.C.....	18
Finnegan, David, Legislative Counsel, Department of the Interior, Washington, D.C.....	18
Johns, Willard T., Assistant Chief, Conservation Education, Wildlife Management Institute, 709 Wire Building, Washington, D.C.....	36
Parker, Lansing, Associate Director, Bureau of Sport Fisheries and Wildlife, Department of the Interior, Washington, D.C.....	18

STATEMENTS SUBMITTED FOR THE RECORD

Callison, Charles H., assistant to the president, National Audubon Society, 1130 Fifth Avenue, New York, N.Y.....	37
Gruening, Hon. Ernest, U.S. Senate, Washington, D.C.....	15
Harris, Mary Hazel, executive secretary, Defenders of Wildlife, Inc., 809 Dupont Circle Building, Washington, D.C.....	59
Kimball, Thomas L., executive director, National Wildlife Federation, 1412 16th Street NW., Washington, D.C.....	36
Poole, Daniel A., secretary, Wildlife Management Institute, Wire Building, Washington, D.C.....	40
Stroud, R. H., executive vice president, Sport Fishing Institute, Bond Building, Washington, D.C.....	65

LETTERS, TELEGRAMS, AND ARTICLES SUBMITTED FOR THE RECORD

Cain, Hon. Stanley A., Assistant Secretary of the Interior, letter dated September 7, 1965.....	31
Douglas, Philip A., executive secretary, Sport Fishing Institute, Bond Building, Washington, D.C., letter.....	62
Edminston, Beula, 5502 Markland Drive, Los Angeles, Calif., letter.....	52
Gray, W. Howard, chairman, Public Lands Committee, American Mining Congress, Ring Building, Washington, D.C., letter.....	60
Gutermuth, C. R., vice president, Wildlife Management Institute, Wire Building, Washington, D.C., letter.....	53
Legislative analysis, Public Land Law Review Commission Act.....	63
Levy, Seymour H., secretary, Tucson Wildlife Unlimited, Sportsmen's Club, Route 9, Box 960, Tucson, Ariz., letter.....	63
Olson, Wayne K., Chairman, Legislative Committee, International Association of Game, Fish & Conservation Commissioners, Centennial Building, St. Paul, Minn., telegrams.....	51
Perry Loran E., wildlife chairman, Desert Protective Council, Post Office Box 33, Banning, Calif., letter.....	61

"Sanctuaries for the Protection of Rare Species," by Gerhard Bakker, article.....	Page 53
"Survival or Surrender," U.S. Department of the Interior, Fish and Wildlife Service, Bureau of Sport Fisheries and Wildlife, article.....	43
Tentative list of endangered species being considered as candidates for restoration programs.....	27

INDEX OF ORGANIZATIONS

American Mining Congress.....	60
Comptroller General.....	14
Department of Agriculture.....	13
Department of Justice.....	14
Department of the Interior.....	18
Department of State.....	13
Desert Protective Council.....	61
International Association of Game, Fish & Conservation Commissioners.....	51
National Audubon Society.....	37
National Wildlife Federation.....	36
Sport Fishing Institute.....	65
Tucson Wildlife Unlimited, Sportsmen's Club.....	63
Wildlife Management Institute.....	36, 53

STATEMENTS SUBMITTED FOR THE RECORD

California Charles H. ... National Audubon Society.....	37
George W. Howard ... National Wildlife Federation.....	15
George W. Howard ... National Wildlife Federation.....	30
George W. Howard ... National Wildlife Federation.....	36
George W. Howard ... National Wildlife Federation.....	40
George W. Howard ... National Wildlife Federation.....	52

LETTERS, TELEGRAMS AND ARTICLES SUBMITTED FOR THE RECORD

George W. Howard ... National Wildlife Federation.....	31
George W. Howard ... National Wildlife Federation.....	53
George W. Howard ... National Wildlife Federation.....	50
George W. Howard ... National Wildlife Federation.....	53
George W. Howard ... National Wildlife Federation.....	53
George W. Howard ... National Wildlife Federation.....	53
George W. Howard ... National Wildlife Federation.....	51
George W. Howard ... National Wildlife Federation.....	51

CONSERVATION OF FISH AND WILDLIFE

CONSERVATION, PROTECTION, AND PROPAGATION OF ENDANGERED SPECIES OF FISH AND WILDLIFE

THURSDAY, AUGUST 12, 1965

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met in room 5110, New Senate Office Building, at 10 a.m., the Honorable Peter H. Dominick presiding.

Senator DOMINICK. The Subcommittee on Merchant Marine and Fisheries will come to order.

I regret to say at the start that unfortunately I won't be able to be here after about 11. I don't know whether any other member of the committee is going to be here or not to keep going. We will move as fast as we can in the time that we have available.

We will start with S. 2217, which is a bill to provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the national wildlife refuge system; and for other purposes.

(The bill follows:)

[S. 2217, 89th Cong., 1st sess.]

A BILL To provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the national wildlife refuge system; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress finds and declares that one of the unfortunate consequences of economic growth in the United States has been the extermination of some native species of fish and wildlife; that serious losses in other species of native wild animals with educational, historical, recreational and scientific value have occurred and are occurring; and that the United States has an obligation pursuant to international agreements, such as the migratory bird treaties and the Inter-American Treaty on Nature Protection and Wildlife Preservation, 1940, with Canada and Mexico and other countries to conserve and protect, where practicable, the various species of native fish and wildlife, including game and nongame migratory birds, that are threatened with extinction. The purposes of this Act are to provide a program for the conservation, protection, restoration, and propagation of selected species of native fish and wildlife, including migratory birds, that are threatened with extinction, and to consolidate, restate, and modify the present authorities relating to administration by the Secretary of the Interior of the national wildlife refuge system.

(b) A species or subspecies of native fish and wildlife shall be regarded as threatened with extinction whenever the Secretary of the Interior finds, after consultation with the States, that its existence is endangered because its habitat is threatened with destruction, drastic modification, or severe curtailment, or

Professional staff member assigned to this hearing: Harry C. Huse.

because of overexploitation, disease, predation, or because of other factors, and that its survival requires assistance.

SEC. 2. (a) The Secretary of the Interior shall utilize the land acquisition and other authorities of the Migratory Bird Conservation Act, as amended, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act to carry out a program in the United States of conserving, protecting, restoring, and propagating selected species of native fish and wildlife that are threatened with extinction.

(b) In addition to the land acquisition authorities in such Acts, the Secretary is hereby authorized to acquire by purchase, donation, or otherwise, lands or interests therein needed to carry out the purpose of this Act relating to the conservation, protection, restoration, and propagation of selected species of native fish that are threatened with extinction.

(c) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) may be used for the purpose of acquiring lands, waters, or interests therein pursuant to this section that are needed for the purpose of conserving, protecting, restoring, and propagating selected species of native fish and wildlife, including migratory birds, that are threatened with extinction.

(d) The Secretary shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purpose of this Act. The Secretary shall also encourage other Federal agencies to utilize, where practicable, their authorities in furtherance of the purpose of this Act.

SEC. 3. In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the several States and he may enter into agreements with the States for the administration and management of any area established under this program for the conservation, protection, restoration, and propagation of threatened species of native fish and wildlife. Any revenues derived from the administration of such areas under these agreements will continue to be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s).

SEC. 4. (a) For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas are hereby designated as the "national wildlife refuge system" (referred to herein as the "system"), which shall be subject to the provisions of this section. Nothing contained in this Act shall restrict the authority of the Secretary to modify or revoke public land withdrawals affecting lands in the system as presently constituted, or as it may be constituted, whenever he determines that such action is consistent with the public interest.

(b) In administering the system, the Secretary is authorized—

(1) to enter into contracts with any person or public or private agency through negotiation for the provision of public accommodations,

(2) to accept donations of funds and to use such funds to acquire or manage lands or interests therein, and

(3) to acquire lands or interests therein by exchange (a) for acquired lands or public lands under his jurisdiction which he finds suitable for disposition, or (b) for the right to remove, in accordance with such terms and conditions as the Secretary may prescribe, products from the acquired or public lands within the system: *Provided*, That the lands or interests therein so exchanged shall involve approximately equal values, as determined by the Secretary: *Provided further*, That the Secretary may accept cash from, or pay cash to, the grantor in an exchange in order to equalize the values of the properties exchanged.

(c) No person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States, including natural growth, in any area of the system; or take or possess any fish, bird, mammal, or other wild vertebrate animals or part or nest or egg thereof within any such area; or enter, use, or otherwise occupy any such area for any purpose; unless such activities are performed by persons authorized to manage such area, or unless such activities are permitted either under subsection (d) of this section or by express provision of the law, proclamation, Executive order, or public land order establishing the area, or amendment thereof: *Provided*, That the United

States mining and mineral leasing laws shall continue to apply to any lands within the system to the same extent they apply prior to the effective date of this Act unless subsequently withdrawn under other authority of law: *Providing further*, That any mining claim affecting lands within the system hereafter perfected under the United States mining laws, and any patent issued for such claim, shall convey title only to the mineral deposits and shall confer upon the holder of the claim only such rights to the use of the surface and surface resources as are reasonably required for carrying on prospecting or mining, subject to such regulations as may be prescribed by the Secretary of the Interior; and the patent for any such mining claim hereafter perfected shall reserve to the United States all title to the surface of the claim and the products of the surface, subject only to the patentee's rights to use the surface of the claim and the surface resources to the extent reasonably required for carrying on prospecting and mining consistent with such regulations as may be prescribed by the Secretary.

(d) The Secretary is authorized, under such regulations as he may prescribe, to—

(1) permit the use of any area within the system for any purpose, including, but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established: *Provided*, That not to exceed 40 per centum at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe; and

(2) permit the use of, or grant easements in, over, across, upon, through, or under any area within the system for purposes such as, but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that such uses are compatible with the purposes for which these areas are established or, if incompatible, are otherwise in the public interest.

(c) Any person who violates or fails to comply with any of the provisions of this Act or any regulations issued thereunder, shall be fined not more than \$500 or be imprisoned not more than six months, or both.

(f) Any person authorized by the Secretary of the Interior to enforce the provisions of this Act or any regulations issued thereunder, may, without a warrant, arrest any person violating this Act or regulations in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations, and may with a search warrant search for and seize any property, fish, bird, mammal, or other wild vertebrate animals or part or nest or egg thereof, taken or possessed in violation of this Act or the regulations issued thereunder. Any property, fish, bird, mammal, or other wild vertebrate animals or part or egg thereof seized with or without a search warrant shall be held by such person or by a United States marshal, and upon conviction, shall be forfeited to the United States and disposed of by the court.

(g) Regulations applicable to areas of the system that are in effect on the date of enactment of this Act shall continue in effect until modified or rescinded.

SEC. 5. (a) The term "person" as used in this Act means any individual, partnership, corporation, or association.

(b) The terms "take" or "taking" or "taken" as used in this Act mean to pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill.

(c) The terms "State" and the "United States" as used in this Act mean the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

SEC. 6. Section 4(b) of the Act of March 16, 1934 (48 Stat. 451), as amended (16 U.S.C. 718d(b)), is further amended by changing the colon after the word "areas" to a period and striking the provisos which relate to hunting at certain wildlife refuges and which are now covered by section 4 of this Act.

SEC. 7. (a) Sections 4 and 12 of the Migratory Bird Conservation Act (45 Stat. 1222), as amended (16 U.S.C. 715c and 715k), are further amended by deleting the word "game" wherever it appears.

(b) Section 10 of the Migratory Bird Conservation Act (45 Stat. 1224), as amended (16 U.S.C. 715i), which relates to the administration of certain wildlife refuges, is amended to read as follows:

"SEC. 10. (a) Areas of lands, waters, or interests therein acquired or reserved pursuant to this Act shall, unless otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico and Canada, and other species of wildlife found thereon, including species that are threatened with extinction, and to restore or develop adequate wildlife habitat.

"(b) In administering such areas, the Secretary is authorized to manage timber, range, and agricultural crops; to manage other species of animals, including but not limited to fenced range animals, with the objectives of perpetuating, distributing, and utilizing the resources; and to enter into agreements with public and private agencies.

(c) Section 11 of the Migratory Conservation Act (45 Stat. 1224; 16 U.S.C. 715j) is amended by striking the period at the end thereof and adding the following:

"(39 Stat. 1702) and the treaty between the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936 (50 Stat. 1311)."

(d) Sections 13 and 14 of the Migratory Bird Conservation Act (45 Stat. 1225), as amended (16 U.S.C. 715l and 715m), which provide for the enforcement of said Act and for penalties for violations thereof and which are covered by section 4 of this Act, are repealed.

SEC. 8. (a) Sections 302 and 303 of title III of the Act of June 15, 1935 (49 Stat. 382), as amended (16 U.S.C. 715d-1 and 715d-2), which authorize exchanges at wildlife refuges and which are covered by section 4 of this Act, are repealed.

(b) The last sentence of section 401(a) of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s), is amended by inserting after the term "wildlife refuges", the following: "lands acquired or reserved for the protection and conservation of fish and wildlife that are threatened with extinction,".

Senator DOMINICK. I offer for the record a copy of a letter, June 5, 1965, from Stewart L. Udall, Secretary of the Interior to the Honorable Hubert H. Humphrey, President of the Senate, requesting this legislation, a copy of the bill, S. 2217, together with a section-by-section analysis of the bill.

I also place in the record a report from the Department of Agriculture in which they say that they recognize the desirability of the purposes of S. 2217 and would have no objection to its enactment.

Also, a report from the Department of State stating that they would interpose no objection to the proposed bill and a letter from the Department of Justice in which they say that they defer to the views of the Department of the Interior.

(A statement by Senator Ernest Gruening and a report from the Comptroller General follow:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 5, 1965.

HON. HUBERT H. HUMPHREY,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill to provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the national wildlife refuge system; and for other purposes. Also, enclosed is a section-by-section analysis of the bill.

We recommend that this bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

The principal objective of this proposed legislation is to authorize and direct the Secretary of the Interior to initiate and carry out a comprehensive program to conserve, protect, restore, and, where necessary to establish wild populations, propagate selected species of native fish and wildlife, including game and nongame migratory birds, that are found to be threatened with extinction. These include various species and subspecies of mammals, birds, fish, and other vertebrate animals that have very small populations and that could be quickly wiped out by adverse changes in environmental factors or by man.

A secondary objective of the proposed bill is to consolidate, and, in some cases, expand the authorities of the Secretary relating to the management and administration of the national wildlife refuge system and to provide sanctions and enforcement provisions designed to protect the needs of fish and wildlife conservation in all areas of the system, including areas acquired or reserved for endangered—that is, threatened with extinction—species of fish and wildlife, and to permit other compatible uses through secretarial regulations.

In addition, the bill amends the Migratory Bird Conservation Act for the principal purpose, among others, of removing an ambiguity in the act relating to the authority of the Secretary to acquire sanctuaries for any species of migratory birds, including game or nongame migratory birds. Our treaties with Canada and Mexico are not restricted to the protection of migratory game birds. It is the purpose of the Migratory Bird Conservation Act to conserve all species of treaty protected migratory birds.

One of the unfortunate results of economic growth in the United States has been the extermination of some wildlife. Since the settlement of the 50 States, some 24 birds and 12 mammals native to the United States and Puerto Rico have become extinct. Examples are the passenger pigeon, heath hen, Carolina parakeet, spotted Hawaiian rail, eastern elk, Texas and California grizzly bears, and the badlands bighorn sheep. These animals are gone forever from the face of the earth. They will be joined before very long by some 35 kinds of mammals and 30 to 40 birds unless special conservation efforts to acquire and maintain sufficient habitats for them are initiated.

Island faunas have been most vulnerable to decimating factors. A number of animals have vanished from Hawaii and Puerto Rico and from various islands under American jurisdiction, and other animals are presently endangered there.

This Department has studied the problem of vanishing wildlife for many years to determine the best devices for providing and protecting habitat for species now threatened with extinction so that these animals may be available for future generations. The Department of Agriculture has also been active in this field. Special efforts, accompanied in some cases by special acts of Congress, have been and are continuing to be made by this Department and other Federal agencies, conservation organizations, and some State fish and game departments to save such threatened species or subspecies as the whooping crane, trumpeter swan, prairie chicken, California condor, Kenai moose, Kodiak bear, Key deer, fur seal, and American bison, by providing refuge areas. Similar protection is needed for other threatened species to insure against disturbance, depletion of food and habitat, and other adverse factors.

Our proposal will provide this protection.

The Land and Water Conservation Fund Act of 1965 expressly makes the fund available for the acquisition of land for the preservation of species of fish and wildlife that are threatened with extinction when the land acquisition is otherwise authorized by law. Thus, we will be able to use the fund in carrying out our endangered species program under this legislation. Land acquisition could also be financed, in the case of migratory birds, from the migratory bird conservation fund and, in the case of other endangered wildlife, from funds made available pursuant to the Fish and Wildlife Act of 1956. All other expenses that may be incurred in administering a program for the protection and conservation of threatened species of fish and wildlife will be financed through general appropriations and, in some cases, through donations. It will be the policy of this Department to finance land acquisition for the endangered species program from the land and water conservation fund wherever possible.

The proposed legislation follows one of the recommendations on endangered wildlife of the First World Conference on National Parks, held in Seattle in 1962. The recommendation stated:

“The First World Conference on National Parks recommends that for every kind of animal or plant threatened with extinction an appropriate area of natural habitat be provided in a national park, wildlife refuge, wilderness area, or equivalent reserve to maintain an adequate breeding population, and takes the view that any species so threatened which is not accorded such official sanctuary proclaims the failure of the Government concerned to recognize its responsibility to future generations of mankind.

The proposed legislation will also advance the objectives of the Inter-American Treaty on Nature Protection and Wildlife Preservation, 1940, which was proclaimed by the President on April 30, 1942 (56 Stat. 1354). Under this agreement the governments of the American Republics agreed on the desirability of protecting in their native habitat representatives of all species of their native flora and

fauna, including migratory birds, in sufficient numbers and over areas extensive enough to prevent them from becoming extinct due to any factor within man's control. They further agreed on the need to establish nature reserves for the protection of individual species of flora or fauna.

As required by the act of July 25, 1956 (70 Stat. 652), the enclosed statement has been prepared concerning the estimated additional man-years of civilian employment and expenditures for the first 5 years of the program to which our proposal relates.

The Bureau of the Budget has advised that there is no objection to the presentation of this draft bill from the standpoint of the administration's program.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

A BILL To provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the National Wildlife Refuge System; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress finds and declares that one of the unfortunate consequences of economic growth in the United States has been the extermination of some native species of fish and wildlife; that serious losses in other species of native wild animals with educational, historical, recreational, and scientific value have occurred and are occurring; and that the United States has an obligation pursuant to international agreements, such as the Migratory Bird Treaties and the Inter-American Treaty on Nature Protection and Wildlife Preservation, 1940, with Canada and Mexico and other countries to conserve and protect, where practicable, the various species of native fish and wildlife, including game and nongame migratory birds, that are threatened with extinction. The purposes of this Act are to provide a program for the conservation, protection, restoration, and propagation of selected species of native fish and wildlife, including migratory birds, that are threatened with extinction, and to consolidate, restate, and modify the present authorities relating to administration by the Secretary of the Interior of the National Wildlife Refuge System.

(b) A species or subspecies of native fish and wildlife shall be regarded as threatened with extinction whenever the Secretary of the Interior finds, after consultation with the States, that its existence is endangered because its habitat is threatened with destruction, drastic modification, or severe curtailment, or because of overexploitation, disease, predation, or because of other factors, and that its survival requires assistance.

Sec. 2. (a) The Secretary of the Interior shall utilize the land acquisition and other authorities of the Migratory Bird Conservation Act, as amended, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act to carry out a program in the United States of conserving, protecting, restoring, and propagating selected species of native fish and wildlife that are threatened with extinction.

(b) In addition to the land acquisition authorities in such acts, the Secretary is hereby authorized to acquire by purchase, donation, or otherwise, lands or interests therein needed to carry out the purpose of this act relating to the conservation, protection, restoration, and propagation of selected species of native fish that are threatened with extinction.

(c) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) may be used for the purpose of acquiring lands, waters, or interests therein pursuant to this section that are needed for the purpose of conserving, protecting, restoring, and propagating selected species of native fish and wildlife, including migratory birds, that are threatened with extinction.

(d) The Secretary shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purpose of this act. The Secretary shall also encourage other Federal agencies to utilize, where practicable, their authorities in furtherance of the purpose of this Act.

Sec. 3. In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the several States, and he may enter into agreements with the States for the administration and management of any area established under this program for the conservation, protection, restoration, and propagation of threatened species of native fish and wildlife. Any revenues derived from the administration of such areas under these agreements will continue to be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s).

SEC. 4. (a) For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas are hereby designated as the "National Wildlife Refuge System" (referred to herein as the "System"), which shall be subject to the provisions of this section. Nothing contained in this Act shall restrict the authority of the Secretary to modify or revoke public land withdrawals affecting lands in the System as presently constituted, or as it may be constituted, whenever he determines that such action is consistent with the public interest.

(b) In administering the System, the Secretary is authorized—

(1) to enter into contracts with any person or public or private agency through negotiation for the provision of public accommodations.

(2) to accept donations of funds and to use such funds to acquire or manage lands or interests therein; and

(3) to acquire lands or interests therein by exchange (a) for acquired lands or public lands under his jurisdiction which he finds suitable for disposition, or (b) for the right to remove, in accordance with such terms and conditions as the Secretary may prescribe, products from the acquired or public lands within the System: *Provided*, That the lands or interests therein so exchanged shall involve approximately equal values, as determined by the Secretary: *Provided further*, That the Secretary may accept cash from, or pay cash to, the grantor in an exchange in order to equalize the values of the properties exchanged.

(c) No person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States, including natural growth, in any area of the System; or take or possess any fish, bird, mammal, or other wild vertebrate animals or part or nest or egg thereof within any such area; or enter, use, or otherwise occupy any such area for any purpose; unless such activities are performed by persons authorized to manage such area, or unless such activities are permitted either under subsection (d) of this section or by express provision of the law, proclamation, Executive order, or public land order establishing the area, or amendment thereof: *Provided*, That the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to the effective date of this Act unless subsequently withdrawn under other authority of law: *Provided further*, That any mining claim affecting land within the System hereafter perfected under the United States mining laws, and any patent issued for such claim, shall convey title only to the mineral deposits and shall confer upon the holder of the claim only such rights to the use of the surface and surface resources as are reasonably required for carrying on prospecting or mining, subject to such regulations as may be prescribed by the Secretary of the Interior; and the patent for any such mining claim hereafter perfected shall reserve to the United States all title to the surface of the claim and the products of the surface, subject only to the patentee's rights to use the surface of the claim and the surface resources to the extent reasonably required for carrying on prospecting and mining consistent with such regulations as may be prescribed by the Secretary.

(d) The Secretary is authorized, under such regulations as he may prescribe, to—

(1) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established: *Provided*, That not to exceed 40 percent at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe; and

(2) permit the use of, or grant easements in, over, across, upon, through, or under any area within the System for purposes such as, but not necessarily limited to, power lines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that such uses are compatible with the purposes for which these areas are established, or if incompatible, are otherwise in the public interest.

(e) Any person who violates or fails to comply with any of the provisions of this Act or any regulations issued thereunder, shall be fined not more than \$500 or be imprisoned not more than six months, or both.

(f) Any person authorized by the Secretary of the Interior to enforce the provisions of this Act or any regulations issued thereunder, may, without a warrant, arrest any person violating this Act or regulations in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations, and may with a search warrant search for and seize any property, fish, bird, mammal, or other wild vertebrate animals or part or nest or egg thereof, taken or possessed in violation of this Act or the regulations issued thereunder. Any property, fish, bird, mammal, or other wild vertebrate animals or part or egg thereof seized with or without a search warrant shall be held by such person or by a United States Marshal, and upon conviction, shall be forfeited to the United States and disposed of by the court.

(g) Regulations applicable to areas of the System that are in effect on the date of enactment of this Act shall continue in effect until modified or rescinded.

SEC. 5. (a) The term "person" as used in this Act means any individual, partnership, corporation, or association.

(b) The terms "take" or "taking" or "taken" as used in this Act mean to pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill.

(c) The terms "State" and the "United States" as used in this Act mean the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

SEC. 6. Section 4(b) of the Act of March 16, 1934 (48 Stat. 451), as amended (16 U.S.C. sec. 718d(b)), is further amended by changing the colon after the word "areas" to a period and striking the provisos, which relate to hunting at certain wildlife refuges and which are now covered by section 4 of this Act.

SEC. 7. (a) Sections 4 and 12 of the Migratory Bird Conservation Act (45 Stat. 1222), as amended (16 U.S.C. 715c and 715k), are further amended by deleting the word "game" wherever it appears.

(b) Section 10 of the Migratory Bird Conservation Act (45 Stat. 1224), as amended (16 U.S.C. 715i), which relates to the administration of certain wildlife refuges, is amended to read as follows:

"SEC. 10. (a) Areas of lands, waters, or interests therein acquired or reserved pursuant to this Act shall, unless otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico, and Canada, and other species of wildlife found thereon, including species that are threatened with extinction, and to restore or develop adequate wildlife habitat.

"(b) In administering such areas, the Secretary is authorized to manage timber, range, and agricultural crops; to manage other species of animals, including but not limited to fenced range animals, with the objectives of perpetuating, distributing, and utilizing the resources; and to enter into agreements with public and private agencies."

(c) Section 11 of the Migratory Bird Conservation Act (45 Stat. 1224) (16 U.S.C. 715j) is amended by striking the period at the end thereof and adding the following:

"(39 Stat. 1702) and the treaty between the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936 (50 Stat. 1311)."

(d) Sections 13 and 14 of the Migratory Bird Conservation Act (45 Stat. 1225), as amended (16 U.S.C. 715l and 715m), which provide for the enforcement of said Act and for penalties for violations thereof and which are covered by section 4 of this Act, are repealed.

SEC. 8. (a) Sections 302 and 303 of title III of the Act of June 15, 1935 (49 Stat. 382), as amended (16 U.S.C. 715d-1 and 715d-2), which authorize exchanges at wildlife refuges and which are covered by section 4 of this Act, are repealed.

(b) The last sentence of section 401(a) of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. sec. 715s), is amended by inserting after the term "wildlife refuges", the following: "lands acquired or reserved for the protection and conservation of fish and wildlife that are threatened with extinction,".

SECTION-BY-SECTION ANALYSIS OF BILL

To provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the National Wildlife Refuge System; and for other purposes

SECTION 1

Subsection (a) contains congressional findings: first, that technological advances of man, among other things, have resulted in the extermination of some native wild animals; second, that a serious depletion of other species of native wild animals is now and has been occurring; and third, that the United States has certain treaty obligations to protect and conserve our endangered species of fish and wildlife. Congress then declares that the purposes of this act are to initiate and carry out a comprehensive program for the protection, conservation, and propagation of selected species of native fish and wildlife that are endangered—that is, threatened with extinction—and to consolidate, restate, and modify the laws relating to administration of the National Wildlife Refuge System.

Subsection (b) provides a means for determining the species of fish and wildlife, including migratory birds, that are regarded as threatened with extinction. The Secretary of the Interior must first make specific findings, after consulting with the interested States, as to each species of fish and wildlife that is endangered.

SECTION 2

Subsection (a) directs the Secretary to carry out a program of conserving, protecting, restoring, and propagating selected species of native fish and wildlife that are endangered using the broad authorities of the Migratory Bird Conservation Act, as amended (16 U.S.C. 715 et seq.), the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a et seq.), and the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.). These acts contain broad authorities for, among other things, research, studies, and land acquisition. The Fish and Wildlife Act of 1956 authorizes the acquisition of refuge lands for the conservation and protection of wildlife. The Fish and Wildlife Coordination Act, as amended (16 U.S.C. sec. 661 et seq.), authorizes the Secretary of the Interior to acquire lands in connection with water-resource projects for the conservation and protection of fish and wildlife. This authority is limited, however, to water-resource projects. The costs of such acquisition are project costs and will continue to be so under this bill. The Migratory Bird Conservation Act, as amended (16 U.S.C. sec. 715 et seq.), authorizes the Secretary of the Interior to acquire areas approved for acquisition by the Migratory Bird Conservation Commission for use as inviolate sanctuaries for migratory game birds. All of these acts are sufficiently broad in scope to include endangered species of fish and wildlife.

Subsection (b) provides new authority to acquire lands for the protection and conservation of endangered species of fish, which is not limited to water-resources projects.

Subsection (c) specifically authorizes the Secretary of the Interior to use funds made available from the recently enacted Land and Water Conservation Fund Act of 1965, to acquire refuges for threatened species of fish and wildlife, including migratory birds. This provision, however, will not limit the Department's existing authority to purchase lands or interests therein, in the case of migratory birds that are endangered, with funds made available from the migratory bird conservation fund and, in the case of other endangered wildlife, with appropriations made available pursuant to the Fish and Wildlife Act of 1956.

Subsection (d) directs the Secretary to utilize other programs that are administered by him for purposes that include fish and wildlife, in carrying out an endangered species program. He is also directed to encourage other Federal agencies to utilize their authorities for the purpose of this act.

SECTION 3

This section directs the Secretary to cooperate with the States in carrying out the new program authorized by this act. It also authorizes cooperative agreements that provide for the management by the States of areas established to carry out the program where the Secretary finds that such management is desirable. Any revenues derived from the management of such areas will be disposed of in the same manner as other revenues under recently amended refuge-sharing legislation.

SECTION 4

This section consolidates and clarifies existing authorities of the Department of the Interior for the administration and management of the various areas that comprise the National Wildlife Refuge System, and in some cases expands this authority.

Subsection (a) names the five types of areas that now constitute the National Wildlife Refuge System, and that are named in the Revenue Sharing Act of August 30, 1964 (78 Stat. 701), and adds a sixth type: areas for the protection of threatened species of fish and wildlife. All of the provisions of this section will apply to the System.

Subsection (a) specifically continues the present authority of the Secretary of the Interior to amend, revoke, or modify existing public land withdrawals affecting the System whenever he determines that such action is in the public interest. The Department, through the joint efforts of the Bureau of Land Management and the Fish and Wildlife Service, is reviewing the present status of the public lands which are included in the System to determine whether any of them should be managed on multiple use principles under the general public land laws that apply to the bulk of the public domain. Due consideration in the study will be given to all pertinent factors, such as ecology, wildlife needs, priorities of use, and the relative values of the various resources in particular areas.

Some of the areas included within the term "National Wildlife Refuge System" are now jointly administered pursuant to cooperative agreements between this Department and various Federal agencies. The bill does not portend any different policies, practices, or procedures from those now being pursued.

Subsection (b) authorizes the Secretary of the Interior to enter into negotiated contracts for public accommodations. The Department's present authority for concession contracts is derived from section 401 of the act of June 15, 1935, as amended (16 U.S.C. 715s), which provides for the disposition of receipts from various activities, including concession contracts. The bill provides express authority for such contracts and will be helpful in carrying out the provisions of the act of September 28, 1962 (16 U.S.C. 460k-460k-4), which authorizes the Secretary to administer the areas within the System for public recreation.

Subsection (b) also provides new authority for the Secretary to accept donated funds and to use them for acquiring lands for the National Wildlife Refuge System, or for managing the System. On numerous occasions donations of funds for the purchase of wetlands or other types of land for migratory birds have been received, but adequate authority to accept donations has been lacking. In the case of the Great Swamp area in New Jersey, a group of public-spirited individuals were willing to acquire the needed lands and then to donate them to the United States. Not many persons or organizations are willing or able to assume this "chore." It seems only good business and in keeping with the intent of the fish and wildlife acquisition authorities of this Department that clear authority be granted to accept donations of money to buy land.

Subsection (b) authorizes the Secretary to acquire lands or interests therein for the System by exchange (1) for acquired or public lands under his jurisdiction, or (2) for the right to remove products, such as hay or timber, from the acquired or public lands within the System. The exchanges must be of approximately equal value. If they are not of approximately equal value, the bill authorizes the Secretary to receive from, or pay cash to, the grantor to equalize the values of the properties to be exchanged. Similar authority has existed since 1935 under the act of June 15, 1935 (49 Stat. 382), as amended (16 U.S.C. 715d-1 and 715d-2), in connection with the administration of wildlife refuges. The bill broadens the authority to make it available to all areas of the System.

Subsection (c) prohibits specified activities on any area of the System, including but not limited to the destruction or removal of Federal property and the taking of fish and wildlife by any person, unless such activities are permitted either under subsection (d) of this section, or under the express provisions of some other law, proclamation, Executive order, or public land order establishing the area. This latter exception recognizes that in some cases the authority, including any amendments thereto, under which an area of the System was established expressly permits certain otherwise prohibited activities, such as the act of August 5, 1957 (61 Stat. 770), which transferred to this Department certain lands in Illinois known as the Crab Orchard National Wildlife Refuge.

Subsection (c) prohibits from the date of its enactment, subject to the above-mentioned exceptions, a person from entering, using, or otherwise occupying any area of the system for any purpose, including mining or mineral leasing. In the case of the public lands that are withdrawn from all forms of appropriation under

the public land laws except the U.S. mining and mineral leasing laws, the proposal continues to make the mining and mineral leasing laws and the regulations issued thereunder applicable to these areas unless, of course, such lands are subsequently withdrawn by the Secretary of the Interior from the operation of these laws. In the case of mining locations, surface use of the land will be governed by regulations issued by the Secretary, subject to valid existing rights. When patents are issued title to the surface will be reserved to the United States, subject to reasonable use to carry on prospecting and mining.

In the case of mineral leases, the discretionary authority of the Secretary will be exercised only upon a finding that mineral leasing will be compatible with the purposes of the wildlife system. This is the situation both under this subsection and under present policy.

Subsection (d)(1) authorizes the Secretary to permit, in his discretion, the use of any area within the system for public hunting, fishing, trapping, recreation, and accommodations, and access, when such activities are found to be compatible with the purposes for which such areas were established, including management thereof. Other multiple uses would be permitted, as is the case under present authority, where such uses are compatible with the purposes for which these areas were established or, if not compatible, are otherwise in the public interest as determined by the Secretary of the Interior.

Section 4(b) of the Migratory Bird Hunting Stamp Act, as amended (16 U.S.C. 718(d)), restricts the present authority of the Secretary to permit hunting of game birds within some parts of the system. The restriction is that not more than 40 percent of the portion of an area reserved as an inviolate sanctuary for migratory birds may be opened to the hunting of migratory game birds or resident species thereof at any time. Subsection (d)(1) limits this restriction to the hunting of migratory game birds, which is consistent with the purpose of the Migratory Bird Conservation Act. That act was not primarily intended to protect resident game birds. Neither the present law nor this revision applies to wild animals other than game birds.

It has long been recognized by the courts that the Federal Government has the authority, by reason of its proprietary interest, to regulate hunting and fishing on all Federal refuges and other areas within the system, and to protect and manage these areas. Hunting and fishing within the system will continue to be regulated within the framework of State regulations.

Subsection (d)(2) authorizes the Secretary to permit, in his discretion, other uses of the areas within the National Wildlife Refuge System for purposes that he finds are compatible with our management of the System. These uses would be permitted either through the issuance of licenses or permits or the granting of easements, whichever is most appropriate. In either case, the Secretary is authorized to issue regulations necessary to govern such uses.

These regulations could include provisions making the grantee or permittee liable for damages and saving the Government harmless from the use of such areas; requiring the payment of the fair market value of any easement or permit; providing for termination or forfeiture on the happening of certain events; providing for the grant of easements or permits with or without limitation as to term; and providing that the grantees or permittees shall comply with all applicable Federal laws and regulations. In specific cases the Secretary could include such other terms and conditions as he finds necessary to manage these uses.

Subsection (e) provides penalties applicable to the entire National Wildlife Refuge System.

Subsection (f) provides enforcement authority, including authority to make arrests, in protecting the various areas that comprise the System.

Subsection (g) is a technical provision which continues the regulations now applicable to the various areas of the System until modified or rescinded by the Secretary.

SECTION 5

This section defines the various terms used in the bill.

SECTION 6

As indicated above, section 4(d)(1) restates the present limitations on the hunting of migratory birds on areas acquired or reserved as inviolate sanctuaries. Accordingly, section 6 of the proposal is a technical amendment which repeals the provision in the Migratory Bird Hunting Stamp Act (Duck Stamp Act) which now contains these limitations.

SECTION 7

This section amends the Migratory Bird Conservation Act in several respects. Subsection (a) removes the word "game" from sections 4 and 12 of the Migratory Bird Conservation Act. This is a technical amendment. The word does not appear in any other section of the act, and the act was not intended to restrict the migratory bird acquisition program to "game" birds. This amendment will permit the program to include all forms of threatened species of migratory birds.

Subsection (b) amends the present section 10 of the Migratory Bird Conservation Act. The revised section 10 directs the Secretary of the Interior to administer the lands acquired or reserved pursuant to that act in a manner that, among other things, will conserve and protect migratory birds and other species of wildlife found thereon. Where the administration of an area that has been acquired or reserved pursuant to the Migratory Bird Conservation Act is prescribed by some other provision of law, such as in the case of those lands within the Klamath Federal reclamation project, which are administered pursuant to the act of September 2, 1964 (78 Stat. 850), this new section 10 will not apply.

Subsection (c) is technical. It amends the Migratory Bird Conservation Act to include in the definition of the term "migratory birds" those birds that are defined in the treaty between the United States and Mexico which was concluded in 1936. Presently, the act refers only to the earlier treaty with Great Britain (for Canada).

Subsection (d) repeals the present sections of the Migratory Bird Conservation Act which provide for the enforcement of said act and for penalties for violations thereof. These enforcements and penalty provisions are now covered by section 4 of the bill.

SECTION 8

Subsection (a) repeals the provisions of law which now authorize the Secretary of the Interior to acquire lands for wildlife refuges by exchange. A broader exchange authority applicable to the entire system is found in section 4 of the bill.

Subsection (b) is a technical amendment to make the provisions of the recently amended "revenue sharing act" applicable to the areas established to protect and conserve all forms of fish and wildlife that are endangered.

Estimated additional man-years of civilian employment and expenditures for the 1st 5 years of proposed new or expanded programs.

	19 calendar year	19 calendar year +k	19 calendar year +2	19 calendar year +3	19 calendar year +4
Estimated additional man-years of civilian employment:					
Executive direction.....	0	0	0	0	0
Administrative services and support:					
Miscellaneous.....	0	3	4	5	5
Total, administrative services and support.....	0	3	4	5	5
Substantive (program):					
Biologists ¹	8	15	22	28	33
Engineers ¹	9	24	26	24	24
Negotiators and appraisers ¹	8	20	20	20	20
Maintenance and management ¹		13	30	45	58
Total, substantive.....	25	72	98	117	135
Total, estimated additional man-years of civilian employment.....	25	75	102	122	140
Estimated additional expenditures:					
Personal services.....	\$250,000	\$780,000	\$1,082,000	\$1,310,000	\$1,515,000
All other.....	2,994,000	3,170,000	3,170,000	3,035,000	3,005,000
Total, estimated additional expenditures.....	3,244,000	3,950,000	4,252,000	4,345,000	4,520,000

¹ Includes supporting personnel.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 15, 1965.

HON. WARREN H. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to your request of June 30, 1965, for a report on S. 2217, a bill to provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the National Wildlife Refuge System; and for other purposes."

This Department recognizes the desirability of the purposes of S. 2217 and would have no objection to its enactment.

S. 2217 would amend the Migratory Bird Conservation Act to include migratory nongame birds and would provide for a program to conserve, protect, restore, and propagate selected species of native fish and wildlife, including migratory birds, that are threatened with extinction.

The bill would also provide for the acquisition of lands to be administered by the Secretary of the Interior for such purposes with funds appropriated from the land and water conservation fund.

In redefining the "National Wildlife Refuge System" S. 2217 would add to the kinds of areas now administered by the Secretary of the Interior and comprising the present system lands acquired or reserved for administration by the Secretary of the Interior for the additional purposes covered by the bill.

Except for this Department's participation on the Migratory Bird Conservation Commission which would approve the acquisitions relating to endangered species of migratory birds, the activities of this Department would not be directly affected by this bill.

This Department does, however, administer areas of national forest lands which have been withdrawn or designated for administration in a manner to protect recognized endangered species such as the California condor and the Kirtland's warbler. Also in recognition of the need to protect and conserve endangered species of birds, mammals, and fishes, this Department carries out certain special management practices on land and water areas to provide and protect key habitat for their breeding, feeding, and survival.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

DEPARTMENT OF STATE,
Washington, July 19, 1965.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of June 30, 1965, requested the Department's comments on S. 2217, a bill to provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the national wildlife refuge system; and for other purposes.

Certain features of the bill involve conservation treaties between the United States and other countries. The Department believes that the proposals in the bill which pertain to our international organizations are worthwhile and are in accord with the objectives of our treaties on the subject. In fact, it is particularly fitting that a reaffirmation should be made at this time of our intention to pursue our obligations under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, 1940. The Organization of American States has recently decided to convoke an Inter-American Specialized Conference To Deal With Problems Relating to Renewable Natural Resources in the Western Hemisphere. The Conference will be held in Mar del Plate, Argentina, from October 4 to 8, 1965. One of the major subjects to be discussed is methods for implementing the 1940 Convention.

Accordingly, the Department would interpose no objection to the proposed bill. The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

Sincerely yours,

DOUGLAS MACARTHUR II,
Assistant Secretary for Congressional Relations.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., July 15, 1965.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR SENATOR: This is in response to your request for the views of this Department on S. 2217, a bill to provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the national wildlife refuge system; and for other purposes.

This legislation would authorize and direct the Secretary of the Interior to initiate and carry out a comprehensive program to conserve, protect, restore, and propagate selective species of native fish and wildlife that are found by him to be threatened with extinction. In addition, the bill would modify the Secretary of the Interior's authority over the administration of the national wildlife refuge system.

This bill was introduced at the request of the Department of Interior. Since the objectives of the measure do not come within the scope of the activities of this Department, we defer to the views of the Department of the Interior.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

RAMSEY CLARK, *Deputy Attorney General.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., August 17, 1965.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate.*

DEAR MR. CHAIRMAN: By letter dated June 30, 1965, you requested our view on S. 2217, 89th Congress, entitled "A bill to provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the national wildlife refuge system; and for other purposes."

While we have no special information as to the desirability of the proposed legislation and, therefore, make no comments regarding its passage, we bring to your attention certain matters for your consideration.

Section 4(b)(1) of the bill provides that in administering the national wildlife refuge system, the Secretary of the Interior is authorized to negotiate contracts with any person or public or private agency for the provision of public accommodations. Section 4(b)(1) would, therefore, permit negotiation without having to justify departure from the formal advertising procedures by invoking the statutory exceptions contained in 41 U.S.C. 5 and 41 U.S.C. 252. We are not aware of any valid reason why these activities should not be subject to such statutory provisions governing the award of public contracts.

It is noted that 16 U.S.C. 17b authorizes the Secretary of the Interior to contract for services or other accommodations provided in national parks and national monuments for the public in the administration of the National Park Service, without compliance with 41 U.S.C. 5. In 16 U.S.C. 17b-1, the Secretary of the Interior is directed to report in detail to the Congress all proposed awards of concession leases and contracts involving a gross annual business of \$100,000 or more, or of more than 5 years in duration, including renewals thereof, 60 days before such awards are made.

The proceeds from contracts for the provision of public accommodations under section 4(b)(1) would be covered into a special fund in the Treasury in accordance with 16 U.S.C. 715s. Section 8(b) of the proposed bill creates a new category of management areas within the national wildlife refuge system under 16 U.S.C. 715s by adding to the scope of the latter provision areas for the protection and conservation of fish and wildlife that are threatened with extinction.

Section 4(b)(3) of the bill provides authority for the Secretary to acquire lands or interests therein by exchange at approximately equal values, such values being equalized, where necessary, by accepting cash from or paying cash to the grantor.

Although funds for equalization of land exchanges would be provided under the various land acquisition authorities of the Secretary as described in section 2 of the bill, no specific provision is made for the disposition of cash which may be received as a result of land exchanges. Only moneys received for the right to remove products from acquired or public lands under section 4(b)(3)(b) would be within the ambit of 16 U.S.C. 715s and for coverage into the special fund. As the latter provision does not include proceeds from the sale of real property such proceeds would be for deposit into the Treasury as miscellaneous receipts pursuant to section 3617, Revised Statutes, 31 U.S.C. 484. If it is intended otherwise, the Committee on Commerce may wish to consider language specifying the disposition of any cash received under section 4(b)(3)(a).

Sincerely yours,

FRANK H. WEITZEL,
Acting Comptroller General of the United States.

STATEMENT OF SENATOR ERNEST GRUENING ON S. 2217, A BILL TO EXPAND
AUTHORITY OF THE SECRETARY OF INTERIOR FOR WILDLIFE CONSERVATION

Mr. Chairman and members of this committee, thank you for giving me this opportunity to appear before you and express my reservations and doubts about enactment of S. 2217, the bill now before you.

At the outset, I wish to qualify myself as a conservationist and a fervent conservationist. I believe the record will support my credentials as one who has had a continuing concern or wise management and preservation of our natural resources.

When I came to Alaska as Governor in 1939, I found that there was a bounty on the bald eagle. The fishermen's fear of its predation on salmon was reflected in this legislative bounty act. In my first message to the biennial legislature (1941), I urged its repeal and on my third try in 1945 I succeeded, securing thereafter that noble bird's protection. Now we enjoy the thrilling sight of this national symbol wheeling far aloft above our capital, Juneau, and elsewhere. (The detailed story of this battle is found in the July-August 1961 Audubon magazine.)

In the U.S. Senate I have strongly supported the wilderness bill and the impressive galaxy of national seashores and parks created by the 87th and 88th Congresses, with more to come in the 89th—this in my judgment, together with civil rights, their most memorable achievement. I am a cosponsor of the wild-rivers bill.

So, I believe it is fair to say I am entirely cognizant of the deep feeling for preservation of our natural resources of wildlife that lead the proponents of S. 2217 to urge its enactment.

However, it has been my observation that many of my fellow conservationists have, from the best of motives and with awareness of the dreadful pressures of onrushing population on our resources, become unduly frantic about the necessity of Federal Government intervention to protect these resources. While understanding the motivation of those who would have this bill enacted, I submit that this zeal for Federal protection of every furred, feathered, and finned creature in existence indicates a lack of balance of values which must be recognized.

Interpreted literally, S. 2217 would confer on the Secretary of Interior virtually unlimited authority to acquire lands of the United States to be set aside from development or use except for the protection of fish and wildlife. In section 1(b) it provides that the Secretary shall, at his discretion, subject only to "consultation" with the States, make determinations as to the possibility of extinction of a species of wildlife. Then, in section 2(b) the Secretary is given authority to acquire land on a virtually unlimited scale—"by purchase, donation, or otherwise" needed to carry out the purpose of the act—a purpose in the control of the Secretary to determine.

I do not believe the Secretary of Interior requires this broad delegation of authority for land acquisition in view of the laws now on the books providing similar authority and in view of the Secretary's plenary control of enormous areas of public domain which he may withdraw—and has withdrawn—for wildlife preservation at will.

The State of Alaska is only too well aware of the extent of the authority now vested in the Secretary of Interior to create wildlife preservation areas—refuges, ranges, and other reserves created for this purpose among others relating to land management responsibilities. Wildlife refuges in Alaska amount to more than twice the acreage of all other States combined (19,012,069 acres in Alaska, as compared with 8,247,720 acres elsewhere). It might be pointed out that this has not occurred with the consent of helpless Alaskans. As it happens that the Department of Interior has exclusive authority over virtually the entire land area of Alaska. This has meant that Alaskans have had little or nothing to say about enormous withdrawals of land from the public domain for the use of wildlife, protests of human beings notwithstanding.

In 1940, the Secretary of Interior, despite requests from Alaska for a hearing, set aside without a hearing 2 million acres of the Kenai Peninsula as a moose range, on the theory the moose required all this land to survive and multiply their kind. A 6-mile-wide strip of land along Cook Inlet was left open for human use, resulting in the phenomenon that while each member of the moose community had set aside for its use an area as large as 500 acres, Alaska homesteaders were restricted to a limit of 160 acres per family. In 1957, when oil was discovered in the Kenai Peninsula, Alaskans sought to release the moose range for mineral leasing in order to develop this resource for the economic benefit of Alaska. This proposal was vigorously opposed by the extremist conservationists who predicted destruction of the moose on an unprecedented scale if the moose haven was disturbed by the rude intrusions of explorers for oil. Despite the strenuous objections of the protectors of the moose, the Secretary of Interior was finally persuaded to release approximately half of the moose range for mineral leasing.

The oil reserves of the Kenai Peninsula have, since they were opened for leasing contributed immeasurably to the development of Alaska as an economically viable State. Over 60 producing wells, the discovery of 3 vast gas fields, an oil refinery in the Kenai Peninsula, an investment of over \$300 million in Alaska—all these, in addition to Alaska's share of Federal rentals and royalties—have given Alaska a base for economic progress and prosperity that would have been impossible without mineral leasing in the Kenai Peninsula.

Meanwhile, the moose have gotten along very well, indeed, with the oil wells and attendant human settlement. The timber clearing incident to exploration has improved and enhanced the environment for moose. Indeed, the moose have multiplied beyond all expectation and are now found throughout Alaska in increasing numbers. In the Matanuska Valley they are a real problem to our farmers whose crops they find delightful for their meals.

If the protestants of mineral leasing in the Kenai Range had had their way, none of this would have ever come about. The experience of the State of Alaska with the establishment and reservation of the moose range is one of the reasons we are extremely hesitant to extend the authority of the Secretary in the field of wildlife preservation, as S. 2217 would do.

Another example of arbitrary action of another Secretary of Interior in establishing a wildlife preservation area unwanted by the people of Alaska is the Arctic Wildlife Range, a 9 million-acre preserve in the northeast part of Alaska which Secretary of Interior Seaton withdrew from other use in the outgoing hours of the Eisenhower administration despite pleas of the State to allow this vast region to remain open for development of mineral and other resources and settlement as this becomes possible, or for State management of the reserve for wildlife preservation. No avenue of appeal and no recourse to a reviewing authority is available to the people of a State where the Secretary of Interior decides to exercise his almost unlimited powers over disposal of the public domain. Thus, the people of Alaska find another 9 million acres of their land withdrawn from human use.

The enactment of S. 2217 would give the Secretary of Interior yet more power to manage land of the people of all the States—power I believe should be most carefully examined before it is conferred. I believe it is unwise and unnecessary

for the preservation of wildlife to authorize the Secretary to acquire lands for this purpose, as that official interprets the need, without providing safeguards against arbitrary encroachment on rights and privileges of human beings.

In addition to my general objections to S. 2217, based on Alaskan experience with the Department of Interior, I would call the attention of the committee to specific provisions of the bill raising serious questions.

Among provisions of the bill to which I object is the proviso of section 4(c) which would have the effect of a major amendment to the basic mining laws of the United States enacted in 1872. For nearly 100 years miners prospecting on the public domain have, upon perfection of their claims had a right to patent of the claim, giving fee title to the estate. This bill would remove that right, allowing successful miners to acquire ownership of the mineral resources of the claim alone, reserving surface rights to the Government. Aside from depriving miners of a right previously enjoyed and understood to be a firm policy of the United States for generations, I believe the proposal embodied in S. 2217 for Interior Department policing of the surface of mining claims is inherently unworkable and would lead to far more difficulties in administration of the mining laws than would be desirable for the Department or the miners. Should S. 2217 be enacted, I strongly urge this provision be deleted.

The mining proviso is but one of a number of features of the bill I respectfully submit should be given review by the Senate Interior and Insular Affairs Committee, of which I am a member. In my capacity as chairman of the Minerals, Materials, and Fuels Subcommittee of that committee I have communicated my views on this to the chairman of this committee, views I am glad to note are shared by the chairman of the Interior and Insular Affairs Committee.

Certainly the provision of S. 2217 dealing with mining interests, especially in so significant a manner, should be subject to hearing and consideration by the committee having primary responsibility in the Senate for this exceedingly important field of endeavor.

In addition, the following provisions of S. 2217 are clearly matters within the purview of interest of the Interior Committee, with its responsibilities for legislation affecting the public domain:

Section 2(c) would authorize use for acquisition of wildlife refuge lands funds in the Land and Water Conservation Fund established by legislation enacted at the last session of Congress to provide resources for purchase of lands needed to meet esthetic and recreational needs of the people of the United States. With all due respect to the welfare of the fish, fowl, and furred friends of mankind I suggest the funds planned for use in the interests of the pursuit of health and happiness of human beings should be left alone for the purpose established. In any case, the land and water conservation measure having been considered and acted upon under the jurisdiction of the Interior and Insular Affairs Committee during the last session of Congress, I believe any legislation affecting that law should be reviewed by the same committee.

Likewise, the provision of section 4(b)(3) authorizing the Secretary of Interior to exchange lands in the public domain for other land to be acquired for wildlife preservation purposes is a matter which should be considered by the Interior and Insular Affairs Committee. According to the rules of the Senate measures dealing with the public lands are submitted to the Interior and Insular Affairs Committee for review. I see no reason why this should not be the case with respect to the provisions included in S. 2217.

In recommending review by another committee of the provisions of S. 2217 specified above I wish to make clear my complete confidence in the judgment and wisdom of the Senate Committee on Commerce. Certainly, this committee should have full power to act upon matters within the sphere of its jurisdiction. I feel sure you will agree the same policy applies with respect to matters traditionally within the jurisdiction of other committees of the Senate.

Thank you again for giving me this opportunity to testify.

Senator DOMINICK. Our first witness is the very distinguished Under Secretary, John A. Carver, Jr., Under Secretary of the Interior.

STATEMENT OF JOHN A. CARVER, JR., UNDER SECRETARY OF THE INTERIOR, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY MR. LANSING PARKER, ASSOCIATE DIRECTOR, BUREAU OF SPORT FISHERIES AND WILDLIFE; AND MR. DAVID FINNEGAN, ATTORNEY IN THE OFFICE OF THE LEGISLATIVE COUNSEL, DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.

Mr. CARVER. Thank you very much, Mr. Chairman. I have with me Mr. Lansing Parker and Mr. David Finnegan, of the Solicitor's Office. I appreciate the opportunity of being here to make a statement on behalf of S. 2217.

Last year, Congress enacted the Land and Water Conservation Fund Act, landmark legislation in the outdoor recreation and conservation field. One provision of the fund act makes available moneys to finance the cost of acquisitions of lands for threatened species of fish and wildlife.

The President's budget for fiscal year 1966 recommended that \$3.1 million be appropriated pursuant to the fund act for our endangered species program. The Appropriations Committee of the House of Representatives, however, deleted this amount, strongly indicating that new authorizing legislation should be obtained for the program before any funds were appropriated. The Senate committee concurred.

S. 2217 is an outgrowth of that action to seek the authorization. It authorizes the Department to initiate a comprehensive program for conserving, restoring, and propagating endangered species of fish and wildlife. In addition, the bill corrects deficiencies, and, in some cases, consolidates present authorities relating to the administration of the National Wildlife Refuge System.

The Congress has demonstrated its awareness of the need to protect the Nation's fish and wildlife, especially those valuable species which are threatened with extinction. The concern for the possible loss of any kind of vertebrate animal is expressed by naturalists, conservationists, hunters, and even the individual who has little or no contact with the out of doors. Witness the interest shown in the welfare of the whooping cranes, whose semiannual migrations and current population numbers have rated front page reporting for 25 years and continue to do so.

The Department has studied the problem of vanishing wildlife for many years, trying to find the best methods for providing and protecting habitat for species threatened with extinction. The Department of Agriculture has also been active in this field.

Special efforts, directed in some cases by acts of Congress, have been made by Federal agencies, conservation organizations, and some State fish and game departments to save such threatened species or subspecies as the whooping crane, the trumpeter swan, the prairie chicken, the Key deer, and the American bison, usually by providing refuge areas.

One unfortunate result of economic growth in the United States has been the extermination of some species of wildlife, such as the great auk, the heath hen, and the passenger pigeon. These animals, and many others, are gone, and before very long so will some 30 to 40 birds and some 35 species of mammals, unless special conservation efforts to acquire and maintain sufficient habitat are initiated.

There is an enormous challenge to meet the requirements of the 78 kinds of mammals, birds, reptiles, amphibians, and fish classed as endangered by over 300 experts to insure against disturbance, depletion of food or habitat, and other adverse factors.

The bill before you will provide such protection.

The bill directs the Department to use existing authorities, such as the Migratory Bird Conservation Act and the Fish and Wildlife Act of 1956, and to cooperate with the States in carrying out this new program. It also directs us to utilize other existing programs, such as park and public land management programs, to further the endangered species program. In one respect the bill gives new land acquisition authority: it authorizes land and water acquisition for endangered species of fish which are not covered by existing law.

One feature of this program will be increased research effort, on the ecological life histories of endangered species of fish and wildlife, to aid in devising appropriate management plans.

Another feature of the bill recognizes that other Federal agencies and State agencies can and should provide measures for the protection of endangered species.

Endangered species are now considered in the management of our Federal lands.

The State fish and game departments have a stake in this program, and many of these agencies now actively support the preservation of endangered forms.

State and Federal agencies can and should cooperate in the determination of the status of endangered species and in measures for their protection.

Private organizations have active programs of habitat preservation and protection, including the World Wildlife Fund, devoted entirely to threatened species, the National Audubon Society, the North American Wildlife Foundation, and the Nature Conservancy.

The program authorized by this legislation is not solely a land acquisition program. Emphasis will also be placed on research and administration of existing Federal and State areas. A relatively small number of species require immediate purchase of land and water areas.

S. 2217 also corrects deficiencies in existing authorities relating to the administration of the many areas that comprise our national wildlife refuge system. The purpose of these changes is to permit more effective and efficient management.

The major deficiencies relating to the administration of the system which S. 2217 corrects briefly are:

1. We lack authority to acquire for the entire system lands or interests therein by exchange. Present exchange authority can only be used in connection with wildlife refuges. In addition, we lack, even in the case of wildlife refuges, authority to receive cash from, or pay cash to, the grantor to equalize the values of the properties to be exchanged which are not approximately equal in value.

2. We are not now authorized to accept and use donated funds to acquire lands and interests therein for any part of the system. We do, however, have authority to accept donated lands. This additional donation authority could be very useful in our migratory bird program.

3. We lack express authority to enter into concession contracts. Our present authority is implied from the recently amended revenue-

sharing act which provides for the disposition of receipts from various activities, including concessions.

4. We are not now authorized to permit the hunting of nonmigratory game birds on more than 40 percent of any area within the system which is reserved as an inviolate sanctuary for migratory birds. This limitation is not consistent with the primary purpose of the Migratory Bird Conservation Act which is to protect migratory birds. No similar limitation applies to other wild animals.

5. Under the Migratory Bird Conservation Act, we lack authority to acquire lands by purchase or rental for migratory nongame birds. Our present authority is limited to the purchase or rental of lands for migratory game birds only. This limitation is not consistent with the purposes of the migratory bird treaties which are intended to conserve all migratory birds.

6. The present sanctions and enforcement and management provisions of law applicable to the system are in negative terms. Provision should be made for adequate sanctions and enforcement and management of the endangered species areas to be acquired, which will be integrated by this bill into the entire system. It would be administratively unsound to have one set of sanctions and enforcement and management provisions for endangered species areas and a different set of such provisions for the other areas of the system.

7. We now lack authority to control the surface and subsurface resources in the case of mining locations and patents. The general problem of control of the surface in connection with mining will probably be studied by the Public Land Law Review Commission. While we think this control authority is desirable in connection with the system, you may wish to defer consideration of it until the Commission has acted.

These are the principal deficiencies in present law which will be corrected by the bill. They will enable us to administer the national wildlife refuge system better and, most importantly, they will help us in carrying out a better program of conserving and enhancing our fish and wildlife populations, including those that are endangered.

I strongly urge your committee to act early and favorably on this legislation, so that we may begin this important and urgently needed program.

By way of general interest, we have a few specimens of the species over here about which I asked Mr. Parker, if they were so scarce, how come he killed them to bring them in here? Let him answer.

Senator DOMINICK. You have them in the room?

Mr. CARVER. Yes, sir. They are on the table.

(The information requested is as follows:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., December 1, 1964.

To: Assistant Secretary for Fish and Wildlife.

From: Deputy Solicitor.

Subject: Authority of the Secretary of the Interior to manage and control resident species of wildlife which inhabit wildlife refuges, game ranges, wildlife ranges, and other federally owned property under the administration of the Secretary.

The Secretary of the Interior has promulgated general regulations, contained in title 50 of the Code of Federal Regulations, and special regulations,¹ published

¹ The authority of the Secretary to promulgate special hunting and fishing regulations for particular refuges, ranges, or areas has been delegated to the regional directors of the Bureau of Sport Fisheries and Wildlife. See 25 F.R. 8524, 4 AM 4.9C, Administrative Manual of the Bureau of Sport Fisheries and Wildlife, as amended by 28 F.R. 12834.

annually in the Federal Register, that control the hunting and fishing activities of the general public upon those lands within the national wildlife refuge system (i.e. game ranges, wildlife ranges, wildlife refuges, and waterfowl production areas). These hunting and fishing regulations have taken one of two forms. Either the regulations incorporate by reference all the hunting and fishing laws of the State in which the refuge, range, or area is located, or the regulations expressly prohibit certain hunting and fishing activities which are permitted by State law. For example if the State law authorizes the killing of two deer of either sex during a fixed season, the Secretary has either expressly adopted the State's season and bag limit for a particular refuge or has authorized only the killing of one deer of the male sex during a time period which is less than the deer hunting season prescribed by the State. The latter type of regulation is specifically designed to be more restrictive than the State hunting and fishing laws.

During the past several years commissioners and directors of the various State fish and game departments have questioned the authority of the Secretary to promulgate hunting and fishing regulations for lands within the national wildlife refuge system, when the regulations prohibit those activities which the State fish and game laws permit. These State officials have argued that the Secretary of the Interior does not have the authority to manage and control resident species of wildlife (i.e., all species of fish and game), which inhabit federally owned land under the administration of the Secretary. These State fish and game departments and the ad hoc committee of the International Association of Fish & Game Commissioners, through conferences and correspondence with this Department, have maintained that the Secretary may issue only hunting and fishing regulations for resident species of wildlife that incorporate completely State law, because all resident species of wildlife, other than migratory birds, are subject to the exclusive jurisdiction and control of the several States, and the States have some semblance of title to the resident species of wildlife. Accordingly, the U.S. Fish and Wildlife Service has raised the following question: Does the Secretary of the Interior have the authority to promulgate regulations which control the hunting and fishing activities of the general public on lands within the refuge system, when such regulations are more restrictive than State fish and game laws?

In order to analyze and answer this question it is necessary to eliminate certain collateral issues. When the States have ceded exclusive jurisdiction over land to the Federal Government, pursuant to article I, section 8, of the Federal Constitution and section 355 of the Revised Statutes, as amended (40 U.S.C. 255 (1958)), there is no question, in our opinion, that State fish and game laws have no application to the federally owned land. In those areas where there has been a cession of exclusive jurisdiction to the Federal Government, by definition, a State has no jurisdiction or control over the area.

Similarly, we do not feel that it is necessary to give extensive analysis to the problem of the States controlling the hunting and fishing activities of the general public on nonfederally owned land. There is no question that the States have control and jurisdiction over the hunting and taking of resident species of wildlife, provided that such hunting activity occurs only upon land which is not owned by the Federal Government. The general power of a State to protect fish and game has always been considered an attribute of the sovereign power of the State. This proposition is supported by a long line of precedents (*Geer v. Connecticut*, 161 U.S. 519 (1896); *Ward v. Race Horse*, 163 U.S. 504 (1896); *LaCoste et al. v. Department of Conservation of the State of Louisiana*, 263 U.S. 545, 552 (1924); *Foster Packing Company v. Haydel*, 278 U.S. 1, 11 (1928); *State v. McCoy*, 387 P. 2d 942 (1963)).

It is important to recognize that in all the above-cited cases the relationship involved was between a State and an individual, not between a State and the Federal Government. Therefore, when hunting activities occur on federally owned land, an entirely different analysis and approach is required, since the relationship would then involve a State and the Federal Government.

There can be no doubt that the Federal Government may acquire lands within a State for purposes within the ambit of its constitutional powers, and that it may do so by virtue of the power of eminent domain (*Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525, 531 (1885)). In the exercise of this power the United States has acquired land for many purposes, including wildlife refuges, game ranges, preserves, parks, and reservations, to name a few. Furthermore, the property clause of the Constitution, article IV, section 3, states, "The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *." [Italic added.] Finally, there is the supremacy clause of the Constitution, article VI, which reads, "This Constitution, and the laws of the United States which shall be made in Pursuance

thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the land * * *." The powers contained in the property and supremacy clauses of the Constitution extend not only to the public domain but also to property acquired by purchase or eminent domain (*McKelvey v. United States*, 260 U.S. 353 (1922); *Utah Power and Light Company v. United States*, 243 U.S. 389 (1917)). It is the exercise of this power under the property and supremacy clauses which is dispositive of the question of the authority of the Federal Government, acting through the Secretary of the Interior, to manage and control resident species of wildlife, on Federal lands under his jurisdiction, through regulations which prohibit what State law permits.

The exercise of this constitutional authority to make rules and regulations for federally owned lands has often been challenged, but just as often upheld by the courts. "The States and the public have almost uniformly accepted this [Federal] legislation as controlling, and in instances where it has been questioned in this Court its validity has been upheld and its supremacy over State enactments sustained." [Italic added.] (*Utah Power and Light Company v. United States*, *supra*, at 404, and cases cited therein.)

"The general Government doubtless has a power over its own property analogous to the police power of the several States, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case" (*Camfield v. United States*, 167 U.S. 518, 525 (1897)).

These broad powers arise out of the proprietary interest of the United States to control the use of its land, and they exceed the powers of an ordinary landowner in the respect that the interest is held by a sovereign and carries with it enforcement powers, referred to as police powers (*Utah Power and Light Company v. United States*, *supra*, at 405).

Even the property interest of an ordinary landowner is protected to the extent that "The State cannot, within constitutional limits, by the issuance of hunting licenses which purport to give a hunter the right to invade the private hunting grounds owned by another person, or by any other means, authorize one to enter another's premises, for the purpose of taking game, without the latter's permission" (24 Am. Jur., Game and Game Laws, section 5). (See cases cited.)

A fortiori, the sovereign's proprietary interest includes that of an ordinary landowner. It too may protect its holding and forbid trespass and control people on the land whether they be hunting, fishing, or just visiting. In addition, articles of value on the land—timber, hay, water, resident game, and wildlife—may also be protected by control over the land and persons on the land. "True, for many purposes a State has civil and criminal jurisdiction over lands within its limits belonging to the United States, but this jurisdiction does not extend to any matter that is not consistent with full power in the United States to protect its lands, to control their use, and to prescribe in what manner others may acquire rights in them" (*Utah Power and Light Company v. United States*, *supra*, at 404).

The authority of the proprietary interest is so substantial that it has been protected by holding enforceable congressional statutes forbidding acts on lands adjoining federally owned lands that might endanger the latter (*United States v. Alford*, 274 U.S. 264, 267 (1927); *Camfield v. United States*, *supra*).

The basic constitutional authority appertaining to the proprietary interest in land owned by the United States has sustained the killing of game on federally owned land by Federal officials while acting within the scope of their authority, although acting in violation of the game laws of the State in which the land was located (*Hunt v. United States*, 278 U.S. 96 (1928); *Chalk v. United States*, 114 F. 2d 207 (4th Cir., 1940). See also *Arizona v. California*, 283 U.S. 423 (1931) and *Johnson v. Maryland*, 254 U.S. 51, 56 (1920)).

From the foregoing authorities it is apparent that the United States constitutionally empowered as it is, may gain a proprietary interest in land within a State and, in the exercise of this proprietary interest, has constitutional power to enact laws and regulations controlling and protecting that land, including the persons, inanimate articles of value, and resident species of wildlife situated on such land, and that this authority is superior to that of a State.

This broad Federal power to regulate and manage resident species of wildlife on federally owned land, which is derived from the Federal Constitution and the inherent powers of the Federal Government as a landowner, has been vested in the Secretary of the Interior with respect to those land and water areas which comprise the national wildlife refuge system by the regulatory sections of the following legislation:

Section 4 of the act of September 28, 1962, 76 Stat. 653, 654 (1962); 16 U.S.C. section 460k-3 (Supp. V, 1959-63).

Section 4 of the Fish and Wildlife Coordination Act, 48 Stat. 401, 402 (1934), as amended, 16 U.S.C. sections 661, 664 (1958).

Section 10 of the Migratory Bird Conservation Act, 45 Stat. 1222, 1224 (1929), as amended, 16 U.S.C. section 715i (1958).

Section 4 of the Duck Stamp Act, 48 Stat. 451 (1934), as amended, 16 U.S.C. sections 718d(b) (1958).

Furthermore, this authority to regulate and manage resident species of wildlife, which has been delegated to the Secretary by the above legislation, has been supplemented by specific legislation for the administration of particular areas. Examples of the regulatory sections of this specific legislation are as follows:

Bear River Migratory Bird Refuge, section 5 of the act of April 23, 1928, 45 Stat. 449, 16 U.S.C. section 690d (1958).

Lea Act Refuges, section 3 of the act of May 18, 1948, 62 Stat. 239, 16 U.S.C. section 695b (1958).

National Key Deer Refuge, section 1 of the act of August 22, 1957, 71 Stat. 412, 16 U.S.C. section 696 (1958).

Upper Mississippi River Wildlife and Fish Refuge, section 3 of the act of June 7, 1924, 43 Stat. 650, 16 U.S.C. section 723 (1958).

We interpret the regulatory sections of these statutes as containing sufficient legal authority for the Secretary to make all appropriate rules and regulations which are necessary for the effective administration of these lands within the national wildlife refuge system, including the authority to regulate such activities as public use, access, recreation, hunting and fishing, provided the regulations are (1) reasonable and appropriate (i.e., "needful"); (2) not inconsistent with the statutory source of the regulatory authority; and (3) consistent with the purposes for which the area was placed under the administration of the Secretary.

Concerning the restriction that the regulations must not be inconsistent with the statutory source of the regulatory power, it is to be noted that the language contained in the regulatory sections of these statutes (*supra*) is broad in both scope and intent. An examination of the regulatory sections will show that sweeping, general language was used by Congress to authorize the Secretary to make rules and regulations which are necessary for the effective administration of refuge areas. This statutory source of regulatory authority is, in our opinion, sufficiently broad to permit the Secretary to prohibit all forms of public access, entry, and use of any portion of a refuge area. A fortiori, the statutory source necessarily includes the lesser power to permit the access and use of a refuge for limited purposes and upon such conditions as the Secretary may prescribe.

"* * * we think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional" (*McCulloch v. Maryland*, 4 U.S. (4 Wheat.) 415, 431 (1819)).

Accordingly, the only meaningful legal issue to be discussed is whether the regulations governing fishing and hunting of resident species of wildlife within a refuge area are reasonable and appropriate, as well as related to the purpose for which the refuge area was acquired or established. Although these issues are primarily questions of fact, a discussion of the principles involved is in order.

Many areas within the national wildlife refuge system were acquired primarily for the protection and development of the migratory bird populations; however, some areas, such as the desert game range, were established for the primary purpose of protecting an endangered species. It should also be noted that the Secretary, by law, is required to protect and manage resident species of wildlife which inhabit areas primarily acquired for migratory waterfowl (48 Stat. 451 (1934), as amended, 16 U.S.C. sec. 718d (1958)). Regardless of the particular species of wildlife for which the refuge area was primarily acquired, the Secretary must use sound conservation principles which are designed to prevent the overpopulation of wildlife, prevent the destruction of food supplies, and protect the general ecology, in administering all refuge areas.

In addition, the Secretary is now required to manage all areas within the national wildlife refuge system in such a manner as to allow various forms of recreational activity, which includes hunting and fishing, that are not inconsistent with the purposes for which the area was established; 76 Stat. 653 (1962), 16 U.S.C. section 460k (Supp. V, 1959-63). In managing areas within the refuge system, the Secretary must, out of necessity to preserve the area, control hunting and

fishing pressures. Any regulation concerning hunting and fishing which has as its focal point sound conservation principles is not only reasonable and proper but is also related to the purpose for which the area was acquired. To argue otherwise is to say that the Secretary is helpless to properly manage federally owned land and the public use of that land.

Inevitably, out of any discussion concerning the control of resident species of wildlife it is not surprising to have the questions of title to wild animals raised by the States.

With respect to game and wildlife generally, the Supreme Court has said that the power to control lodged in the State is to be exercised as a trust for the benefit of the people and not as a prerogative for the advantage of the Government. *Geer v. Connecticut, supra*; *Foster Packing Company v. Haydel, supra*; *State v. Rodman* (58 Minn. 393 (1894)); *Magner v. People* (97 Ill. 320 (1881)); *In Re Eberle* (98 Fed. 295 (1899)).

It is the law that he who claims title to game must first reduce it to possession. This proposition is supported by State court decisions too numerous to recite which enunciate that principle. These decisions extend from *Pierson v. Post* (3 Caines 175 (New York, 1805)), to *Koop v. United States* (296 F. 2d 53 (8th Cir., 1961)).

"The statutes declaring the title to game and fish as being in the State speak only in aid of the State's power of regulations; leaving the landowner's interest what it is" [italic added]. *McKee v. Gratz* (260 U.S. 127, 135 (1922)).

It is clear that the "ownership" of wildlife by a State is a trust interest, and not a possessory title. *McKee v. Gratz, supra*; *Missouri v. Holland*, (252 U.S. 416 (1920)); *Sickman et al. v. United States* (184 F. 2d 616 (7th Cir., 1950)). Further, the Supreme Court states that as between a State and its inhabitants, the State may regulate the killing and sale of migratory birds, "but it does not follow that its authority is exclusive of paramount powers. To put the claim of the State upon title is to lean upon a slender reed." *Missouri v. Holland, supra*, at 434. This authority of the State to regulate the killing of wildlife is based upon a trust concept, not upon ownership or title in the wild animals. Under basic constitutional doctrine the trust or police power (i.e., regulatory jurisdiction) of a State yields to the exercise by the National Government of its powers under the property clause of the constitution.

In this memorandum we have attempted to set out the broad authority of the Federal Government, as a landowner, to make needful rules and regulations for the management of its property. We have set forth some of the more pertinent legislation which delegated this broad power to the Secretary of the Interior. It is our conclusion that the Secretary has ample legal authority to make hunting and fishing regulations for particular areas within the national wildlife refuge system that prohibit activities authorized and permitted by State law. The regulation of the wildlife populations on federally owned land is an appropriate and necessary function of the Federal Government when the regulations are designed to protect and conserve the wildlife as well as the land.

EDWARD WEINBERG,
Deputy Solicitor.

Senator DOMINICK. I have a few questions on this, if I may, for the record.

I am not quite sure, Mr. Under Secretary, how we got this in this committee. It looks like an Interior bill to me. I am happy to have it here, and I am happy to be able to preside at this hearing. I think you know of my interest in this general subject anyhow.

I would like to ask you at this point, isn't it true that up until now we have largely concentrated, as far as the Federal system is concerned, on migratory waterfowl?

Mr. CARVER. Let me have Mr. Parker respond to that, Mr. Chairman.

Mr. PARKER. The refuge system includes not only refuges for migratory waterfowl but also other migratory birds. There are six or seven game ranges that are administered in cooperation with the Bureau of Land Management. There are some wildlife ranges in the State of Alaska. There are the production areas that occur primarily in Minnesota and the Dakotas that are for waterfowl.

Senator DOMINICK. Those game ranges have been public lands to begin with and have largely been set aside?

Mr. PARKER. Yes, sir.

Senator DOMINICK. This bill as I understand it proposes that the Federal Government will acquire non-Federal lands and set themselves up in a management position for specific purposes of taking care of nonmigratory mammals as well as wildfowl.

Mr. PARKER. That's right, although currently the Bureau, for example, has a national elk refuge, a national bison range and a refuge in Florida for the key deer. The Bureau already has done this with specific authorization.

Mr. CARVER. Mr. Chairman, it does authorize acquisition of private lands for this purpose, to answer your question directly.

Senator DOMINICK. All the lands we have up to date have been Federal lands from the beginning?

Mr. PARKER. No, sir; most of those I have enumerated—the key deer was a special authorization, almost all are acquired lands. There are some public lands within the general area.

Senator DOMINICK. I ask the question because there have been some questions on constitutionality of the act that have been brought up.

I don't know if we have received any opinion on that or not.¹

Mr. FINNEGAN. The Fish and Wildlife Act of 1956 now authorizes land acquisition generally, sir. We would be using that authority, as mentioned in the bill to acquire lands. Nobody to my knowledge has raised the question of constitutionality.

Senator DOMINICK. What are you going to do as to game management if this bill should be passed, in connection with things such as the bighorn sheep in Colorado, which the State has a shooting season on?

Mr. PARKER. The bighorn sheep, some of the forms of which are considered rare. There is no plan immediately to consider any particular acquisition in Colorado for the sheep. We do have one game range now in Nevada that is devoted primarily to the desert sheep, as well as two in Arizona that are devoted chiefly to this animal.

Senator DOMINICK. I am trying to find out possible areas of conflict, if I can, between this bill and what the State laws and regulations are doing, whether we can, under this bill,¹ just upset the State laws.

Mr. CARVER. We could not upset the State laws. The only effect that this bill would have would be the ordinary Federal power, that the Federal Government has as a proprietor when it acquires an area, to control the use of the Federal area. I don't think there is anything in this bill that would have any effect on State laws. It would run to the species, so to speak, and say that the Federal Government within an area now, such things couldn't be covered as a matter of Federal law unless as you pointed out they were covered in some constitutional form, such as a treaty.

Senator DOMINICK. Is there anything in the bill which limits the species, or is it left general, so that by regulation additional birds and mammals could be included?

Mr. PARKER. Section 1(b) provides that the Secretary should make this determination after consultation with the States, as to which species should be considered threatened with extinction. This we

¹ See p. 31, Secretary of the Interior letter, Sept. 7, 1965,

would view as the first step in implementing the act, a review with each of the States of the tentative list that has been developed by the experts as the Secretary has indicated. Each State department would have the opportunity to review any of the species which might be considered threatened with extinction.

Senator DOMINICK. But the States have no inherent power under this bill, as I understand it, to exercise any power other than coordination and cooperation. The final decision is left up to the Secretary; is that correct?

Mr. PARKER. In determining the list, that's right. Although I would point out that depending upon the act which is used to acquire the lands, there are some other features built in.

For example, the Migratory Bird Conservation Act requires consent by all the States. Each State at the time the project is considered, the representative of the State is an ex officio member of the Migratory Bird Conservation Commission which must approve the acquisition by purchase.

Senator DOMINICK. One of the purposes of the bill is to extend the jurisdiction of the land conservation fund.

Mr. PARKER. No. It merely reiterates the provisions of the land and water conservation fund, one of which is to set up money for authorizing the purchase of lands and waters for species threatened with extinction. This provision in 2(c) of the bill simply restates that.

Senator DOMINICK. I thought the funds under the Land and Water Conservation Act were supposed to be held for the acquisition and development of national parks and State parks.

Mr. PARKER. There are three provisions: National parks, national forests, and species threatened with extinction, in addition to the funds that will be made available to the States.

Mr. CARVER. The endangered species is stated in the fund bill as one of the objectives for acquisition.

Senator DOMINICK. Mr. Secretary, have you or the Department made any estimate as to the cost of the bill?

Mr. CARVER. We submitted with our report the estimated additional expenditures under the 1965 Land and Water Conservation Fund Act and those financed with general appropriations.

I would like to point out—that is attached to our report—I would like to point out that these moneys have to be appropriated each year. Further, that as to those financed with general appropriations, some of those come under the controls of the—they come under the regular appropriation controls. Some will go through the Migratory Bird Commission, too?

Mr. PARKER. No.

Mr. CARVER. To answer your question, the estimates which had been made show that in the calendar year of enactment we would contemplate a little over \$3 million, and each year thereafter a little under \$3 million for this purpose. That is an estimated level of acquisition, according to the Department's program. This does not involve an appropriation because each year it must come up and be appropriated.

The level on all others financed through general appropriation in the calendar year, \$130,000, and thereafter on the order of a million and a quarter to a million and a half each year.

Senator DOMINICK. I would presume, Mr. Secretary, that you have ideas in mind as to where the land would be acquired.

Mr. CARVER. I would think that gives us more credit than we are entitled to, Mr. Chairman. We have done a lot of studying on the species. And as they determine opportunities within that list, they are going to have to make some decisions. The dollar estimates I think have been picked out based upon an estimated level at which the program should be started without any specific reference to areas or tracts which anybody has in mind.

Senator DOMINICK. Would you be able to furnish for the record a tentative list, or a preliminary list, of the species that you have in mind, and where in general they are located?

Mr. CARVER. Yes, sir. We have now a tentative list. We will have the locations to this list, and we will furnish it for the record.

(The list referred to is as follows:)

*Tentative list of endangered species being considered as candidates for restoration programs*¹

Mammals:	<i>Location</i>
Delmarva Peninsula fox squirrel.....	Eastern Shore of Maryland.
Atlantic right whale.....	Temperate waters of North Atlantic.
Bowhead whale.....	Bering Strait, Point Barrow, Alaska, Aleutian Islands, and Kurile Islands, north of Japan.
Pacific right whale.....	North Pacific Ocean.
Nevada kit fox.....	Northern Nevada, southwestern Idaho, southeastern Oregon.
Red wolf.....	Northeastern Louisiana and adjacent Mississippi.
Timber wolf.....	Eastern Minnesota, Wisconsin, Michigan, Ohio, and Northeastern United States.
Grizzly bear.....	Montana, Wyoming, Idaho, and San Juan range of southwest Colorado, Alaska.
Black-footed ferret.....	Western North and South Dakota, northern Montana and Alberta, south to Texas and central New Mexico.
Florida panther.....	Florida.
Guadalupe fur seal.....	Guadalupe Island, Mexico, and coast of southern California.
Caribbean monk seal.....	Not definitely known. (Jamaican waters in 1949; possibly Key West, Fla., and Texas coast.)
Florida manatee or sea cow.....	Southern Florida.
Columbia white-tailed deer or Oregon white-tailed deer.	Wahkiakum County, Puget Island, Wash., and Roseburg, Oreg., area.
Key deer.....	Monroe County, Fla.
Sonoran pronghorn antelope.....	Arizona and Sonora-Hermosillo-Pinnacle region, Mexico.
 Birds:	
Florida great white heron.....	Florida and Caribbean region.
Aleutian Canada goose.....	Aleutian Islands, Alaska, northern Japan, Grizzly Island, Calif.
Laysan Hawaiian duck.....	Laysan Island, Leeward Group, Hawaii.
Main Islands Hawaiian duck (or Koloa).	Islands of Kauai and Niihau, Hawaii.
Mexican duck.....	Rio Grande Valley, south New Mexico, west Texas and Mexican highlands to Puebla.
Nene (or Hawaiian goose).....	Mauna Loa, Mauna Kea, and Hualalai, Hawaii, Haleakala Crater, Maui.

See footnotes at end of table, p. 29.

*Tentative list of endangered species being considered as candidates for restoration programs*¹—Continued

Birds—Continued	<i>Location</i>
California condor.....	Tehachapi Mountains, southern Sierra Nevada and southern coast ranges, southern California.
Florida everglade kite (or snail kite).	Southern Florida.
Attwater's greater prairie chicken..	Gulf coastal prairie of Texas.
Masked bobwhite.....	Southern Sonora, Mexico.
Whooping crane.....	Wood Buffalo National Park, Canada, gulf coast of Texas.
Hawaiian common gallinule.....	Islands of Kauai, Molokai, and Oahu, Hawaii.
Yuma clapper rail.....	Lower Colorado River.
Eskimo curlew.....	Texas coast in 1959, 1960, 1961, and 1962; not recorded in 1963 or 1964.
Puerto Rican parrot.....	Eastern Puerto Rico.
American ivory-billed woodpecker..	Eastern Texas, Louisiana, Florida, and South Carolina.
Hawaiian crow (or aala).....	North and south Kona and Kau Districts, Hawaii.
Puaiohi (small Kauai thrush).....	Island of Kauai, Hawaii.
Nihoa millerbird.....	Island of Nihoa, Hawaii.
Kauai Oo (or Ooaa).....	Island of Kauai, Hawaii.
Akiapolaau.....	Mauna Kea and Mauna Loa, Hawaii.
Crested honey-creeper (or akohekohe).	Northeast slopes of Haleakala, island of Maui, Hawaii.
Kauai akialoa.....	Island of Kauai, Hawaii.
Kauai nukupuu.....	Do.
Laysan finch-bill.....	Laysan Island, Hawaii.
Maui parrotbill.....	Northwest slope of Haleakala, island of Maui, Hawaii.
Nihoa finch-bill.....	Nihoa Island, Hawaii.
Ou.....	Islands of Kauai and Hawaii.
Palila.....	Mauna Loa and Mauna Kea, Hawaii.
Bachman's warbler.....	Virginia and South Carolina.
Kirtland's warbler.....	Lower Peninsula of Michigan, Bahama Islands.
Cape Sable sparrow.....	Southwestern Florida.
Dusky seaside sparrow.....	Florida.
Hawaiian hawk (or Io).....	Island of Hawaii.
Fish:	
Atlantic sturgeon.....	Atlantic coast and northern gulf coast.
Lake sturgeon.....	Great Lakes region.
Shortnose sturgeon.....	Hudson River, Florida, New Brunswick.
Longjaw cisco.....	Lakes Michigan, Huron, and Erie.
Arctic grayling.....	Major river drainages north of Gulf of Alaska and Alaska Peninsula.
Atlantic salmon.....	Eight coastal streams in Maine.
Apache (Arizona) trout.....	Fort Apache Indian Reservation, Arizona.
Gila trout.....	Headwaters of Gila River, Gila National Forest, N. Mex.
Greenback cutthroat trout.....	Streams in Boulder and Larimer Counties, Colo.
Lahontan cutthroat trout.....	Streams in Nevada, Heenan Reservoir, Calif.
Montana westslope cutthroat trout..	Flathead River drainage, Montana.
Piute cutthroat trout.....	Alpine County, Calif.
Rio Grande cutthroat trout.....	Small streams in Colorado.
Colorado River squawfish.....	Main Colorado River.
Desert dace.....	Humboldt County, Nev.
Humpback chub.....	Green and Colorado Rivers, Utah-Wyoming border.
Little Colorado spinedace.....	Arizona.

See footnotes at end of table, p. 29.

*Tentative list of endangered species being considered as candidates for restoration programs*¹—Continued

Fish—Continued	Location
Cui-ui.....	Pyramid Lake, Nev.
Comanche Springs pupfish.....	Phantom Lake Spring, Tex.
Devils Hole pupfish.....	Ash Meadows, Nev.
Owens Valley pupfish.....	Owens Valley, Calif.
Pahrump killifish.....	Pahrump Valley, Nye County, Nev.
Clear Creek gambusia.....	Headwaters of Clear Creek, Tex.
Gila topminnow.....	Monkey Spring, Ariz.
Blue Pike.....	Lake Erie and Lake Ontario.
Reptiles: American alligator.....	North Carolina on coast to Corpus Christi, Tex., Mississippi drainage to Arkansas and southeast Oklahoma.
 Amphibians:	
Texas blind salamander.....	Deep wells and underground streams in caves in Hays, Kendall, and Comal Counties, Tex.
Black toad, Inyo County toad.....	Deep Springs Valley, Inyo County, Calif.

¹ A relatively few of these species will be restored through the acquisition of lands and waters. In most cases, other restoration work, such as research and propagation, will be necessary.

SENATOR DOMINICK. It is my understanding that some of these lands or refuges will be acquired with money from the sale of duck stamps; is that correct?

Mr. PARKER. That could be one source of the financing, yes.

Senator DOMINICK. Aren't you going to find yourself in a fight with the duck hunters, such as myself, almost immediately?

Mr. PARKER. The Migratory Bird Conservation Act is considered as one of the possible ways of carrying out this program. One of the purposes for the inclusion of that phrase in 2(c) of the bill is to assure the duck hunters that when we purchased lands for the migratory nongame birds, we would use the migratory conservation fund.

Mr. CARVER. We have stated to the Congress, (see the Department's letter June 5, 1965 to the President of the Senate), that it is the policy of the Department to finance land acquisitions for the endangered species program from the land and water conservation fund wherever possible.

Senator DOMINICK. It is my recollection that the duck stamp law is pretty specific on the fact that the funds from that must be used for purposes of increasing the duck population.

Mr. PARKER. Purchasing refuges primarily for waterfowl, that's right. It provides funds to carry out the purposes of the Migratory Bird Conservation Act.

Senator DOMINICK. If you are going to use some of those funds for acquiring land for the protection of whatever you call the squirrel in Arizona—Kaibab.

Mr. PARKER. No, we would not contemplate using waterfowl, duck stamp money, for the acquisition of land for the squirrel.

Senator DOMINICK. Under this bill you can.

Mr. PARKER. The bill simply reiterates the existing authorities, which are the Migratory Bird Conservation Act, Coordination Act, and the Fish and Wildlife Act of 1956. The only additional authorities that are being requested are the acquisition of lands for fish.

As pointed out in section 2(c), the purpose of that section is to indicate that the land and water conservation fund would primarily be used for carrying out the acquisition. But as you understand,

the land and water conservation fund itself does not authorize any land acquisition. We must have other authorizing legislation. The land and water conservation fund is simply a financing program.

Mr. CARVER. I would like to point out in amplification of what Mr. Parker has said, Mr. Chairman, that the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.) authorizes the Secretary to acquire areas approved for acquisition by the Conservation Commission, which is one standard or measure or test that it has to go through, for use as inviolate sanctuaries for migratory game birds.

Our lawyers have told us, as we have reported to the committee, that this act is sufficiently broad in scope to include endangered species. In other words it is not limited, as far as the exact provision of the law is concerned, to migratory waterfowl.

Senator DOMINICK. No, but it is limited to migratory game birds?

Mr. CARVER. They have to be migratory game birds, yes. They are not just waterfowl.

Senator DOMINICK. This is the point I was trying to make. So that the use of any of those funds for refuge for the bighorn sheep or the Arizona Kaibab squirrel is not going to work.

Mr. PARKER. The existing authority, as far as the migratory birds—

Senator DOMINICK. My question to you is whether this bill, if enacted, would change that restriction in the Migratory Duck Act.

Mr. CARVER. The answer to that is that it would eliminate the word "game," so that the objective of the Migratory Bird Conservation Act would be changed to include migratory birds, not migratory game birds. Is that correct?

Mr. FINNEGAN. That is correct. The bill will permit the Secretary to recommend to the Commission for purchase such lands as may be necessary to conserve migratory birds.

Mr. PARKER. It would not extend to any of the resident species or mammal species or anything else.

Senator DOMINICK. I am interested in this bill and seeing if we can do anything about the general proposition. What I am interested in is would you have any objection to eliminating that section of it? I think you will find yourself in trouble with the duck hunters and the gamebird hunters in the future if you leave it in. You may get some kickback on it. I am just wondering.

Mr. CARVER. I am sure, Mr. Chairman, we would be glad to review this matter and give you a further report. So far as the Department's position is concerned, we have cleared the request for the amendment of that act as well. At least for the moment we would like to stay with it.

Senator DOMINICK. I want to be clear. I want to know that what I am thinking is right. If we pass the act as it is written now, the effect of it will be that you can use funds from the Migratory Bird Conservation Act, which is the duck stamp, in common language, for purposes of migratory wildfowl, whether they are game wildfowl or not² and you can increase the refuges and use them for threatened species.

² See following letter, Secretary of the Interior, Sept. 7, 1965,

U.S. DEPARTMENT OF THE INTERIOR,
 OFFICE OF THE SECRETARY,
 Washington, D.C., September 7, 1965.

HON. WARREN G. MAGNUSON,
 Chairman, Committee on Commerce,
 U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: The acting chairman of the Subcommittee on Merchant Marine and Fisheries of your committee requested our views and comments on some questions raised by him and others during the recent hearings on S. 2217, a bill to provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the national wildlife refuge system; and for other purposes. The questions and our comments are as follows:

1. Do the provisions of the bill relating to the acquisition of lands for endangered species of resident fish and wildlife present any constitutional problems?

The bill presents no constitutional problems.

S. 2217 directs the Secretary of the Interior to utilize the Department's existing authorities to carry out a program of "conserving, protecting, restoring, and propagating selected species of native fish and wildlife that are threatened with extinction." These authorities are the Migratory Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act. These statutes now authorize, among other things, the acquisition of lands to promote the conservation of our Nation's wildlife. The term "wildlife" includes endangered species of both resident and nonresident wildlife. The only new land acquisition authority found in the bill is for endangered species of fish.

It is well settled that the Federal Government can acquire lands within a State for any public use within the scope of its constitutional powers. One example of these powers is found in article I, section 8, of the Constitution, namely the general welfare clause. The power of the Federal Government to promote such national causes as conservation and agriculture through the expenditure of public funds for the acquisition of property and the construction of reclamation projects can be deduced from the general welfare clause. The Supreme Court in *United States v. Butler*, 297 U.S. 1, 65-66 (1936) said:

"The Congress is expressly empowered to lay taxes to provide for the general welfare. Funds in the Treasury as a result of taxation may be expended only through appropriation (art. I, section 9, clause 7). They can never accomplish the object for which they were collected unless the power to appropriate is as broad as the power to tax. The necessary implication from the terms of the grant is that the public funds may be appropriated 'to provide for the general welfare of the United States.' These words cannot be meaningless, else they would not have been used. The conclusion must be that they were intended to limit and define the granted power to raise and to expend money.

* * * * *

"While, therefore, the power to tax is not unlimited, its confines are set in the clause which confers it, and not in those of section 8 [of art. I of the Constitution] which bestow and define the legislative powers of the Congress [i.e., regulate commerce, establish rules of naturalization, establish post offices, etc.]. It results that the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution."

The power of Congress to determine what is an appropriate "public purpose" or "use" has been challenged principally in a series of eminent domain cases. The court in *Berman v. Parker*, 348 U.S. 26, 32 (1954) said:

"The role of the judiciary in determining whether that power [eminent domain] is being exercised for a public purpose is an extremely narrow one."

In *United States ex rel. Tennessee Valley Authority v. Welch*, 327 U.S. 546, 551 (1945), the Court said:

"We think that it is the function of Congress to decide what type of taking is for a public use and that the agency authorized to do the taking may do so to the full extent of its statutory authority. * * * whatever may be the scope of the judicial power to determine what is a 'public use' in 14th amendment controversies, this Court has said that when Congress has spoken on this subject 'Its decision is entitled to deference until it is shown to involve an impossibility.' *Old Dominion Co. v. United States*, 269 U.S. 55, 66. Any departure from this judicial restraint would result in courts deciding on what is and is not a governmental function and

in their invalidating legislation on the basis of their view on that question at the moment of decision, a practice which has proved impracticable in other fields." Congress has already determined by the enactment of the above statutes that the conservation of wildlife is a "public use."

2. Does this bill interfere with the State's role with respect to the protection and control of resident fish and wildlife?

S. 2217 authorizes the Department to initiate a comprehensive program for conserving, restoring, and propagating endangered species of fish and wildlife—both resident and nonresident. In addition to the land acquisition features of the program, emphasis will be placed on research, propagation, and utilization of existing Federal programs, such as park and public land management programs.

The bill does not authorize the Department to control or regulate the hunting or fishing of endangered species of fish and wildlife on non-Federal land. Thus, the answer to this question must be emphatically "No."

The bill does, however, continue the longstanding authority of the Federal Government to protect and regulate resident and nonresident fish and wildlife, including endangered species thereof, on federally owned lands. The United States, in its proprietary capacity, is authorized to protect its property and to prohibit activities therein, including fishing and hunting. S. 2217 will not change this authority.

We are enclosing a copy of a memorandum of the Solicitor of this Department (M-36672), dated December 1, 1964. In this memorandum, the Solicitor discusses in more detail the authority of the Secretary of the Interior to regulate hunting and fishing and other activities on federally owned lands within the national wildlife refuge system.

We point out that the Fish and Wildlife Coordination Act requires that regulations adopted by the Secretary of the Interior governing areas made available for wildlife conservation at Federal water-use or other projects must be consistent with State fish and game laws.

3. Should a provision be added to the bill giving the Governor of each State a "veto" over the acquisition of lands within the State for the endangered species program?

We think that such a "veto" provision is undesirable.

The endangered species program which is authorized by S. 2217 is a national program designed to prevent the extinction of selected species of native wild animals with educational, historical, recreational, and scientific value to the Nation. It is also designed to further the objectives of the Inter-American Treaty on Nature Protection and Wildlife Preservation.

We understand that there are two reasons put forth by some to support the need for a "veto" provision.

First, some fear loss of revenues due to acquisitions for this program. The recently amended revenue sharing act is designed to meet this problem by providing more revenues to the counties from refuge receipts. S. 2217 provides that the local counties in which an endangered species area is located will also share under that act in the revenues collected throughout the United States from the national wildlife refuge system.

Second, some believe that the States should be given the initial opportunity to carry out the program within a State.

One important feature of the bill is the recognition that other Federal and State agencies can and should provide measures for the protection of endangered species. Higher priority must be given to endangered species in the management of existing Federal lands. State and Federal agencies can and should cooperate fully in the determination of the status of endangered species and in measures for their protection. The State fish and game departments have a real stake in this program because the management of resident species of fish and wildlife is their primary responsibility. Many such agencies are now very actively supporting the preservation of endangered species.

The program authorized by this bill is not solely a land acquisition program. In fact, the land acquisition portion of the program will be modest. Emphasis will be placed on research and administration of existing Federal and State areas and encouraging other public and private agencies and groups to provide measures for endangered species.

We are enclosing a tentative list of endangered species and where they are located. A relatively small number of these species require any purchase of land and water areas.

4. Should the Migratory Bird Conservation Act be amended, as provided in section 7(a) of the bill, to permit the purchase or rental of areas for migratory nongame, as well as game, birds?

Section 4 of the Migratory Bird Conservation Act permits the Secretary of the Interior to recommend to the Migratory Bird Conservation Commission the purchase of those areas of land and waters which he determines are needed for the conservation of migratory "game" birds.

Section 2 authorizes the Commission "to consider and pass upon any area of land, water, or land and water that may be recommended by the Secretary of the Interior for purchase or rental" under the act. Section 5 authorizes the Secretary "to purchase or rent such areas as have been approved for purchase or rental by the Commission, * * *, and to acquire by gift or devise, for use as inviolate sanctuaries for migratory birds, areas which he shall determine to be suitable for such purposes."

Obviously, the plain language of these sections permits the Secretary to recommend, and the Commission to approve, lands for purchase or rent that he determines are necessary for endangered species of migratory "game" birds. Such approved lands could then be purchased and rented by the Secretary.

The act when read as a whole, and considered in the light of its legislative history and its purpose, is not entirely clear in regard to the purchase of lands for any "nongame" migratory birds, including endangered species.

The plain language of section 4 when read alone appears to limit the Secretary's authority to recommend to the Commission any lands that are necessary for migratory "game" birds. Since, as a practical matter, the Commission only considers and passes upon areas that are recommended for purchase by the Secretary, it would ordinarily follow that his purchase authority in section 5 is limited to lands needed for migratory "game" birds.

The ambiguity arises when sections 12 and 11 are read with sections 2, 4, and 5. Section 12 authorizes an annual appropriation of \$200,000 for, among other things, "the acquisition, * * * of suitable areas of land, water, or land and water, for use as migratory bird reservations, * * *, and for the administration, * * * of such areas and other preserves, reservations, or breeding grounds frequented by migratory game birds." The sections use both the term migratory "game" birds and "migratory birds." Section 11 defines "migratory birds" to mean those defined in the 1916 treaty with Great Britain. The treaty lists as protected birds both game and nongame migratory birds. The language of these sections suggests that the act may have been intended to protect both game and nongame migratory birds. The issue is whether this protection was intended by Congress to be by way of purchasing lands as sanctuaries for either type of bird, or by purchasing lands only for migratory "game" birds.

The legislative history has been examined in an effort to determine congressional intention.

The legislative history indicates four things. First, Congress and the executive branch intended to implement further the treaty with Great Britain. Second, Congress and the executive branch intended to give protection to treaty-protected birds through the establishment of inviolate sanctuaries for them. Third, Congress and the executive branch understood that treaty-protected birds include nongame migratory birds, as well as migratory "game" birds. Fourth, Congress and the executive branch used the terms "game" birds and "migratory birds" interchangeably in discussing the legislation.

We believe that two possible conclusions may be drawn from the legislative history. One conclusion is that although Congress was concerned with a fuller implementation of the treaty with Great Britain, it was principally concerned with the protection of migratory "game" birds; the limitation on the Secretary's authority to recommend and to purchase lands needed for migratory "game" birds was intentional; the protection of nongame birds was intended to be incidental to the protection of game birds; and nongame birds would be protected only to the extent they could also use the "game" bird sanctuaries.

Much of the debate centered on the need to provide additional feeding, resting, and nesting areas for ducks, geese, and other game birds and to prevent hunting on the sanctuaries. The references to nongame migratory birds in the legislative history might be an indication, so this analysis goes, that Congress expected that the game sanctuaries would provide protection to these birds also, but not to buy lands primarily for them.

The Department, in carrying out a migratory bird acquisition program, has as a matter of fact purchased lands primarily for migratory "game" birds. This is especially true since the enactment of the Migratory Bird Hunting Stamp Act in 1934. That act authorized the sale of "duck stamps." The receipts are used for the acquisition of lands under the Migratory Bird Conservation Act. The legislative history of the 1934 act, but not the plain language of the act itself, indicates

an intention that these receipts are to be used for the acquisition of migratory "game" bird sanctuaries only. Since 1934, "duck stamp" receipts have been the main source of revenue for acquisitions under the Migratory Bird Conservation Act.

The second conclusion is that Congress intended to authorize the purchase of lands both for game bird sanctuaries and for nongame bird sanctuaries and that the term migratory "game" birds in section 4 of the act has no special significance.

Section 12 of the act refers to the acquisition of reservations for "migratory birds" and to the administration of the reservations frequented by "migratory game birds." In the debate, Congress refers to both game and nongame birds. No distinction is made. The act defines "migratory birds" to mean treaty-protected birds. These include both game and nongame birds. Congress and the executive branch clearly intended that the treaty with Great Britain should be fully implemented by affording protection to all migratory birds through the acquisition of lands by purchase, gift, or devise as sanctuaries. The Commission is not expressly or impliedly prohibited from considering and approving areas for purchase which are recommended by the States or other interested persons. The Secretary's purchasing power is restricted only to areas approved by the Commission.

We believe that the ambiguity in the present law should be clarified by adopting the second conclusion. This can be done by deleting the reference to game birds and making the law applicable to all migratory birds, as contemplated by our treaties. Although in the past we have been concerned primarily with land acquisition for game bird habitat, the need for acquisition of land for endangered species of nongame birds is now equally important.

It should be emphasized that S. 2217 restates the provisions of the recently enacted Land and Water Conservation Fund Act of 1965 and makes the funds under that act available for the acquisition of lands for all endangered species. In addition, the Secretary, in transmitting the bill to the President of the Senate on June 5, 1965, said:

"It will be the policy of this Department to finance land acquisitions for the endangered species program from the land and water conservation fund wherever possible."

We, therefore, conclude that the provision is necessary to this new program. Without this authority some very important endangered species of migratory nongame birds could not be protected by this bill. Such result is highly undesirable and would be objectionable to most sportsmen-conservationists.

Sincerely yours,

STANLEY A. CAIN,
Assistant Secretary of the Interior.

Mr. PARKER. Migratory birds. Migratory birds only, not mammals or fishes.

Mr. CARVER. The answer would be "Yes," as I understand the bill, it would broaden the authority so that the requirement that it be a game bird would be eliminated. It would still be migratory, and it would still be birds.

Senator DOMINICK. The staff has brought up a question which had not occurred to me. As I understand it, some acts require a sharing of revenue with the counties and other local governmental agencies. Would this still be true under this act?

Mr. PARKER. Yes, indeed. It extends the provisions of that particular act. It is included in this one.

Senator DOMINICK. Under the provisions of the Migratory Bird Conservation Act, it also has been brought to my attention that the Governor has a veto of the acquisition of land within his State for this purpose. Would this still be in effect if this bill were passed?

Mr. PARKER. The provisions would still be in effect, yes, This does not do anything to the Migratory Bird Conservation Act in that respect.

Mr. CARVER. The Governor's veto I believe is limited to the wetlands acquisition program, the Loan Fund Act.

Senator DOMINICK. Did the Department, do you know, Mr. Carver, consider the possibility of giving the Governors of various States a right of veto over acquisition of these lands by the Federal Government?³

Mr. CARVER. I don't believe we did. Excuse me, I think we did, on general principles. Mr. Finnegan has some other information. Apparently we considered it and imposed it.

Mr. FINNEGAN. Sir, this was brought up in the House committee recently. We responded—some conservationists raised the issue and we responded to the Bonner committee by letter of July 19 in which we stated that the veto provision was undesirable for a number of reasons.

We now have under the Migratory Bird Conservation Act, if we acquire lands for endangered species, the requirement that we must get the consent of the State, that is, legislative consent. This would apply in the endangered species program.

To add an additional veto requirement would make the program very difficult to work. In some cases it would be extremely difficult to get—we would get involved in local controversies and so forth.

Since this is entirely a Federal program, the position of the Department has been that it should be under the control of the Federal program, and not subject to these controversies. I recognize, though, that this is not a good argument in all cases.

Mr. CARVER. I would like to say, Mr. Chairman, my initial "yes" turned out to be exactly accurate.

Senator DOMINICK. I wonder if I could ask just one more question. Is it intended, or is it considered likely that most of these lands will be acquired again in the Western States?

Mr. CARVER. I think that you would have to say that the acquisition pattern will follow the pattern of the animals, rather than—

Senator DOMINICK. This is why I thought maybe if you knew what the preliminary list of animals were, we would have some idea of that.

Mr. PARKER. The list covers practically all of the United States, including Hawaii, and some of the biggest problems are in Hawaii, for example. I would think generally, just glancing at the list, the problems are in the southern part of the United States and the Southwest.

Mr. CARVER. There are only two species that are on our list, to pick out one State, your own, and that is the—I don't know why such chicken should be so categorized—the lesser prairie chicken and the blackfooted ferret.

Senator DOMINICK. Thank you very much, Mr. Secretary. I appreciate your coming up and testifying.

The next witness will be Mr. Willard Johns, testifying on behalf of Mr. C. R. Gutermuth, of the Wildlife Management Institute. Will you come forward?

³ See letter, Secretary of the Interior, Sept. 7, 1965, see p. 31.

STATEMENT OF WILLARD T. JOHNS, ASSISTANT CHIEF, CONSERVATION EDUCATION, WILDLIFE MANAGEMENT INSTITUTE, WASHINGTON, D.C.

Mr. JOHNS. I am Willard Johns, Assistant Chief of Conservation Education, National Wildlife Federation.

Before presenting our statement, which will be short, I have been asked by Mr. Poole and Mr. Callison, of the National Audubon Society, neither of whom were able to appear personally this morning, to request the privilege of tendering their statements as if read.

I have been requested by the management of the Wildlife Institute to request the hope that the record will remain open for several days. They would like to present an additional statement in letter form for insertion in the record concerning new developments.

Senator DOMINICK. The staff informs me we can keep the record open for 10 days for this purpose, if that will be adequate time.

Mr. JOHNS. I am sure it will be. Thank you, Mr. Chairman.

Senator DOMINICK. We have only about 15 minutes before I unfortunately have to leave. I wonder if you would like to put your statement in, and give us copies of it, and go on verbally, or whether you want to read the statement.

Mr. JOHNS. We would be happy, sir, to have the statement inserted as if read, in the interests of time.

Senator DOMINICK. Fine.
(The statement follows:)

STATEMENT OF THOMAS L. KIMBALL, EXECUTIVE DIRECTOR, NATIONAL WILDLIFE FEDERATION (PRESENTED BY WILLARD T. JOHNS, ASSISTANT CHIEF, CONSERVATION EDUCATION)

Mr. Chairman, it is my privilege to represent the National Wildlife Federation and offer our views on S. 2217, a bill providing for the conservation, protection, and propagation of endangered fish and wildlife as well as consolidation of authorities relating to the administration of the national wildlife refuge system. The Federation is a private, nonprofit organization, founded in 1936 to achieve conservation goals through educational means. Independent affiliates of our organization are found in almost every State. Approximately 2 million private citizens are members of these affiliated groups or otherwise support the work of the National Wildlife Federation.

From its very beginning almost 30 years ago, our organization has had a special interest in endangered species of fish and wildlife. We have long sought to increase public awareness and appreciation of this Nation's great wildlife resource through our various conservation education programs. Each year since 1938 the Federation has sponsored the nationwide observance of National Wildlife Week during the month of March. In 1952, the first year in which a specific theme for this observance was developed, we called the attention of the American people to the plight of the key deer, a species which then was on the brink of extinction and is still an endangered animal. The following year the Wildlife Week theme focused on the prairie chicken, another endangered species, and in 1956 we called public attention to the need for saving all forms of endangered fish and wildlife, including the grizzly bear, whooping crane, sea otter, trumpeter swan, everglade kite, grayling, California condor, and many others. Our interest has been maintained to this very day. The current issue of National Wildlife magazine now being mailed to more than 185,000 associate members contains a feature article and full-color centerspread describing many of the wild birds and animals which have already vanished from the American scene, as well as information on the urgency of protecting and saving species which are presently endangered.

Because of this special interest and the knowledge that our associate members, affiliated organizations, and the great majority of the American people are deeply interested in maintaining all of our country's valuable wildlife heritage, we are pleased and grateful for the opportunity to support the principles expressed in the

bill before you today. We believe S. 2217 (and companion measures in the House of Representatives) offer new and urgently needed opportunities for Federal efforts to conduct vital research, protect, manage, and perpetuate many species of wild birds, animals, fish, reptiles, and amphibians which otherwise may pass into oblivion within our lifetime.

At the same time, however, we would hope that, from the very beginning of the new program authorized by this legislation, areas of responsibility and duties will be made clear. As you are well aware, jurisdiction over our Nation's wildlife resource has always been twofold in nature. By tradition and statute, the protection and management of native, resident, and nonmigratory species of fish and wildlife have been for the most part a responsibility of the several States. The basic concept upon which the American system of wildlife management is based is that ownership of wildlife is not vested in landowners but in the people in their sovereign capacity as States. The duly constituted fish and game agencies of State governments, therefore, are responsible for the management of fish and wildlife, both game and nongame species alike, which live within State boundaries. On the other hand, the Federal Government for quite logical reasons has largely concentrated its research, management, and law enforcement efforts on migratory species which cross National and State boundaries.

We fully realize that, over the years, one of the brightest chapters in the history of wildlife conservation here in the United States has been a growing, cooperative effort in which both State and Federal Governments have worked together for the common good of our Nation's wildlife resource. There has developed a conservation partnership which has accomplished miracles in wildlife research, land acquisition, and management techniques for both resident and migratory species.

Nevertheless, from a long-range viewpoint, we foresee some possibility of misunderstanding and confusion as this new program to save endangered wildlife develops. For the first time, it authorizes new and far-reaching efforts for Federal acquisition of refuges or other lands specifically for resident, nonmigratory species. There is nothing seriously objectionable in this new approach. Conservationists generally realize that many State agencies have been unable or unwilling to make any major contributions, either in manpower or money, toward the protection and management of fish and wildlife species of little economic value, particularly nongame species. We hope, however, that any law, along with its legislative history, enacted by the Congress will provide clear-cut guidelines as to which branch of government is to do what.

Section 3 of S. 2217 indicates there is a desire to develop maximum cooperation between State and Federal efforts in this new program. We suggest, nevertheless, that perhaps this section might be strengthened or clarified with reference to species traditionally under the control and management of the several States. As our human population grows, that growth will result in increasing alteration of our land and waters to meet human needs in transportation, commerce, housing, and industry. It is almost a foregone conclusion, therefore, that more and more of our resident wildlife species will become endangered as the years roll by. We believe the States should be given the initial opportunity to preserve and manage their resident species of fish and wildlife, now and in the future.

In summary, Mr. Chairman, we appreciate this opportunity to lend our support to this new and significant legislative effort to save America's endangered wildlife. For many species, the hour is late, the need is great, and the time for action is now. Except for this one minor suggestion for improvement—i.e., clear delineation of jurisdictional responsibilities over resident, nonmigratory species—we fully and wholeheartedly support S. 2217.

Mr. Chairman, the National Wildlife Federation hopes your committee will give this proposal prompt and favorable consideration. Thank you.

STATEMENT BY CHARLES H. CALLISON, ASSISTANT TO THE PRESIDENT, NATIONAL AUDUBON SOCIETY

To the Senate Commerce Committee, 89th Congress, 1st session:

The National Audubon Society is pleased and honored to have the opportunity to support this landmark, conservation bill. We think it proposes a logical and long overdue broadening of the purposes and authority of the U.S. Fish and Wildlife Service. The migratory bird treaties with Canada and Mexico contemplated, and in fact, obligated, the Federal responsibility of the United States for the protection and conservation of all the migratory birds named in the treaties. However, due to an ambiguity or oversight in the drafting of the Migratory Bird Treaty Act and other laws spelling out that responsibility, there has always been

doubt that authority existed for the acquisition and management of lands for the benefit of the nongame species.

Among the migratory birds, there are far more of the nongame than game species. Many of the nongame species are of economic importance because of their recreational value and their insectivorous habits. All are important for esthetic and scientific reasons. Some are in dire need of special research and conservation measures. So are some important species that were not included in the treaty listings of migratory species, although they are in fact migratory. I refer to such forms as the peregrine falcon, the osprey, the bald and golden eagles, and some of the other beleaguered birds of prey, as well as pelicans, ibises, and kites.

The National Audubon Society has at times been critical of the Bureau of Sport Fisheries and Wildlife in a friendly way for manifestations of a narrow preoccupation with the game species. We recognize the recreational value of hunting and the economic aspects of the business of supplying the needs of hunters. We also recognize, and applaud the fact, that waterfowl hunters have contributed more funds, through their purchase of duck stamps, than any other group to the acquisition of lands for the national wildlife refuges. Many Audubon members are themselves duck hunters and purchasers of duck stamps.

However, the general public contributes most of the rest of the funds for the Bureau's operations through the general tax revenues, and now the general public will contribute additional amounts through the channels of the Land and Water Conservation Fund Act. The general public is interested in all kinds of wildlife—not just the game species. So we view this legislation as a long and significant step in the right direction.

Why spend money and make extraordinary public efforts to prevent the extinction of a species such as the California condor, now down to a remnant population of about 40 birds; or the black-footed ferret, which may be our rarest mammal and which will never be seen by more than a mere handful of people; or the humpback chub, a rare species of minnow found only in a few unspoiled tributaries of the upper Colorado basin; or the devils hold pupfish, which I never even heard of until the current study of endangered species began and which is said to inhabit only a single, spring-fed pool in Nevada? Why bother with them?

There are several important reasons.

The esthetic and scientific interest in any species increases, one might say as an axiom, in geometric proportion to its scarcity. Scientists and bird watchers will travel halfway around the world to see and study a bird as rare as the condor or the whooping crane. They would hardly cross the street to see a starling or a house sparrow.

The scientific value is quite real, and, in a sense, immeasurable. Every living species, however common or rare, must be considered a storehouse of undiscovered knowledge of as yet unknown importance in the sciences of biology and ecology. That is why scientists cry in alarm when, through man's ignorance or cupidity or neglect, any rare plant or animal is threatened with extinction.

The National Audubon Society, which has specialized for over half a century in the study and preservation of rare wildlife, could not write a more discerning justification of the purposes of this bill than the authors of a leaflet entitled "Survival or Surrender for Endangered Wildlife" (Circular 223) that was recently published by the Bureau of Sport Fisheries and Wildlife. I should like to quote a few paragraphs from this leaflet.

"Suppose the last whooping crane quietly gave up the struggle for survival in some lonely marsh. Would it make any difference to you? Chances are that you'll never see a live one anyhow—millions of Americans never will. Why worry? The same may be said of many other rare or endangered species of wildlife. What are the values of these creatures? Why spend time and effort to save them? * * *

"... As the numbers of a wildlife species grow fewer, their true value grows greater, for in the few are concentrated all the worth of one small but valuable part of our whole world.

"History is replete with examples of evolution and change, a matter of considerable import to mankind as an indication or insight into his own future. Threatened species are visible indicators of some of the changes that are often so subtle as to be otherwise unnoticed and therefore unmeasured.

"Nothing is surer than death and extinction, but the death of a species can be postponed longer than that of an individual. Man's wisdom and experience have not been extensive enough to grasp the full significance of the loss of a species of wildlife. Each occupies a niche and makes a contribution to the whole of life.

The biological impact of forever removing a species from the environment may not always be readily discernible, but something of value has been lost.

"Why feel concern for the whooping cranes?"

"Because they are still there."

Many years ago the board of directors of the National Audubon Society composed and adopted "A Statement of Audubon Philosophy" as a general expression of guiding policy for our society. This statement declares:

"We believe in the wisdom of nature's design.

"We know that soil, water, plants, and wild creatures depend upon each other and are vital to human life.

"We recognize that each living thing links to many others in the chain of nature.

"We believe that persistent research into the intricate patterns of outdoor life will help to assure wise use of earth's abundance.

"We condemn no wild creature and work to assure that no living species shall be lost.

"We believe that every generation should be able to experience spiritual and physical refreshment in places where primitive nature is undisturbed.

"So we will be vigilant to protect wilderness areas, refuges, and parks, and to encourage good use of nature's storehouse of resources.

"We dedicate ourselves to the pleasant task of opening the eyes of young and old that all may come to enjoy the beauty of the outdoor world, and to share in conserving its wonders forever."

Mr. Chairman, we heartily endorse the purpose of this bill. We endorse nearly all its language. We believe it can be improved and strengthened by the addition of a few small amendments.

On page 5, line 22, of S. 2217, we recommend the following amendment:

Delete the comma after the word "accommodations" and add, "when, and in such locations, and to the extent that the Secretary shall determine will not be inconsistent with the primary purpose for which the affected area was established."

With an aggressive Bureau of Outdoor Recreation now looking over its shoulder, the Bureau of Sport Fisheries and Wildlife needs clear statutory directives to help it resist the pressures that seek to turn every wildlife refuge into a center for mass, public recreation. We do not condemn the Bureau of Outdoor Recreation for being aggressive; we expect them to do their job. But at the same time, we must continue to insist that the purpose of a national wildlife refuge or a national game range is not to provide public recreation, but to provide for the conservation of wildlife resources. These areas were not established to furnish sites for campgrounds, picnic areas, boat-launching ramps, airports, parking lots, scenic highways, motels and restaurants, or any of the other paraphernalia associated with the current public clamor for recreational "accommodations." We must not permit the wildlife refuges to be turned into a chain of Coney Islands and Jones Beaches where the management feels it must pander to every whim and fad of the weekend recreationist and the beer-toting motorist. The amendment that we recommend above would help hold the line.

We also recommend inserting the words "or invertebrate" in three places:

(1) Between the words "vertebrate" and "animals" in line 7 on page 6.

(2) Between the words "vertebrate" and "animals" in line 21 on page 8.

(3) And between the words "vertebrate" and "animals" in line 24 on page 8.

These amendments would empower the Secretary to regulate some important invertebrate forms of wildlife within the units of the national wildlife refuge system, some of which could conceivably become endangered species. The forms we have particularly in mind are the mollusks, or shellfishes—oysters, clams, fresh water mussels, and others—and the crustaceans—shrimp, lobsters, crabs, and crayfish.

Finally, we recommend the deletion of the word "migratory" in line 23 on page 7. This, in effect, would keep the present statutory provision which limits to 40 percent, the area within any refuge which may be opened for bird shooting within any refuge which was established as a sanctuary for migratory birds. There is a sound reason for the existing limitation. One of the primary functions of a migratory bird refuge is provide resting and feeding areas where the birds will be free from disturbance. Such a condition of undisturbed sanctuary could not be provided if all or most of a refuge were thrown open to the shooting of any or all kinds of resident game. The existing 40-percent provision provides ample flexibility for the harvest of resident species when such harvest is desirable for wildlife management purposes.

If the committee sees fit to approve this amendment, deleting the word "migratory" in line 20, then section 6 (all of lines 16 through 21 on p. 9) should also be deleted, and the sections that follow should be renumbered accordingly.

Thus amended, S. 2217 would be excellent legislation. We respectfully recommend a favorable report by this committee.

Thank you for the privilege of appearing before you and for this opportunity to present our views.

STATEMENT OF DANIEL A. POOLE, SECRETARY, WILDLIFE MANAGEMENT INSTITUTE

Mr. Chairman, I am Daniel A. Poole, secretary of the Wildlife Management Institute. The institute is one of the older national conservation organizations in this country, and its program has been dedicated to the improved management of natural resources in the public interest for more than 50 years.

The Nation's conservationists are pleased to support the objectives of S. 2217. This proposal would authorize the Secretary of the Interior to acquire lands for, and to propagate, such native species of fish and wildlife, including migratory birds, as are determined to be in danger of extinction. This bill responds to recognition of the fact that a rapidly increasing human population and a tremendous proliferation of cities and suburbs, industry, and commerce are steadily encroaching upon the natural environment of fish and wildlife.

This destruction and alteration of the natural environment is both direct and indirect. Highway construction, subdivisions, and industrial sites can destroy the usefulness of land and water for fish and wildlife completely and for all time. Interruption of the flow of water from such lands, the discharge of air and water contaminants, the physical intrusion of buildings, towers, powerlines, or the disturbance from air and vehicular traffic may render nearby areas of habitat equally unsuited for animal life of many kinds. Sometimes such disturbances can be lessened, but experience shows the condition is aggravated rather than abated more often than not.

Man is much better prepared today than he was in the past to demonstrate how the alteration of natural habitat is endangering some species of fish and wildlife. The statistics of highway construction, metropolitan expansion, forest conversion, wetlands drainage, and other factors are more comprehensive and reliable than ever before. In addition, there is a broader understanding of the habitat requirements of various animals, because the Federal and State conservation agencies are better staffed and financed. Most of the emphasis of the State and Federal agencies has been on species of fish and wildlife sought by sportsmen, but useful information has been gathered about the nongame species largely through the work of universities, independent groups, and societies. It must be recognized, however, that with the exception of a few species that have been studied more extensively than others, man has much to learn about the environmental requirements of endangered animals. In fact, authorities are not in complete agreement about the species that are endangered, although considerable progress has been made in compiling and refining the list.

From present knowledge, one conclusion emerges. Only by moving rapidly to assure that adequate areas will be preserved and retained in their natural condition will there be any basis for believing that some endangered species can be relieved of the threat of extinction. This will be easier to do for land forms than for aquatic species. Conditions that influence the abundance of an animal are more susceptible to control and correction when an animal's habitat requirements can be supplied largely from within an area that has been established for its protection. The more mobile or migratory the species, the more complex the challenge. Many aquatic species, in addition, are largely dependent upon the quantity and quality of a water supply that may arise far from the designated refuge area. This situation introduces a number of factors that may be beyond the complete control of the wildlife and fish administering agency.

Nevertheless, we believe that the acquisition, lease, or other authority to obtain control over areas of natural habitat so as to enhance opportunities for the preservation and increase of species of animals threatened with extinction is a vital first step. It is basic to the overall success of the program. But everyone should recognize that the authority that would be conferred under this bill is no guarantee that some species now threatened with extinction will not, in fact, become extinct in time. Without an acceleration of research into the biology and ecology of most of these nongame species, without acquiring more knowledge about their requirements, without the development of habitat manipulation and other management techniques, and without the application of those techniques, the

purchase and reservation of land may serve merely to delay the day of extinction, rather than to rescue a species that is endangered.

It is hoped that the committee will report this bill favorably, and that its report will make clear the need for additional appropriations to support necessary research and management programs to obtain and apply the knowledge on which successful preservation efforts must be based. One need only to refer to the successful restoration of white-tailed deer, pronghorn antelope, elk, bighorn sheep, wild turkeys, and other of the so-called game species to visualize the value of management programs based on biological facts obtained from research. In one area or another, these species and others, were eliminated or endangered a few decades ago because of public disregard and the absence of protective regulations. None are in danger today, because man has learned to manage such wildlife resources. In fact, the animals have increased greatly and many species have been reestablished in habitat where they have been absent for years.

A similar restoration procedure now must be applied to the many species of nongame animals, virtually all of which are threatened with extinction because of the contamination, alteration, or drastic reduction of their habitat. The optimum habitat for each endangered species must be determined, and the findings must be applied to the land in such a way as to create and perpetuate the natural conditions most conducive to an animal's present and future well-being. Much will have to be learned, too, about the dietary, health, cultural, and other techniques of propagation for those species that would appear to benefit from the hatching, rearing, and release of additional specimens into suitable habitat.

Conservationists believe that S. 2217 offers a point of beginning, and it is hoped that the proposed program will be authorized in this session of Congress. Before concluding, Mr. Chairman, I wish to comment briefly on a few provisions of the bill.

In section 1(b) the procedure whereby the Secretary of the Interior is to consult with the States to determine the status of a species or subspecies of native fish and wildlife is not entirely clear. This section along with section 3 raises questions about the responsibility for resident species of animals, and perhaps the departmental witnesses and some of the State agencies will have further comments on this point. In addition, it is not clear whether this proposed enactment will authorize the Secretary to take other action, rather than land acquisition, if it appears necessary to assist a species that may be endangered by such contributory factors as water pollution, pesticides, or human disturbance, for example. In other words, land acquisition may not always be the remedy. The cooperation of other departments of government, which is requested in section 2(d), will be of the utmost importance in furthering the purposes of this program. Perhaps the committee will want to study opportunities for assuring that the Secretary will get this cooperation as required. The language merely directs the Secretary to "encourage" other Federal agencies to cooperate.

Section 4 consolidates and sets forth existing authorities of the Interior Department for the administration and management of the national wildlife refuge system. In one or two places this authority would be expanded. Generally, it is believed that this section is logical and reasonable. The Secretary's authority should be specific, yet he should have sufficient latitude to make decisions as the needed arises. Ours is a complex and rapidly changing society, and the conditions that advise the establishment and the management of a wildlife refuge today will not necessarily be the same tomorrow. We believe, that as a matter of philosophy, the administration of the wildlife refuges for nonwildlife purposes should be guided by Public Law 87-714, which was enacted "to assure continued fish and wildlife conservation areas by authorizing their appropriate incidental or secondary use for public recreation to the extent that such use is compatible with the primary purposes of such areas * * *"

The word "compatible" is used throughout section 4, but I am unable to find the words "incidental or secondary use." Conservationists are concerned about the impact of outdoor recreation on the national wildlife refuge system. We realize that certain kinds of increased public use are desirable and inevitable. At the same time, there are such threats as that to the Chincoteague National Wildlife Refuge in Virginia from the expansion of the recreational use of its beach and the construction of a high-volume access highway through the refuge to the proposed Assateague Island National Seashore. Both the Department of the Interior and the conservationists are opposed to such unwarranted intrusion into a unit of the national wildlife refuge system, but there is no guarantee that it will not be sanctioned.

For this reason, conservationists are convinced that the hand of the Department of the Interior should be strengthened at every opportunity. It is believed that S. 2217 should have a firm link with Public Law 87-714. We do not think that recreation or other public use of a unit of the wildlife refuge system should be decided primarily on whether it is compatible with the purposes of the refuge. Such use should be incidental or a secondary to the intended purposes of the refuge. In other words, wildlife always should be given priority consideration at wildlife refuges.

Secondly, section 4 also provides authority for incompatible nonwildlife use of a refuge when the Secretary determines it is otherwise in the public interest. Roads, powerlines, ditches, canals, and other uses are cited as examples.

Here again, it is believed that the Secretary's hand should be strengthened so that he can effectively resist, or at least force modification of plans to make contemplated nonwildlife use of refuges less destructive. I have mentioned the threat to the Chicoteague National Wildlife Refuge. In Alabama, there is a plan to construct a leg of an interstate highway through the most productive part of the Wheeler National Wildlife Refuge.

It appears, Mr. Chairman, that inasmuch as the proposal before the committee seeks clarification and consolidation of the Department's authorities to administer and manage wildlife refuges, it would be entirely appropriate to consider amending the proposal still further to accomplish the objectives of S. 2192, also before this committee.

This bill specifies that the Migratory Bird Commission approve actions to sell, transfer, or otherwise dispose of units of the national wildlife refuge system. Commission approval also would be required for the construction of roads through refuges, and the migratory bird conservation fund would have to be reimbursed in the amount of the fair market value of refuge lands taken for nonwildlife purposes. Many millions of dollars derived from the purchase of duck stamps by sportsmen have been invested in research and in acquiring, developing, and maintaining refuges. Authority of this kind, it is believed, would be a strong and desirable addition to the body of law concerning the national wildlife refuges.

Finally, Mr. Chairman, there is the proposed clarification in subsection (d)(1) of section 4, that the Secretary may open more than 40 percent of an involute sanctuary for migratory game birds for the taking of resident species of wildlife. We know that as far as the hunting of nonmigratory gamebirds on wildlife refuges is concerned, this has been a controversial matter in some areas. Inasmuch as migratory bird refuges are located in the wintering, transition, and nesting zones for migratory waterfowl, it is possible to have hunting for resident, nonmigratory birds on more than 40 percent of a refuge at times when migratory species are not there. Our position on this clarification is shaped by our desire, on one hand, to have nothing interfere with the utility of a refuge for migratory waterfowl and on the other by our knowledge that under present-day authority to establish and enforce hunting seasons and bag limits resident species of game birds are not harmed by recreational hunting.

The authority that would be granted the Secretary under this provision is permissive. That is, he would not be mandated to open a refuge to the hunting of resident species of game birds. It is expected, of course, that in the opening of any refuge for such hunting, the Secretary would make sure that nothing is done either to impair the usefulness of the refuge for waterfowl or allow the disturbance of waterfowl in such a way as to harass them or make them more vulnerable to gunning pressure outside the refuge. There is no reason to assume, of course, that this authority will be abused, and until that should happen, we can see no serious objection to clarification of the 40-percent limitation as proposed.

Mr. Chairman, the conservationists are hopeful that the committee will give this proposal prompt and favorable consideration.

Senator DOMINICK. Can you give me an outline form of your general feeling about the legislation?

Mr. JOHNS. Mr. Chairman, the federation, as I am sure you know, has long been interested in endangered wildlife, starting as far back as 1952. The first specific theme of National Wildlife Week centered on the key deer, which then was on the brink of extinction and even to this very day is considered an endangered species.

We fully support the principles expressed in S. 2217. We hope that the committee will look favorably upon this legislation, and give it an early and prompt and favorable report.

As has been brought out in testimony this morning, our only concern is with the clear delineation of responsibilities concerning resident, nonmigratory species in keeping with the traditional management of wildlife throughout our Nation over the years, with the State governments being largely responsible in the past for these resident species, and the Federal Government concentrating largely on migratory species.

Senator DOMINICK. Do you suggest that there is need for an amendment of the bill in this respect?

Mr. JOHNS. We would feel that perhaps the legislative history developed in connection with this bill would be sufficient to serve this purpose. We are not in a position and are not legally qualified to determine whether or not a specific amendment would be necessary.

Senator DOMINICK. I can say in all frankness to you that we can develop all the history in the world and in about 4 or 5 years from now it won't make the slightest bit of difference if the legislation itself fails to give the Federal Government the power to act. What I wonder is whether or not you would be in a position to suggest any amendments which you think might be pertinent.

Mr. JOHNS. In testifying before the House committee considering this same proposal, we did suggest a specific amendment. For the record we would be glad to insert it along with our statement for your committee.

Senator DOMINICK. I think this would be very helpful if you could let us have that.

(The statement and telegrams follow:)

SURVIVAL OR SURRENDER

A MOMENT OF TIME AND A SPARK

A little more than a century ago a man might have looked up by the hour as a flock of passenger pigeons winged overhead, almost from horizon to horizon.

A little more than half a century ago the last passenger pigeon on earth died in a zoo.

A little more than a century ago a man might have watched by the hour as a herd of bison thundered across the land.

A little more than half a century ago the only bison left on earth were a few dozen in some private herds. But a spark of concern caught fire, and the American bison was brought back from the edge of oblivion to continue as part of our peculiarly American heritage.

Today the future of many kinds of wildlife depends on how brightly burns a spark of concern. We can recall, in shortened form, Aldo Leopold's observation on the extinction of the passenger pigeon: "For one species to mourn the death of another is a new thing under the sun. We, who have lost our pigeons, mourn the loss. Had the funeral been ours, the pigeons would hardly have mourned us. In this fact, rather than in nylons or atomic bombs, lies evidence of our superiority over the beasts." And we can be assured by the bison we see today that imperiled wildlife can be saved when concern is bright enough.

FROM ARCHAEOPTERYX TO PASSENGER PIGEON

Through the eons of time, who knows how many kinds of animals have lived and died? Why did the huge dinosaurs, the formidable saber-toothed tiger, the diminutive five-toed horse, the gigantic mastodons and mammoths, and that reptilelike bird, the archaeopteryx, disappear from the earth? They held important places in the wildlife communities of their times, which collectively spanned millions of years. Now they are known only from bones that happened to be preserved beneath the surface of the earth.

These ancient species were gone before history, so the reasons for their passing are unknown. We know they disappeared along with thousands of other species that lived long before man began to dominate the earth; we can only speculate on

the cause of their demise on the basis of geologic evidence and our knowledge of the species that survived until historic times.

Species on the earth at any given time have developed through natural processes working toward a balance of life in the world. Each species and subspecies has some special characteristic, some individual feature, that distinguishes it from other species or subspecies. Wildlife species have attributes that fit them for specific niches in their wildlife communities much as the professions in our human communities fill specific needs. If species arise that are better adapted to fill community niches, the original occupants are replaced. And when there is a change in the conditions for which a species is fitted, the species faces three alternatives: adapt, move on, or die.

Before the relatively recent arrival of man, species disappeared because gradual changes, such as shift in climate, glacial advance, or inundation by the oceans, eliminated the habitats to which they were adapted, or because they lost in competition with other species. Changes were speeded up by civilized man with his technological means of rapidly altering environment, his propensity for introducing competing species, both wild and domestic, and his more direct means of destruction. As a result, species are now disappearing at a disproportionately greater rate than formerly and apparently much more rapidly than they are evolving.

Of all the continents, North America has witnessed the most drastic changes in abundance of wildlife and the greatest number of extinctions in historic times. This is undoubtedly because of its sudden transition from primitive to highly civilized conditions. Among the victims in America, during its short history of settlement, were the great auk, Labrador duck, passenger pigeon, heath hen, and Carolina parakeet, among birds; the Arizona elk, eastern elk, California grizzly, Texas grizzly, plains grizzly, eastern forest bison, giant sea mink, plains gray wolf, eastern puma, and Badlands bighorn, among mammals; and the Michigan grayling, San Gorgonio trout, Pahrnagat spinedace, thicktail chub, harelip sucker, Owens River pupfish, and ash meadows killifish, among fish. There may be other less known species that have passed out of existence, with so little known about them that their passing went unrecorded.

Life on oceanic islands has been most vulnerable of all to man's interference. In the West Indies, Puerto Rico has been severely affected. Two birds confined to this island are gone and others are going. Of the Pacific islands, the Hawaiian group has suffered most. Sixteen of its remarkable native birds are gone and many more are in jeopardy. The relatively simple community organization of native island life, with few species, few predators, and little disease, has made it particularly vulnerable to introduced continental species more resistant to disease and adapted to tougher competition. Disease against which isolated island life had built up no immunity, competition for community niches, and predation spelled disaster when with the help of man the foreign invaders reached the islands. Introduced rats, rabbits, goats, domestic cats, mongooses, and man himself have been among the worst destroyers of island plant and animal life.

Flightless birds like the Laysan rail of the Hawaiian Islands were at an obvious disadvantage when predatory animals were introduced. The habit of congregating in dense flocks made the passenger pigeon, the Carolina parakeet, and the Eskimo curlew vulnerable to mass slaughter. Flocking and flightlessness together preordained the great auk to extinction at the hands of oil- and meat-hungry mariners.

Yes, nothing is more certain than death and extinction. Yet man, being man, is reluctant to accept the inevitable without a struggle. He has prolonged his own lifespan materially through the wonders of medical science. He seems reluctant to let other species become extinct, perhaps even more reluctant when those other species may have been brought to the edge of extinction by the actions of some of man's own kind.

Man believes that the technological ability that enabled him to harness the atom can also, if properly directed, increase the survival span of other species. This is the challenge.

A QUESTION OF STATUS

Absence of easily understood, clearly defined criteria has made it difficult for the public to become aware when a species of wildlife may be near extinction. To determine whether a species is in danger, information is needed about the area it originally occupied and its abundance, the changes in its distribution and the causes of those changes, its present status in numbers and range, and the natural and human factors that may act upon it. We need to know when pollution may be making unlivable the only stream that is the habitat of a race of fish; or when

the drying up of the last bit of marsh will wipe out the only source of food for a species of bird; or when too-close proximity of an introduced species will bring about the disappearance of the special characteristics that distinguish an interesting subspecies.

To make discussion practical, specialists of the Bureau of Sport Fisheries and Wildlife of the U.S. Department of the Interior have suggested the circumstances under which wildlife should be considered as in peril and have prepared a list of species considered rare and endangered. The terms used to show the status of wildlife species—and subspecies or races—are these:

An endangered species is one whose prospects of survival and reproduction are in immediate jeopardy. Its peril may result from one or many causes—ravages of disease, predation by another animal, competition from a more aggressive species, a change in habitat. An endangered species must have help, or extinction will probably follow. In this classification the specialists put 16 mammals, 34 birds, 25 fishes, 1 reptile, and 2 amphibians.

A rare species is one whose numbers are few throughout its range. So long as conditions remain stable and favorable, a rare species may continue, though in limited numbers. When such a species occupies a limited habitat, adverse influences are more critical, and changes in environment may quickly make it endangered. In this classification the specialists put 12 mammals, 16 birds, 14 fishes, 1 reptile, and 1 amphibian.

A peripheral species is one whose occurrence in the United States is at the edge of its natural range. Such a species may be found in satisfactory numbers outside our country, but its retention in our Nation's fauna calls for special attention. In this classification the specialists noted 9 mammals, 68 birds, 4 fishes, and 2 reptiles.

In a classification status questionable have been placed a number of wildlife species. Wildlife specialists have suggested that information be sought on these species so that their status can be determined. Some of them may be in danger. In this classification the specialists have listed 18 mammals, 45 birds, and 49 fishes.

In their list the specialists included more than 200 forms of mammals, birds, fishes, reptiles, and amphibians occurring naturally within the 50 States and Puerto Rico. Of these species, 78 are regarded as endangered and 44 as rare; 21 are peripheral species whose continuance in our country's fauna is threatened; and the rest are status-questionable species suggested for special study.

Thumbnail notes on 15 endangered species are given here as typical.

Key deer (Odocoileus virginianus clavium).—This diminutive whitetailed deer once occupied most of the lower Florida Keys, but overhunting, development of the islands, and hurricanes and fires reduced it to an estimated 30 by 1949. Protective legislation, establishment of the Key Deer Wildlife Refuge in 1953, and favorable publicity in its behalf have helped this resilient deer. Its numbers appear to be increasing slowly; they were estimated at 300 in 1964. This is a good example of what man can do to assist a dwindling race, if he so desires.

Delmarva Peninsula fox squirrel (Sciurus niger cinereus).—This local race of fox squirrel, which inhabits the same country as the smaller gray squirrel, apparently survives chiefly in Dorchester County, Md. Its decline was due to overhunting, as well as encroachment on its habitat by logging, cultivation, construction, roadbuilding, and forest fires.

Black-footed ferret (Mustela nigripes).—This large weasel traditionally lived in company with prairie dogs, which provided it with a natural prey and with den sites. Destruction of the prairie dogs, grazing or cultivation of the grasslands, hunting, and highway mortality have brought the ferret to the verge of extinction. Its best hope appears to be the establishment of sanctuaries where prairie dogs still exist in numbers.

Grizzly bear (Ursus horribilis).—Greatly reduced in all of its former range except Canada and Alaska, south of which the grizzly seems to be making its last stand in Glacier and Yellowstone National Parks. Continuous persecution as a predator, and the development and alteration of the wilderness areas on which it depends, are mainly responsible.

Whooping crane (Grus americana).—This magnificent bird is now reduced to a population of about 42 in the wild and 8 in captivity. The migrants breed in southern Mackenzie Province, Canada, and winter at the Aransas National Wildlife Refuge on the Texas coast. During migration they are subjected to shooting and much of their former breeding range has been altered adversely by man. Their best hope seems to be in strict enforcement of existing laws, provision of additional refuge areas, and attempts to reinforce the population by specimens bred in captivity.

Ivory-billed woodpecker (Campephilus principalis).—Once resident from Oklahoma to North Carolina and southward, this largest American woodpecker may already be extinct. Feeding on the larvae of woodboring beetles, they were dependent on large tracts of forest with dead and dying trees. Removal of overmature forests has reduced the birds' essential habitat to the vanishing point.

Florida Everglade kite (Rostrhamus sociabilis plumbeus).—This species is reduced to a score or less in the vicinity of Lake Okeechobee and the Loxahatchee National Wildlife Refuge in Florida. It feeds on a single species of snail that lives in fresh water lakes and marshes. Extensive drainage of these habitats, or their destruction by fire, is fatal to the kite.

Attwater's prairie chicken (Tympnanuchus cupido attwateri).—First cousin of the extinct heath hen of the Northeast, this bird is threatened with the same fate. Approximately 1,300 are thought to reside in the coastal prairie of Texas. Cultivation and grazing of the natural tall grass habitat are chiefly responsible for the bird's decline.

California condor (Gymnogyps californianus).—Our largest soaring land bird, which once ranged from the Columbia River to Mexico and east to Texas, was reduced by 1964 to an estimated population of 40, mostly in the Los Padres National Forest of southern California. Human disturbances, mainly shooting, are chiefly responsible.

Nene or Hawaiian goose (Branta sandvicensis).—The official State bird of Hawaii was reduced to fewer than 50 in the late 1800's, owing to hunting, predation by introduced mammals, and destruction of habitat by introduced grazing animals. Protection and restoration programs have produced an estimated 285 on Hawaii and Maui at the present time.

Aleutian Canada goose (Branta canadensis leucopareia).—Once regarded as extinct, this very small race of Canada goose which once bred widely on the Aleutian Islands was rediscovered in 1963 on remote Buldir Island, where there were no introduced foxes and rats. Present numbers are about 300, and attempts are being made to rear captive birds for restocking the former range.

Apache trout (Salmo sp.).—This fish, differing in several respects from the similar Gila trout, was once widespread in the upper tributaries of the White and Colorado Rivers in Arizona. Introduction of competing species and modification of habitat by deforestation have reduced the population to two small streams on the Fort Apache Indian Reservation.

Humpback chub (Gila cypha).—Little is known of the former status of this distinctive minnow, which now occurs in the Green and Colorado Rivers north of the Grand Canyon. Its upper range along the Utah-Wyoming border has now been inundated by the Flaming Gorge Dam.

Devils Hole pupfish (Cyprinodon diabolis).—This small, specialized fish, probably a relict of the ice age, now occurs only in a single, spring-fed pool in southern Nevada. It requires warm water and heavy algae growths, and human tampering with the habitat might well doom it.

Green turtle (Chelonia mydas mydas).—This large marine turtle occurs worldwide in tropical waters but has been greatly reduced as a breeding population in the mainland United States by heavy pressure on it for food and by molestation of its eggs and young.

AWAY FROM THE EDGE

As early as colonial times attempts were made to help wildlife, principally by restrictions on hunting. By 1880, all the States had some form of game laws. A change from mere protection to the principle of managing wildlife for enjoyment by everyone began with establishment of the first Federal parks and sanctuaries, now called wildlife refuges, at the turn of the century.

As refuges and parks were dedicated to preserving the native fauna and flora, biological surveys of the distribution, habits, economic importance, and classification of wildlife added to the knowledge on which effective management depended. The first comprehensive study of a species coupled with effective management was Stoddard's monumental investigation of the bobwhite quail in Georgia in the 1920's. In the next 25 years, many other studies of wildlife, mostly game species, were carried out.

The developing science of wildlife management aimed at more effective preservation of habitats, protection and other measures for declining species, and better harvesting of game species. For most fish and wildlife, management has progressed to the point where adequate methods are available to enhance production and to permit a safe annual harvest of game, but conventional management measures have not been enough for some kinds of wildlife, and their survival may depend on new approaches.

For survival, a species' year-round needs must be provided for. For migratory animals, this means provision not only on breeding and wintering grounds but also in transit between those areas. Rapidly changing conditions brought about by more intense land use and other human-related factors can permanently reduce the likelihood of survival of some forms. For other species, relatively adverse conditions may be only temporary, and habitats substituted for those damaged or destroyed can tide them through brief periods of adversity. If a species must be protected from excessive hunting, more intensive enforcement or more restrictive regulations may be needed. When a species is being killed off by a well-meaning but uninformed public, more extensive informational programs may help.

Since the first Federal refuge on Pelican Island in Florida in 1903, nearly 300 Federal refuges have been established. The Federal refuge system is now adequate for many species of wildlife, including some in the endangered category, but a few additional areas are needed to meet special requirements. The recently enacted land and water conservation fund legislation may be a means to this end.

On some areas, all that is needed is protection of the land and water and the associated flora and fauna. On others a major habitat restoration is necessary, or the elimination of such adverse factors as human disturbance, excessive predation, or disease-producing conditions. Cereal and other crops have provided supplementary food for wildlife and by holding them on managed areas have helped to reduce mortality.

To facilitate development and management that is possible only under full ownership, most Federal wildlife refuges have been purchased in fee title. Some refuges have been superimposed on lands controlled by other Federal agencies for flood control, irrigation, forest and range management, or other purposes. Still others are under leases or easements whose purpose is to preserve, improve, or reestablish conditions needed by wildlife species. Such provisions may range from closure to hunting to prevention of burning, disking, or plowing of vegetation, or merely assurance that water and marsh areas shall not be drained. Lower costs and less maintenance responsibility are advantages of lease-type arrangements.

Wildlife refuges and habitat management have enhanced the survival prospects of many forms of wildlife. The American bison, estimated to have numbered about 60 million in 1800 when it already had begun to decline, had completely disappeared from the wild about 1900. Restoration of this species to manageable numbers on the National Bison Range in Montana and other Federal, State, and private refuges, parks, and zoos, from stock preserved in small private herds, appears to have assured its preservation. The Key deer in southern Florida and the trumpeter swan in southwestern Montana and parts of Idaho and Wyoming have responded well to habitat management combined with protection from hunting.

The Forest Service and the Michigan Conservation Department are managing forest regrowth for the nesting of the Kirtland's warbler which seems to be coming back. The National Park Service, in preserving representative elements of this Nation's flora and fauna, is contributing to the welfare of species using its lands, particularly the nonmigratory forms which may remain within park boundaries throughout their lives. The National Audubon Society has always been in the vanguard of action on behalf of endangered and other wildlife, not only in fostering protection but in purchasing and dedicating lands and waters necessary for them. A substantial number of other national and international organizations are engaged in similar projects.

Other wildlife species that have been brought back from the edge of extinction include the sea otter, fur seal, wild turkey, snowy egret, Hudsonian godwit, and golden plover. Control of the sea lamprey on the Great Lakes is bringing about a spectacular return of lake trout to commercially harvestable quantities. In the West, research on methods of reducing fish losses at damsites is showing promise.

REGULATIONS

Federal and State regulations provide for harvest of game species that can tolerate periodic removal of part of their number and for protection of those that need this assistance. International treaties, Federal and State legislation, and effective enforcement have largely eliminated market hunting and have strictly controlled the use of wildlife plumage, furs, and other parts in the clothing trade. Egrets, herons, grebes, and many other nongame species benefit from this protection.

Rare game species that can be readily identified by the hunter can be protected by keeping them off the list of species that may be taken. Rare species that

resemble more common species in appearance or habits, or occupy the same habitats, must be protected by other means. Two important protective measures are control of the time when hunting is allowed and control of the place. Hunting of a species may be delayed, moved up, or interrupted in order to protect a similar but rarer type while it is passing through or resident on an area. An example is a delay in opening the hunting season on snow geese in a Province of Canada to permit the earlier migrating, rare Ross' geese to pass through safely.

By restricting the place where hunting is permitted, plentiful species can be taken with minimal risk to rare or endangered forms. Permitting hunting of the abundant lesser sandhill crane only in western Texas and eastern New Mexico protects the endangered whooping crane and the rare greater sandhill crane. Other provisions to regulate the take of certain wildlife include special seasons, limitations on equipment or methods, restrictions on daily or seasonal bag, hunting by permit only, and sanctuaries or refuges where hunting is curtailed or prohibited. Many regulations favor rare wildlife by reducing predator or competitive species that share limited habitats.

EDUCATION

Universal stewardship of wildlife is the objective. Responsible citizens must not only obey the laws themselves but must encourage others to obey. Organizations and individuals who have an interest in our native wildlife must take every opportunity to convey the conservation message to everyone. The subject has headline value. Interesting articles and pictures are readily accepted by the press and they form the basis for popular television programs.

Practically untouched are opportunities for bringing this conservation message to schoolchildren. The story of endangered species is the chronicle of much of our wasted natural wealth. Though wildlife in general is a renewable resource, a wildlife species that is once lost can never be replaced. This is the kind of story youthful minds can grasp and champion.

ADDITIONAL MEASURES

Despite substantial habitat management and enforcement efforts on their behalf, certain species have bleak survival prospects, particularly those with narrow ranges of adaptability or with specialized habits and requirements. Many forms of wildlife, particularly migratory species, cannot be kept on managed habitats or under protective observation all the time. Other measures are needed.

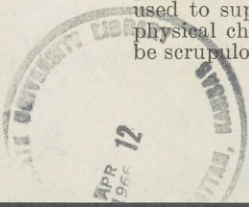
Each species and variety of wildlife is a product of many generations of development. To preserve it, a knowledge of its characteristics and living requirements is essential. The needs of many species, particularly the more abundant ones, are fairly well known, and for them management measures have been quite successful. For many rare and endangered species, some of the essential information is sketchy or lacking. Here, further preservation efforts must start with factfinding.

A first step is an appraisal of the status and range of each endangered form followed by intensive studies of its habits and the factors that affect its productivity and survival. These investigations will point the way toward improving habitat and developing more effective regulations.

A promising and relatively recent development in the program to preserve rare and endangered species is the use of propagation methods that include the capture and direct transfer of stock from one location where they are present to another where they are dwindling or have disappeared, and the taking of wild stock into captivity for mass production and later release to bolster existing numbers or to establish new populations. To avoid risk to endangered species, preliminary propagation experiments should be carried out with closely related but more abundant species. For instance, research on the captive production and release to the wild of sandhill cranes is expected to yield information that eventually can be used with whooping cranes.

Methods that have been successful in restoring breeding flocks of Canada geese in the North Central States now are giving a new lease on life to the State bird of Hawaii, the nene or Hawaiian goose. They have been used to restore or extend the ranges of the trumpeter swan, the pronghorn antelope, and numerous native big game and small upland game species.

Trial-and-error methods of the past are yielding to research-based techniques. Intensive physiological, pathological, genetic, and behavioral studies must be a part of any program to restore endangered forms. If production in captivity is used to supplement production in the wild, purity of genetic, behavioral, and physical characteristics must be maintained. Captivity-induced changes must be scrupulously guarded against, because they may entail the loss or detrimental



modification of traits essential to survival in the wild. The individuals to be released must be properly conditioned so that they will behave naturally in the wild.

After release, their fate in the wild must be closely watched to determine the factors that lead to failure or to successful reestablishment as a natural population. Satisfactorily carried out, it is impossible to distinguish the members of an artificially planted wildlife population from those that have appeared by natural expansion. As a bonus benefit, captive propagation reduces the risk of catastrophic loss of the wild population, by maintaining productive stock in captivity.

The passenger pigeon, the heath hen, and the Labrador duck do not need more company in oblivion. Taking all our endangered wildlife away from the edge of extinction will not be easy, but past successes with what appeared to be hopeless situations prove that it can be done. What has been accomplished with the American bison, the pronghorn antelope, the trumpeter swan, the American egret, can be repeated with the Florida manatee, the black-footed ferret, the whooping crane, the California condor. Tomorrow may be too late.

THE PRICE IS RIGHT

There is an economic angle to the perpetuation of endangered wildlife. Concentrations of wildlife of any kind seem to draw people: chambers of commerce often advertise them as local attractions. When people gather, they naturally spend money and prime the local economy. Curiosity draws thousands of visitors to Aransas National Wildlife Refuge in Texas, where the remnants of the once great population of whooping cranes gather to spend the winter. Sightseeing boats on the Intracoastal Waterway near the refuge are supported by people hoping to get a view of these majestic birds. But in our whole national economy this is only a small part.

Many species that have reached the endangered category were once important sources of food or other raw material for human use. The bison and the beaver practically supported the settlement of the West. The passenger pigeon, the sturgeon, and the prairie chicken were staple food items in the markets of yesterday. We cannot expect any resurgence of an endangered species to make it a important food item again, but perhaps society owes a debt to assure survival of these wild forms now threatened with extinction.

Americans are notorious for their interest in the underdog. This interest goes out to wildlife struggling for their very existence against obstacles that sometimes are the inevitable results of human progress but sometimes the results of human indifference or human greed.

Suppose the last whooping crane quietly gave up the struggle for survival in some lone marsh. Would it make any difference to you? Chances are you'll never see a live one anyhow—millions of Americans never will. Why worry? The same may be said of many other rare or endangered species of wildlife. What are the values of these creatures? Why spend time and effort to save them?

Coldly appraised, there is little doubt we could get along without most forms of wildlife, be they common, rare, or threatened with extinction. We could get along without baseball, or golf, or automobiles, or coal, or trees, or many, many other things—if we had to. But each of these helps make life easier, or pleasanter, or more interesting. It's a question of how many good things we want and can afford.

A businessman, after a period of clawing competition, realized he must either slow up or blow up and took off on a fishing trip to the coast. The three game fish he caught were big ones, and figuring what he spent for his trip, they had a value of about \$170 apiece. Or was that the value of the fish?

Can we set a value on a whooping crane as the price a zoo might offer on a free and open market?

The American bison or buffalo has been restored to the point that it is necessary to keep some of the herds to manageable size by disposing of a few animals for food. Could we figure the true worth of bison to the American people in foodstore values?

Can the worth of a city park be calculated in board feet of trees and square feet of dirt? Or in children's feet at play?

A generation ago there was a vogue for estimating the worth of the chemicals and other elements that make up a human's body. In those days it came to something less than a dollar. Prices are higher now and no doubt a human these days is worth more than a dollar. Isn't he?

Human happiness is the sum total of all the desires and enjoyments and accomplishments of all the individuals who make up the human population. Take away one part from the whole and the whole is no longer complete.

As the numbers of a wildlife species grow fewer, their true value grows greater, for in the few are concentrated all the worth of one small but valuable part of our whole world.

History is replete with examples of evolution and change, a matter of considerable import to mankind as an indication or insight into his own future. Threatened species are visible indicators of some of the changes that are often so subtle as to be otherwise unnoticed and therefore unmeasured.

Nothing is surer than death and extinction, but the death of a species can be postponed longer than that of an individual. Man's wisdom and experience have not been extensive enough to grasp the full significance of the loss of a species of wildlife. Each occupies a niche and makes a contribution to the whole of life. The biological impact of forever removing a species from the environment may not always be readily discernible, but something of value has been lost.

Why feel concern for the whooping cranes?

Because they are still there.

ROOM FOR ALL

Many conservation organizations and societies have long records of aid to wildlife species that needed a helping hand. A bright spot in the history of the bison was the establishment in 1908 of the National Bison Range in Montana. The American Bison Society raised the necessary funds to buy animals for the initial herd. The venture was financed in part with pennies and nickels contributed by schoolchildren.

The responsibility for and the efforts to develop and undertake restoration programs should not be considered primarily those of the Bureau of Sport Fisheries and Wildlife, the Department of the Interior, or the Federal Government. The problems of saving most of the rare or endangered forms of fish and wildlife are extremely varied. There are ample opportunities and great rewards of satisfaction for you as an individual, for your conservation organization, for industry, for agriculture, and for forestry, as well as for all levels of government.

A list of species considered by specialists in their fields to be rare or endangered is being maintained by the Bureau of Sport Fisheries and Wildlife. Information on the status of these animals and possible avenues of action to correct their plight may be secured from the Bureau.

Each individual, organization, and government agency is urged to continue and to increase participation to the fullest extent practicable to achieve the goal of saving those forms of wildlife that may otherwise disappear from the scene.

SUPPLEMENTAL STATEMENT BY THE NATIONAL WILDLIFE FEDERATION TO TESTIMONY PRESENTED AUGUST 12, 1965, BY WILLARD T. JOHNS, ASSISTANT CHIEF, CONSERVATION EDUCATION

In response to the request by the acting chairman, Senator Peter H. Dominick, during the hearing on S. 2217, held August 12, 1965, the National Wildlife Federation would suggest consideration of the following amendment:

In section 3, line 6, following the words "extent practicable with the several States," add the following:

"Such cooperation shall involve consultation before initiation of land acquisition for the purpose of protecting, preserving, and perpetuating endangered species of migratory fish and wildlife and in those cases involving nonmigratory, resident, and native species, no acquisition shall be authorized unless (1) the State agencies legally responsible for such species consent to such acquisition; or (2) unless the Secretary shall determine that the individual States are unwilling or unable to effectively protect, preserve, and perpetuate such species."

Add to section 3, the following subsection:

"(b) Notwithstanding anything contained in this or any other Act of Congress, it is hereby declared to be the intent of the Congress that the provisions of this Act and the administration thereof shall at no time and in no manner displace, preempt, or deprive the several States of their primary and historically recognized authority to control, regulate, and manage nonmigratory, resident fish and wildlife species, both game and nongame."

ST. PAUL, MINN., August 19, 1965.

WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate, Washington, D.C.:

The International Association of Game, Fish & Conservation Commissioners urges adoption of S. 2217 relating to protection of endangered species of fish and wildlife subject to the following amendment:

"Notwithstanding anything contained in this or any other Act of Congress, it is hereby declared to be the intent of Congress that the provisions of this Act and the administration thereof shall at no time and in no manner displace, preempt, or deprive the several States of their primary and historically recognized authority to control, regulate, and manage fish and wildlife within their territorial boundaries. The Secretary of the Interior shall have no authority to administer or enforce any of the provisions of this Act unless he first receives the consent, granted pursuant to an act of the legislature of such State, of the State agency legally responsible for regulatory authority over fish and wildlife."

WAYNE H. OLSON,
Chairman, Legislative Committee, International Association of
Game, Fish & Conservation Commissioners.

ST. PAUL, MINN., August 11, 1965.

WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate, Washington, D.C.:

I urge favorable action on S. 2217 relating to protection of endangered species of fish and wildlife.

WAYNE H. OLSON,
Chairman, Legislative Committee, International Association of
Game Fish & Conservation Commissioners.

Senator DOMINICK. What you are in effect saying is that you believe the purposes of this bill are excellent, and what you want them to do is to concentrate on migratory animals and wildfowl and leave to the States the resident animals and wildfowl.

Mr. JOHNS. Not necessarily, Mr. Chairman. I think from our experience and the history of wildlife conservation in America, it has been rather conclusively shown that many State fish and game agencies are either unwilling or unable financially and otherwise to devote much attention, much program, or action, in connection with nongame species. Many of the endangered species today, in fact most of them, are nongame species and always have been.

We feel that the States, looking toward the future, however, many years ahead, will find that many of their presently classified game species, resident species, may become endangered, and this is where the problems may arise.

Senator DOMINICK. Do you have any preliminary list of the ones that you think should be covered by this bill, both birds and mammals?

Mr. JOHNS. No, sir. We would defer to the study that has been made, the preliminary study at least, of the Fish and Wildlife Service, based on a survey of over 300 competent scientists and other qualified persons, which has developed for us the present list today.

Senator DOMINICK. How many of these are predators? I remember introducing a bill to preserve the golden eagle. We finally got it through. There were some people pretty unhappy about it, particularly in the livestock area.

I notice you have the grizzly bear on here.

Mr. JOHNS. The grizzly bear, the Florida panther, I am sure could be considered a member of the predator group, and just offhand, in a

quick survey of the listed species, those would be the only two that I immediately foresee.

The timber wolf, and the red wolf also, would be added. A total of four predators.

Senator DOMINICK. I think it would be helpful if you could give us your suggestions on proposed changes. I keep in mind the moose ranges that we have in Alaska. I have been up there taking pictures in the Kenai, which I know is one of the ranges. I know that they have a vast population of moose up there. A good number of the people in Alaska aren't too happy with the fact that they can overrun and get out of the refuge and create quite a lot of problems. The same thing would be true of the timber wolf and the grizzly bear.

You can get quite a lot of reaction on this type of thing. Although they are residents to the general State, they are not necessarily resident to whatever refuge there may be.

Mr. JOHNS. In the case of the timber wolf and the grizzly, their present population is very low in the United States. There are a number of them north of the border.

Senator DOMINICK. They are not in Alaska.

Mr. JOHNS. Not in Alaska; excuse me.

Senator DOMINICK. And that is a part of the United States.

Mr. JOHNS. Yes, sir; very much so.

Senator DOMINICK. Thank you.

Is Mr. Clapper here, or are you representing him?

Mr. JOHNS. I am representing him.

Senator DOMINICK. I appreciate those who have testified on S. 2217. We will keep the record open for 10 days for additional views on this bill.

I might say here that if anybody has done any work on constitutional problems, which I think there are involved in this bill, or which could be, it would be helpful to get your viewpoints on them.

Mr. Parker, I wonder if you would be able to give us any kind of an opinion on this, or whether we ought to ask the Justice Department on this.

Mr. PARKER. We will be happy to respond to the question.

Senator DOMINICK. I think this would be helpful. I am as sure as I am setting here that we will be getting some kickbacks from people on the ground that this is just another invasion of States rights. It would be helpful if we had a legal opinion.

Thank you very much.

The meeting is adjourned.

(Whereupon, at 10:58 a.m., the subcommittee was adjourned.)

(The following material subsequently was submitted for the record:)

LOS ANGELES, CALIF., August 12, 1965.

Hon. WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR MAGNUSON: The need is great. The hour is late. I wish to go on record for strong protective legislation in behalf of our beleaguered wildlife. Upon studying the measure I may request an addendum to the following statement, but wish at least the following statement included in the testimony of the hearing. Would you please see that it is so entered?

At last we are beginning to grasp the truth Thoreau uttered a century ago: "In wilderness is the preservation of the world." I trust that every American, at least in principle, desires the preservation of our land's priceless heritage of wildlife.

Let us remember that in wildness is the preservation of the world and accept the responsibility of setting aside adequate places of wildness while there are still such opportunities. It is necessary to do so to save the rare and endangered species now at the cross-roads and to save the whole genetic potential, the unknown but vital links in the chain of life. Let us remember, as Roger Tory Peterson has said, that nature refuses to be managed, precisely. I urge that S. 2217, in its final form, will spell out strong mandatory measures for great natural area refuges or sanctuaries or preserves that are inviolate. There is too much to be lost forever to compromise with the possible pitfalls of permissive legislation, or no legislation.

I urge legal framework to accomplish the following, as Daniel H. Jansen described: "Natural areas on many national wildlife refuges are kept free of habitat manipulation. They are not only important to those animal species depending on such environment; they also are valuable for comparing fauna and flora characteristics with those lands subject to multiple use and managed for game production."

Let us establish great sanctuaries for the preservation of our species facing decimation or extinction which are worthy of their gigantic purpose and not settle for a program of fragmentation, manipulation, and game production in lieu of heritage. Time is running out but with a strong enough bill much can be accomplished.

Sincerely,

BEULA EDMISTON.

WILDLIFE MANAGEMENT INSTITUTE,
Washington, D.C., August 16, 1965.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: It is regretted that the institute was unable to have a representative return the second day of the committee's hearing on S. 2217, the bill to initiate a program for the protection of rare and endangered species of animals. We did arrange to have our statement in support of S. 2217 submitted for the record, however, and we indicated that a supplementary letter would be forwarded promptly.

It has come to our attention that some questions have been raised concerning the relation of S. 2217 to the application of the mining laws, particularly in Alaska. Only one national wildlife refuge in Alaska, the Clarence Rhode Refuge, is open to mining. Only five game ranges, which are part of the national wildlife refuge system in the contiguous States, are open to mining. Many are open to mineral leasing under regulations of the Department of the Interior.

Conservationists support the provision in S. 2217 that would require that patent to a mining claim in a unit of the national wildlife refuge system be restricted to the subsurface resources and to only as much of the surface of the claim as is necessary for the mining activity. We believe this is fully in keeping with the purposes of the national wildlife refuge system. In this respect, the provision is compatible with a law enacted several years ago to restrict the use of the surface of mining claims on the national forests. Congress found, at that time, that nonmining use of the surface of claims was obstructing the proper administration and management of the national forests. It is believed that the same would apply to surface activity on mining claims in the national wildlife refuges, should unrestricted use of all the surface of a mining claim be granted to a successful claimant.

With kindest personal regards.

Sincerely,

C. R. GUTERMUTH, Vice President.

SANCTUARIES FOR THE PROTECTION OF RARE SPECIES

(By Gerhard Bakker)

Unique to California, the rare and impressive tule elk needs a permanent sanctuary in the Owens Valley. Because of harassment, poaching, and periodic hunts, these animals are kept so wary and frightened that they are almost never seen by the tourist and seldom seen even by the local people of the valley.

Whenever the elk increase their number to over 300, a legal hunt is held in the fall to reduce them to 250 individuals, a number arbitrarily set by the California Fish and Game Commission as a compromise between the cattlemen and ranchers on the one hand and the conservationists on the other. These periodic hunts keep the elk at a very low species level and constantly fearful of their lives.

A sanctuary would increase their number, and in time they would learn to accept the close approach of an interested and friendly public, thus greatly enhancing the enjoyment of tourist, photographer, and scientist alike.

Let's make the incomparable Owens Valley a sanctuary for a truly great native son, the tule elk.

The setting aside of an area as a sanctuary for the protection of the last remnant of a rare animal, as we wish done with the southern half of the Owens Valley for the tule elk, is not by any means a unique request. Many nations have seen fit to proclaim reserves specifically for the protection of one or more of their threatened wildlife species. The extinction of a species of bird or mammal caused by man's deliberate or unthinking actions is a tragedy; a scientific, esthetic, cultural, and national tragedy. With all the land on this world of ours, surely somewhere there could be spared a space for each threatened species to have a sanctuary where it could survive and perpetuate itself. Hundreds of species of animals have become extinct during the last 150 years due to man's unconcern or greed, and hundreds of other species have been brought to the very brink of extinction. A complete list of the recently exterminated animals would be too long to include, but here are a few outstanding examples of mammalian fauna no longer in existence.

North America: The eastern and Arizona subspecies of wapiti, the eastern and Oregon forms of the bison, many subspecies of grizzlies, including the California grizzly, the eastern sea mink, the Florida and Newfoundland wolf, and the Badlands bighorn are now gone forever.

Europe: The wild cattle or aurochs, the wild horse or tarpan, the European lion, and the Portuguese and Pyrenean ibex are now extinct.

Africa: The Atlas bear, the Cape lion, the Barbary lion, the quagga, blubok, Bubal hartebeest, rufous gazelle, and the Algerian wild ass are now extinct.

Australian region: Three types of rat-kangaroo, two kinds of bandicoot, two types of wallaby, and a marsupial mouse are now extinct, and the famous Tasmanian wolf has not been seen for many years.

Asia: The Japanese wolf, the Syrian wild ass, and Schomburgk's deer are now gone.

Islands of the West Indies: Over 30 small mammals have become extinct, including such interesting forms as the Cuban solenodon, Martinique muskrat, the lesser falcate-winged bat, the long-tongued bat, the Cuban spiny rat, and six species of insectivores.

In other parts of the world such creatures as the Steller's sea cow, the Falkland Island wolf, and the Jones Island pine rat are now gone forever. Many more mammals are on the verge of the same fate, and it is both the duty and privilege of every thinking person to fight for a sanctuary or protective law to save at least a remnant of these once numerous animals.

The list of recently extinct birds is also a large one. At least 44 full species and 43 subspecies have become extinct in the 275 years since the dodo disappeared. This includes such species as the great auk, Carolina parakeet, heath hen, Labrador duck, spectacled cormorant, and probably the Eskimo curlew and the American ivory-billed woodpecker.

The greatest number of extinctions of birds occurs on islands which have been taken over by man with his plow and his domestic animals. Goats, cats, and rats take a heavy toll of wildlife and vegetation, leaving desolation and extinction on many an archipelago such as Galapagos, West Indies, and Hawaii. At least 25 species of birds have disappeared in the Hawaiian Islands, including such interesting types as rails, honeyeaters, honeycreepers, and thrushes.

What can be done to stop, or at least retard, this accelerating extinction rate? Many nations have found one answer in the setting aside of an appropriate area for the specific purpose of saving a rare species. Most of these sanctuaries are open to the public, giving pleasure to those people who appreciate and enjoy seeing and photographing these animals roaming free in their natural habitat. Many reserves are partially or entirely self-supporting through entrance fees and camping privileges. Also the rarity of the animal often insures a high price paid when the eventual surplus is captured and sold to zoos. As an example, the rare square-lipped rhino of South Africa once numbering only a few dozen, has been increased to over 700, and many have been captured by tranquilizer and immobilizer drugs and sold to zoos (the San Diego Zoo has 2) or transplanted to other reserves such as the Kruger National Park and Matopos Hills of Southern Rhodesia.

The following is a partial list of reserves which have been set aside specifically for the protection and preservation of one particular kind of animal.

THE UNITED STATES

(1) The National Bison Range in Montana: Here the proverbial stampeding herd of American buffalo is seen as it looked before white men came to the New World.

(2) The National Elk Range in Wyoming: This accommodates wapiti herds which migrate out of Yellowstone National Park into Jackson Hole for winter grazing. This Rocky Mountain elk is a close relative of the California tule elk.

(3) The National Key Deer Refuge in Florida: The smallest of the North American deer, once numbering only 32 in 1951, now number over 300.

(4) Great White Heron Refuge in Florida: This consists of a number of mangrove-covered keys which are the only islands in the United States used for nesting by the rare great white heron.

(5) Loxahatchee Bird Refuge in Florida is for the preservation of the rare Everglades kite and limpkin.

(6) Pelican Island National Wildlife Refuge in Florida: This is the first and oldest Federal refuge. It was set aside on March 13, 1903, by the Executive order of Theodore Roosevelt to protect the nesting sites of a large colony of brown pelicans.

(7) Aransas National Wildlife Refuge in Texas: North America's largest and rarest migratory bird uses this area for its winter feeding grounds. The whooping crane numbers about 41 individuals. Each year a few young are reared in Canada and a few adults are shot by ignorant or thoughtless hunters while they fly along their migratory route.

(8) The Tule Elk Reserve State Park in California: Here a small captive herd of tule elk, numbering 32 individuals, is kept in fenced confinement in an area much too small to support them on natural forage. They are fed alfalfa which is spread on the ground and game feed pellets are placed in long feed troughs. Tourists view the elk through the wire meshes of 7-foot fence.

(9) Sespe Wildlife Refuge in California: Less than 45 individuals of North America's largest bird, the California condor, are protected here in rugged country where the cliff crannies are used as nest sites. Their reproduction rate is very slow for only one egg is laid every 2 years and the young spend over a year in the nest.

(10-11) Sheldon National Antelope Refuge in Nevada and Hart Mountain National Antelope Refuge in Oregon: These refuges contain the winter and summer ranges of the beautiful and fleet pronghorn antelope.

(12-13) Kofa Game Refuge in Arizona and Desert Game Refuge in Nevada: The reserves are specifically for the protection of the Gaillard and Nelson's bighorn sheep.

(14) Kenai National Moose Range in Alaska: This protects the largest subspecies of the moose. The Kenai bull moose often weigh more than 1,500 pounds with an antler spread of over 6 feet.

(15) Kodiak National Wildlife Refuge in Alaska: Here the largest carnivore in the world, the big brown Kodiak bear, has a sanctuary protecting him from trophy hunters.

(16) Nunivak Island Refuge in Alaska: After their extinction in Alaska, muskox were imported from Greenland and liberated on Nunivak Island so that a breeding population might be reestablished on American soil.

(17) Pribilof Islands Reserve in Alaska: These three islands are the summer breeding grounds of thousands of fur seals. The high price of sealskin coats and capes once brought this species to near extinction, but now the great colonies have reestablished themselves under treaty laws between the United States, Russia, and Japan. A certain number of young bulls are taken each year for commercial purposes, but all the cows are left to propagate the species.

(18) Simeonoff National Wildlife Refuge in Alaska: Here the animal with the most valuable pelt in the world has a sanctuary from its relentless pursuers. The sea otter's fur was once worn only by czars, kings, and noblemen, and now in the United States it is illegal even to own a skin.

(19) California even has a reserve in a city park of Pacific Grove for the protection of the overwintering migratory monarch butterfly. The butterflies arrive from the north and spend the cold winter months in great concentrations on the needles of the pine trees in the city park. Their numbers are estimated at 2 million.

CANADA

(20) Wood Buffalo Park in Alberta: Here the northern, darker subspecies of bison has a sanctuary, and recently it was discovered that the whooping crane uses the reserve as a summer nesting site.

MEXICO

(21) The Guadalupe fur seal is protected by the Mexican Government, and these rare mammals are making a comeback on the small rocky islands of Guadalupe off the coast of Baja California.

REPUBLIC OF SOUTH AFRICA

(22) Umfulozi Reserve: The square lipped rhino or white rhino is protected here, and its numbers increased from near extinction to over 700 strong.

(23) Hluhluwe Reserve: A reserve has been established for the black or prehensile lipped rhino.

(24) Mountain Zebra Reserve: This sanctuary was proclaimed just in time to save the last remnants of this species of zebra.

(25) Bontebuck Reserve: Exterminated in the wild state, here a few captive individuals have slowly increased to over 100.

(26) Addo Elephant Reserve: The most southerly herd of elephants in Africa are here surrounded by an elephant-proof fence of old elevator cables. Starting with 6 elephants, the herd now numbers over 30.

(27) Kalahari Gemsbok National Park: In a semidesert region next to South-West Africa, this reserve protects the beautiful gemsbok, and the few Bushmen of the area are allowed to hunt this animal in their old traditional ways.

(28) Percy Fyfe Nature Reserve: Here the very rare blesbok is being bred for distribution to farmers and ranchers who wish to reestablish an old friend on their lands.

UGANDA

(29) Mountain Gorilla Reserve: On a steep bamboo-covered volcanic slope on the border of the Congo, a very few mountain gorillas still exist.

(30) White Rhino Sanctuary: On the west bank of the Nile are still to be found a few of the northern white rhino. Protection from poachers is so difficult that some rhinos have been captured and transplanted across the Nile into the Murchison Falls National Park.

(31) Elephant Sanctuary: A large sanctuary of 1,350 square miles furnishes the necessary browse for large herds of elephant.

KENYA

(32) Lake Nakuru Sanctuary: Here great flocks of two species of flamingoes are protected as they feed on the blue-green algae and other plankton of the lake.

MADAGASCAR (MALAGASY REPUBLIC)

(33) Six reserves have been proclaimed for the protection of indigenous lemurs.

INDIA

(34) Gir Sanctuary: This is the only place where the Asiatic lion now exists.

(35) Kaziranga Sanctuary of Assam Province: About 300 great Indian rhinos still exist in this area.

(36) Dachingam Sanctuary of Kashmere Province: This refuge is for the Kashmere stag, a relative of the California tule elk.

INDONESIA (JAVA)

(37) Udjung Nature Reserve: It protects the very rare Javan rhino.

INDONESIA (SUMATRA)

(38) Sumatra-Selatan Nature Park: The rare Sumatran rhino is preserved here.

(39) Sikundur Reserve: The orangutan is protected here.

(40) Rintja Nature Park: Here the giant monitor lizard of the island of Komodo is protected. Sometimes called the dragon lizard, it is known to reach a length of 12 feet.

MALAYSIA (BORNEO)

(41) The Great Cave at Niah in Sarawak is a sanctuary for the rare, black-colored naked bat along with one of the rarest insects of the world, the large, hairy earwig which is known from only one or two other caves also inhabited by the bat.

JAPAN

(42) Daisetsuzan National Park: In this area is found the Yezo brown bear and the crying hare.

PHILIPPINES (LEYTE)

(43) Kuapnit Park: The habitat of a unique swift and bat are preserved here.

NEW ZEALAND (SOUTH ISLAND)

(44) Notornis Sanctuary: The west side of Lake Te Anau is the only remaining habitat of the flightless rail or tokahe. Until recently this bird was thought to be extinct, but now they are believed to number between 50 and 100.

(45) Stephen Island Sanctuary: This island located between North and South Islands in Cook Strait is a sanctuary for the living fossil known as the tuatara or *Sphenodon*. This lizard-like creature lives in the burrows of sea birds.

ICELAND

(46) Eldey Nature Reserve: This small rocky island is the rookery of gannets. The last pair of great auks was killed here in 1844.

TASMANIA

(47) Goose and Little Woody Island Reserves: The rare Cape Barren goose numbered only 943 in 1960, and has now increased to 2,642.

AUSTRALIA

(48) Mallee Fowl Sanctuaries: Two reserves in Victoria and one in New South Wales protect the mallee fowl, a bird which incubates its eggs by using the heat of decaying vegetation placed in a sandy pit dug by the male birds.

(49) Sherbrooke Forest: This is a lyre-bird sanctuary.

(50) Giant Earthworm Sanctuary: In Gippsland, South Victoria, there is a small sanctuary for the giant earthworm which is an inch or more in diameter and which reaches a length of from 6 to 11 feet.

VENEZUELA

(51) Alexander von Humboldt National Monument: These caves are the home of the rare guacharo or oil bird which uses a clicking noise for its echolocation or sonar technique of navigation in the total darkness of the caves which it uses as nesting sites.

PERU

(52) Owl's Nest National Reserve: These caves are also the habitats of oil birds.

ITALY

(53) Abruzzi National Park: This is a sanctuary for the chamois and the Abruzzi bear.

(54) Gran Paradiso National Park: Here the Alpine ibex has a sanctuary.

POLAND

(55) Bialowieza National Park: Here is the largest herd of European bison.

GREECE

(56) Samarios Park: This park on the island of Crete was established for the protection of the rare chamois of Greece.

RUSSIA

(57) Prioksko-Terrasny Reserve: This area near Moscow is for the breeding of the European bison.

(58) Belovezhskaya Pushcha Reserve: (Byelorussia) This is also for the preservation of the European bison.

(59) Badkhyz Reserve: (Turkman) Over 500 onager or wild asses have a sanctuary here.

(60) Zuvinto Reserve: (Lithuania) This lake and surrounding marsh is the nesting site of 50 pairs of whooper swans.

INTERNATIONAL

(61) The International Whaling Commission has authorized the complete protection of the humpback whale south of the equator.

(62) The blue whale is protected in all areas south of 40° south latitude except between 40° and 50° south and 0° and 86° east longitude. It is also protected in the North Atlantic.

(63) The Greenland whale has complete protection in Arctic seas where it is found in small numbers.

If other nations can have sanctuaries for such rare and interesting creatures as earthworms, lizards, oil birds, and rhino, surely it is not too much to ask for a Tule Elk Reserve. We not only have a unique and beautiful species to save, we have it living in a unique and beautiful valley, secluded between two spectacular mountain ranges, and the most unusual feature of all is the beautiful fact that the people of Los Angeles own most of the valley. With enough public demand we can have a reserve for our tule elk.

STATEMENT SUBMITTED FOR THE RECORD BY MARY HAZELL HARRIS, EXECUTIVE SECRETARY, DEFENDERS OF WILDLIFE

Defenders of Wildlife, a national, nonprofit, educational organization dedicated to the preservation of all forms of wildlife, enthusiastically supports S. 2217. We are pleased to note that it would greatly broaden and increase the constructive purposes and responsibilities of the U.S. Fish and Wildlife Service. It would include the increased protection of our native wildlife, especially those species threatened with extinction and most needing protection. That it would encourage the Service to acquire additional lands for refuges is of primary importance.

Our obligation and moral responsibility to keep from extinction all species of wildlife is inescapable, for the human need is universal. The need may be a scientific one, biological and ecological; or an intricately woven economic one; or an esthetic and recreational need. They are all a part of human welfare.

We believe the amendments offered by the National Audubon Society in Mr. Callison's statement would greatly strengthen the effectiveness of these bills. We support the National Audubon Society in the following suggested amendments.

1. On page 5, line 11—Delete the period after "accommodations" and add, "when and in such locations, and to the extent that the Secretary shall determine will not be inconsistent with the primary purpose for which the affected area was established."

This should keep facilities for mass recreation out of areas provided for conservation of wildlife. The two are incompatible.

2. On page 6, line 7; page 8, line 21 and line 24—Between the words "vertebrate" and "animals" insert "or invertebrate."

3. On page 7, line 23—Delete the word "migratory."

4. On page 9, lines 17 through 21, section 6—Delete all.

This would hold to the present existing limitation of 40 percent, the area of any refuge which could be opened for bird shooting.

Defenders of Wildlife urges strongly that these bills be reported favorably out of the Merchant Marine and Fisheries Subcommittee and the full Committee on Commerce. Thank you for the privilege of submitting our views.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: Your committee has before it S. 2217 and a related measure which provides for the conservation, protection, and propagation of certain species of fish and wildlife threatened with extinction; and which would consolidate certain authorities relating to the administration of the national wildlife refuge system by the Secretary of the Interior.

Section 4(c) of S. 2217, beginning at line 3 on page 6 and following through to line 9 on page 7, provides that the mining and mineral leasing laws would continue to apply to any lands within the national wildlife refuge system to the same extent that they now apply but that any mining claim perfected under the mining laws and any patent issued for such claim, after passage of this proposed act, would convey title only to the mineral deposits and would give the holder of mining claims only such rights to the use of the surface and surface resources "as are reasonably required for carrying on prospecting or mining, subject to regulations as may be prescribed by the Secretary of the Interior," and in any patent issued after passage of this act would reserve all title to the surface of the claims and surface resources to the United States, subject only to the patentee's rights to use so much of the surface of the claim and surface resources reasonably required for prospecting and mining.

The mining industry objects strenuously to the adoption of any such provision. This provision would make a drastic substantive change in existing mining law. Under present law, the rights of a patentee carry with them a fee ownership, in the property patented. The mining industry is, and always has been, opposed to any proposal that would substitute a limited estate in the place of the fee estate provided for under the general mining laws, and amendments thereto. Such proposed limitation of a patentee's estate would inherently involve interference, or a constant threat of interference, with the mining operations and related uses by the patentee of his property, and uncertainty to the patentee's rights, with ever present possibilities of controversy and litigation.

As you know, the development of mineral resources involves large expenditures of capital. The difficulties in securing venture capital for mining arise from the uncertainty of financial success, and should not be aggravated by uncertainty as to rights, or by the hazards of interference and litigation.

Today particularly, when so much of our mineral production comes from the mining of low-grade deposits, adjacent surface areas are needed for the treatment of the low-grade ores and for the disposition of waste. Many operations involve surface or open-pit mining. Even where a mining operation upon a particular claim is limited to underground operations through a shaft or drift, there exists a practical need to exclude third parties from the property because of the dangers present. Few people who have not had actual experience realize the difficulties which are involved in connection with livestock grazing in the vicinity of a mining operation, or in connection with unrestricted public access about mining operations.

Under existing mining law and prior to patent, the locator of a mining claim has a possessory right and the United States retains title to the property. Assertion of such possessory rights is necessary to the protection of the locator against those who might have other objectives in the filing of subsequent claims in the area.

In 1955, the mining industry joined with conservationists and other users of the public domain to bring about the enactment of Public Law 167, 84th Congress, which restricts the surface usage and surface resource usage by the holder of an unpatented mining claim to those uses necessary to prospecting, mining, and related activities. That law specifically states that rights under any mining claim located after its passage under the mining laws of the United States "shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States)." This law gives the United States, even under the circumstances mentioned in S. 2217, the right to manage surface resources on any unpatented mining claim.

This same law provides that when a mining claim is patented that nothing in this act "shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation, limitation, or restriction not otherwise authorized by law * * * or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law" (69 Stat. 372). The industry then felt in supporting these provisions, and now feels that any mineral patent should represent a title carrying with it the certainty of right and freedom from controversy. The bills pending before you would bring about a drastic change in the basic mining law of the Nation, contrary to statutes now on the books, and would do so without thorough consideration being given to the subject by Congress or by any agency of the Government established for the purpose of considering conflicts between public land laws.

We would suggest to you that Congress has created a Public Land Law Review Commission, which has been duly constituted by action of Congress and by the President, to study conflicts between the various public land laws of the country and to develop recommendations for the creation of a public land law code which would eliminate conflicts between existing laws, remove inequities in administration, regulations and interpretations, and return to Congress the control over the disposition of public lands as was originally intended when the land laws were enacted. We urge you to eliminate the restrictive mining section contained in the bills before you so that this major proposed revision of the mining laws may be thoroughly considered by the Public Land Law Review Commission and by any other committee of Congress which may have jurisdiction over such substantive changes in the mining laws. See legislative analysis, Public Land Law Review Commission Act, p. 35.)

We believe language relating to the mining laws appearing at lines 19 following the phrase "providing further" on page 6 of S. 2217 through line 9 on page 7 should be stricken from the bill. We urge your favorable consideration of this recommendation.

Respectfully submitted.

W. HOWARD GRAY,
Chairman, Public Lands Committee,
American Mining Congress.

PASADENA, CALIF., February 2, 1965.

Senator MAGNUSON,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR: The Pasadena Independent-Star News, newspaper of this city has published a little article concerning your proposed conservation bill.

As wildlife chairman of the Desert Protective Council (600 persons), I would like to assure you of our complete backing.

We are worried about our condor and the tule elk, in fact this group come out flatfooted against any type of so-called predator control. The so-called predators of today are the "endangered species" of tomorrow.

We have a very vicious breed of human in the West. They are varmint hunters who shoot everything as they go, using "calls" to bring in their quarry.

Please be assured of our complete support and let us know if this is needed, and be assured of thousands of others, sport and gun clubs, Ducks Unlimited, National Audubon, gem and mineral groups and practically every other person.

I have polled all these groups in the past to stop man's deprecations against wildlife—they stand abreast for you and your bill.

Respectfully,

LORAN E. PERRY,
Wildlife Chairman,
Desert Protective Council.

P.S.—No doubt Senators Murphy and Kuchel will support your bill.

SPORT FISHING INSTITUTE,
Washington, D.C., July 7, 1965.

Re S. 2217, to provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction.

Senator WARREN MAGNUSON,
Chairman, Senate Committee on Commerce,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: Sport Fishing Institute is known to you for its work in helping to provide more and better sport fishing opportunity. We are the only nongovernment, nonprofit, professionally staffed, national fish conservation organization. We would like to express our views on the legislation in your proposed bill which would establish machinery for the "conservation, protection, and propagation of native species of fish and wildlife * * *"

Assessment by the Rare and Endangered Fish and Wildlife of the United States, Federal Committee, has provided stimulus in establishing coordination among the many individuals and conservation organizations, and energies now involved in attempting to preserve and protect endangered species of fish and wildlife. Too, the recently passed Land and Water Fund Conservation Fund Act does provide a clause to afford some means for protection of the more critically endangered species in some circumstances.

Sport Fishing Institute does admonish the general public, conservationists, government agencies, and legislators who are loathe to support adequate programs of scientific research into the biology of the fishes and other animals until a crisis arises. It is somewhat tragic to learn that often it is "too little too late."

The Federal Committee has come up with a listing of some 60 species of fish, birds, and mammals that are considered "endangered." With conscientious planning there may have been assured for now and future generations a program that would preserve such species for enjoyment by the many. Therefore, Sport Fishing Institute urges careful consideration of the effects of land and water developments in resource management activities upon threatened or scarce aquatic resources and to take such action(s) "to preserve a high degree of quality in aquatic resources through maintenance of a wide variety in natural aquatic habitats and the living organisms sustained thereby."

The special scientific team appointed by the Interior Department in its Fish and Wildlife Service is making and has made intensive study of those American fish and wildlife resources that seem to be on the danger list. Of course, other organizations have published their own lists and it means that there must be some compromising and definite coordination to bring into firm being a list of those fish, birds and mammals that must be managed for their enduring existence. Too, the purpose of the program should be to provide only for those species which are really "endangered." Sport Fishing Institute at the National Conference on Conservation Issues sponsored by the National Wildlife Federation, December 10, 1964, did prepare a rather complete treatise on this subject. Mr. Richard H. Stroud, executive vice president of SFI lists six classifications to provide criteria for judging the various categories that should be considered. For definitive purposes classifications involved "endangered, rare or unique, depleted, peripheral, restored, and abundant." I am attaching a copy of the treatise that Mr. Stroud wrote for this national conference. In it there is a listing of fishes, on which subject Sport Fishing Institute is most competent, of 29 "endangered" species.

Sport Fishing Institute appreciates the amount of study that went into the writing of this bill, and feels that it is a strong one and urges its consideration for passage into law by the committee so charged.

Sport Fishing Institute would like this letter and the attachment to be made a part of the written record of testimony favoring this provision.

Sincerely yours,

PHILIP A. DOUGLAS,
Executive Secretary.

TUCSON WILDLIFE, UNLIMITED,
Tucson, Ariz., August 5, 1965.

Senator WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: Thank you very much for sending me a copy of your Senate bill 2217.

I have been instructed by our board of directors to convey to you our wholehearted support of this fine bill. With our fast increasing population this bill and other like are necessary to conserve and wisely manage our precious and priceless wildlife.

There is one part of your bill that does need clarification, from line 16 through 23 on page 2. We think it should be spelled out just what influence the States will have. "After consultation with the States" does not bind the Secretary of the Interior to give any weight to those members of the various State game and fish departments who are in the last analysis the most closely associated with the various wildlife species.

As an example the Kaibab squirrel, a local race of the widespread Abert's squirrel is listed as a rare and endangered species in the Fish and Wildlife Service compilation. This is over the protests and recommendations of the Arizona Game and Fish Department and members of the staff of the Arizona Cooperative Wildlife Research Unit at the University of Arizona. The Department of the Interior apparently give more consideration to the superficial observations of wildlife picture takers and some National Park Service personnel. It is interesting to note that biologists with the Park Service need not have a degree in any phase of wildlife management; a degree in any area is sufficient.

It is our belief that it be mandatory that the views of the State game departments be considered.

Very truly yours,

SEYMOUR H. LEVY, *Secretary.*

LEGISLATIVE ANALYSIS

PUBLIC LAND LAW REVIEW COMMISSION ACT, PUBLIC LAW 88-606 (78 STAT. 982)

H.R. 8070, introduced August 14, 1963.

Hearings Committee on Interior and Insular Affairs, September 9 and 10, 1963.

House Report 1008, 88th Congress, 1st session, December 7, 1963.

Passed House, March 10, 1964, Congressional Record (daily, pp. 4690-4703).

Senate hearings, Committee on Interior and Insular Affairs, June 30, (printed).

Senate Report 1444, 88th Congress, 2d session, August 15, 1964.

Passed Senate, September 3, 1964, Congressional Record (daily pp. 20915-17).

House agrees to Senate amendments, September 4, 1964. Congressional Record (daily, p. 20985).

Signed by President, September 19, 1964. Public Law 88-606 (78 Stat. 982).

SUMMARY

The Public Land Law Review Commission has been created to conduct a comprehensive review of the laws, rules, regulations, policies, and practices with respect to the retention, management, or disposition of the public lands. As used in the act the term "public lands" includes (a) the public domain of the United States (that is the areas, except for the O. & C. lands, administered by the Bureau of Land Management); (b) reservations other than Indian reservations, created from the public domain; (c) lands permanently or temporarily withdrawn, reserved or withdrawn from private appropriation or disposal under the public land laws including the mining laws; (d) outstanding interests of the United States in lands patented, conveyed in fee or otherwise under the public land laws; (e) national forests; (f) wildlife refuges and ranges; and (g) the surface and subsurface resources of all such lands including the disposition or restriction on disposition of the mineral resources of the United States in the Outer Continental Shelf.

In an appendix to his prepared statement for the Senate Committee Secretary Udall listed "probable areas of investigation and recommendation to be considered by the Public Land Law Review Commission." These are:

1. Criteria for determining disposition of public lands for:
 - (a) Agriculture use.
 - (b) Commercial use.
 - (c) Residential use.
 - (d) Public purposes.
 - (e) Mineral resources including retained mineral interests.
2. Criteria for determining retention of public lands.
3. Directive for management of lands to be retained including authorities for the protection and use, the sale or lease of renewable and nonrenewable resources, and land exchanges or acquisitions.
4. Directive on rights-of-way and easements including railroad rights-of-way.
5. Manner and standards for transferring land management responsibilities from one Federal agency to another.

Origin

Representative Wayne Aspinall, chairman of the House Committee on Interior and Insular Affairs, introduced H. R. 8070 on August 14, 1963. The bill proposed a Public Land Law Review Commission composed of six members from Senate Committee on Interior and Insular Affairs, six members from the House Interior Committee (membership to be divided equally between the two major parties), and six persons from the executive branch to be appointed by the President. These 18 members would have been authorized to elect a full-time Chairman.

This was Mr. Aspinall's response to the Department's request for modern public land management authority. In announcing his plan to introduce H. R. 8070, Mr. Aspinall referred to "an burgeoning population," "an expanding economy," as well as a "recreation minded America." He charged that congressional failure "to come to grips with overall land use programs had allowed outmoded land laws to remain on the books without significant modification." To allow Congress to deal meaningfully with these outmoded laws he proposed a commission "given the time, money, and staff" to conduct a comprehensive review and make recommendations. At the same time he added that situations confronting the Secretary of the Interior made it desirable to provide interim authority for the sale of public lands and clarification of multiple use. These secretarial authorities were granted by Public Sale Act (Public Law 88-608) and H. R. 5159 the Classification and Multiple Use Act (Public Law 88-607).

The present system's inability to cope with increasing demands on the public lands had come to the committee's attention through various departmental bills over the years, and through the numerous private and local bills introduced to provide sale authority in specific situations, as well as the proposal then before House Interior Committee to create a wilderness preservation system within existing systems of public land management.

The Public Land Law Review Commission Act sets a congressional policy "that the public lands of the United States shall be '(a) retained and managed or (b) disposed of, all in a manner to provide the maximum benefit for the general public.' It declares that the purpose of the Commission is to achieve 'a comprehensive review of [the public land] laws and the rules and regulations promulgated thereunder and to determine whether and to what extent revisions thereof are necessary.'"

The Commission is given four duties: (1) Study existing statutes and regulations covering the retention, management, and disposition of the public lands; (2) review the policies and practices of the Federal agencies, insofar as such policies and practices relate to retention, management, and disposition; (3) compile data and determine various existing and future demands on the public lands; (4) recommend such modifications in existing laws, regulations, policies, and practices which will "best serve to provide the maximum benefit to the general public."

As the provisions make clear this review is not to be a mere codification; it is a comprehensive review pointed not only to the laws but to the regulations made under them and to the policies and practices which have arisen. The act authorizes an appropriation of \$4 million to be available to the Commission until expended.

To assist the Commission each agency with responsibility for retention, management, or disposition of public lands is required to appoint a liaison officer "who shall work closely with the Commission and its staff. * * *

The Department liaison officers form the nucleus of an Advisory Council. In addition the Council will have 25 members appointed by the Commission representing major organizations interested in problems relating to the retention, management, and disposition of public lands. The Commission is also required to invite the Governor of each State in the Union to designate a representative to work closely with the Commission and the staff of the Advisory Council.

Although the bill was not initiated by the executive branch of the Government, John A. Carver, Jr., as Acting Secretary of the Interior, made clear in his testimony before the House committee that the Department would follow the lead of President John F. Kennedy's letter of January 17, 1963, to Mr. Aspinall setting a "tone for constructive cooperation." The Department suggested amendments which Secretary Carver described as "nonvital." The substantive amendments included a suggestion to confine the Commission's review to the lands administered by the Secretary of the Interior through the Bureau of Land Management including the revested Oregon and California Railroad and reconveyed Coos Bay wagon road lands but excluding acquired acreage. It also recommended including the outstanding interests of the United States, principally the reserved mineral interest and the Outer Continental Shelf.

House committee action

Certain changes were made by the House committee: (1) Appointment of full- or part-time employees or officials of the executive branch was prohibited and the appointment of six members from the public was substituted; (2) limits on the use of the subpoena power were provided; (3) protection for confidential material obtained by the Commission was provided; (4) definition of public lands was extended to include national forests, acquired lands (except for lands acquired for national forests, wildlife ranges and game ranges, acquired lands are not included in the review), and the definition of public lands was expanded to include the reserved mineral interest and the mineral interests in the Outer Continental Shelf.

Major recommendations by public witnesses revolved around the membership of the Commission and use of the subpoena power. The appointment of public members rather than executive branch membership met these recommendations fully, while the subpoena power was clarified but retained.

The Senate committee made no substantive changes. It fixed the date for final review and closeout of the Commission. It also specifically inserted "wildlife refuges and ranges" in the definition of public lands. These changes were concurred in the House of Representatives by modifying them to provide for the report by December 31, 1968, and extending the life of the Commission to June 30, 1969.

REMARKS BY R. H. STROUD, EXECUTIVE VICE PRESIDENT, SPORT FISHING INSTITUTE, AT NATIONAL CONFERENCE ON CONSERVATION ISSUES, WASHINGTON, D.C., DECEMBER 10, 1964

ENDANGERED SPECIES PROGRAM

(Fishes, amphibians, reptiles, and aquatic mammals)

The newly formalized Federal Committee to assess rare and endangered fish and wildlife of the United States is a potentially welcome development in certain respects. First, it provides a powerful stimulant to the traditional efforts by many individuals and several conservation organizations. Second, it marshals substantial new resources to serve a needed coordinating role for the diverse interests and energies that have been and may become involved. The latter has become especially significant with the recent passage of the Land and Water Conservation Fund Act, which would appear to provide previously lacking means for protection of critically endangered species in some circumstances.

It is unfortunate that the general public, conservationists, Government agencies, and legislators, are loathe to support adequate programs of scientific research into the biology of fishes and other animals until a crisis arises. Then, often too late, crash programs (with attendant confusion and inadequate planning) are launched in hopes of turning the tide. It may be hoped, if forlornly, that we are learning rapidly enough the tragedies of our past shortcomings in this regard that we will not continue to repeat these mistakes.

It is tragic, in this context, that some 60 species of birds, fish, and mammals are already said by the Federal Committee to be facing critical times when their survival as species is becoming a question. The activities and requirements of a

large technologically advanced human population have drastically altered and occupied a large part of the landscape, with consequent displacement of many competitive life forms and often critical reduction of their numbers. In many instances, however, a little conscious planning would assure that most other species will continue to occur in some abundance.

So far as the Sport Fishing Institute is concerned, our policy in these matters urges the concerned "governmental bodies and officials to consider carefully the possible effects of land and water developments and resource management activities upon threatened or scarce aquatic resources and to take such actions as may be necessary and desirable to preserve a high degree of quality in aquatic resources through maintenance of wide variety in natural aquatic habitats and the living organisms sustained thereby." No doubt, this is somewhat similar to the general attitude of most folk present here today.

As mentioned, the Interior Department recently named a special scientific team in its Fish and Wildlife Service to make an intensive study of dozens of dwindling species of American fish and wildlife. For some species, the bells may already be tolling. For others, obviously at low abundance levels but not yet at the brink of extinction, the study may have come soon enough to stimulate timely actions. The list of rare and endangered species released by the Interior Department includes only seven species of fishes, namely Atlantic salmon, arctic grayling, Lahontan cutthroat trout, Ohio muskellunge, Maryland darter, and the Olympic mud minnow. This compares to a list of more than 68 allegedly rare, restricted, and/or threatened (but not necessarily endangered, as a careful reading will reveal) species of freshwater fishes released last year from the University of Michigan Museum of Zoology. Moreover, only three species (grayling, darter, and mud minnow) are common to both lists. The National Wildlife Federation publicized 12 of the species from the Michigan museum list as being among the more seriously endangered. Yet the range of one of these, the Sacramento perch, is being extended significantly, by introductions in alkaline lakes in Nebraska, South Dakota, and North Dakota, and it cannot longer be considered a valid inclusion in the endangered listing, in our view.

Obviously, there is confusion as to what species of fishes, at least, are in trouble. (We need not only to know which these are; we need also to identify those that might easily become so.) The basic source of the confusion is the lack both of general agreement on terms to be used and of their definitions as to meaning. This is compounded to a significant degree by lack of substantial agreement in many cases as to what are or are not good species. This, of course, reflects the traditional taxonomic conflict that continues to flourish between the "splitters" and the "lumpers." Some taxonomists challenge the definitive emphasis on species, preferring a genetic-unit approach that emphasizes a population syndrome. It is compounded further in several well established instances by lack of adequate knowledge concerning species distribution.

It would seem that what's needed as a next step, for the fishes, is to analyze all the published and unpublished records of fish collections made by State fishery biologists, as well as by museum taxonomists, and to develop an atlas of rare and endangered fishes. Fortunately, this need has now been formalized in a resolution by the American Fisheries Society calling for development of such an atlas as a joint venture with the American Society of Ichthyologists and Herpetologists. This reflects recognition that mere listings by one or two taxonomists, or one or two fishery biologists, are inadequate. Such listings tend to reflect principally their own special interests. At the very least, a composite listing, thoroughly reviewed by all State, academic, private, and Federal agencies would be needed. For implementation of measures to assure species survival in adequate numbers, however, an actual atlas must eventually be developed.

In an effort partly to stimulate such action within the spirit of the AFS resolution, partly in order to modify constructively certain inadequacies evident in the preliminary listings by the Federal Committee on Rare and Endangered Species, and partly to meet the needs of the distinguished group present here today, I sent inquiries to 157 State and academic fishery authorities throughout the United States seeking their nominations and appraisals of species to be included or considered. Over 70 different species and subspecies of fishes scattered in 15 States were cited for consideration or evaluation (45 of which represented new nominations including a dozen or more that may already be extinct or nearly so), together with 6 species of reptiles and amphibians, and 5 species of aquatic mammals (species list attached).

The supplementary comments and information available from their responses, coupled with existing information from other sources cited, suggested that a useful classification of species, for definitive purposes, might be as follows:

1. *Endangered*.—Species that have suffered progressive and substantial declines in abundance to such low levels that further decimation of population numbers, whether presently indicated or otherwise, would appear to threaten the species with extinction. Includes a number of rare or unique species being unwisely exploited or severely affected by habitat alteration, but does not necessarily include all rare or unique species.

2. *Rare or unique*.—Species characterized by naturally low population numbers and/or restricted distribution embracing relatively few climatologic habitats, or unique geologic situations, or that are poorly known due at least partly to infrequent or intermittent collections. Not necessarily endangered but, being potentially vulnerable due to extreme specialization, probably would become so if subjected to any significant exploitation or if habitat perceptibly altered, either directly or indirectly.

3. *Depleted*.—Species that have apparently or actually become substantially reduced in abundance or geographic range, compared either to postulated or known earlier numbers or distribution, which are nevertheless maintaining their populations sufficiently to support limited exploitation without threat of extirpation. Periodic or continuous monitoring generally required in order to detect any significant changes in population status.

4. *Peripheral*.—Species that are represented in abundance elsewhere in the world but occur in small numbers in restricted areas of the United States by virtue of their presence at the fringe of their range of natural distribution. Species that are extremely sensitive to any changes in the marginal conditions normally encountered at the periphery of their range, where they tend to be environmental "sports" or biological "curiosities."

5. *Restored*.—Once-endangered species that are no longer characterized by alarming declines in abundance but which have extended their ranges naturally or have responded to protection and management and have become restored sufficiently to be characterized by increasing abundance. Not necessarily yet capable of supporting significant exploitation.

6. *Abundant*.—All other species under all other conditions.

By this approach, then, the various species that have been listed from various sources would seem to classify approximately as follows:

FISHES

(Classification tentative; list subject to modification)

Endangered fishes, include some 29 species or subspecies, viz:

- **Acipenser brevirostrum*—short-nose sturgeon.
- **Acipenser oxyrhynchus*—Atlantic sturgeon.
- **Acipenser transmontanus*—Columbia River white sturgeon.
- **Coregonus johannae*—Deepwater cisco.¹
- **Coregonus nigripinnis*—Blackfin cisco.¹
- **Salmo clarkii*—Westslope cutthroat trout.
- **Salmo clarkii henshawi*—Lahontan cutthroat trout.
- **Salmo clarkii pleuriticus*—Colorado cutthroat trout.¹
- **Salmo clarkii seleniris*—Piute cutthroat trout.
- **Salmo clarkii stomias*—Green-backed trout.
- **Salmo clarkii Utah*—Utah cutthroat trout.¹
- Thymallus arcticus*—Arctic grayling.
- Gila mohavensis*—Mohave chub.
- Lepidomeda vittata*—Colorado spinedace.²
- **Notropis anogenus*—Minnow.
- Ptychocheilus lucius*—Colorado River squawfish.
- Chasmistes brevirostris*—Short-nose sucker.
- Chasmistes cujus*—Cui-ui.²
- **Lagochila lacera*—Harelip sucker.¹
- Empetrichthys latos*—Pahrump killifish.
- Gambusia heterochir*—Clear Creek gambusia.
- Poeciliopsis occidentalis*—Gila topminnow.
- **Ambloplites cavifrons*—Roanoke bass.^{1 3}
- Etheostoma sellare*—Maryland darter.²

See footnotes on p. 69.

- **Etheostoma trisella*—Trispot darter.¹
 **Percina evides*—Gilt darter.²
 **Cottus echinatus*—Utah Lake sculpin.¹
Gasterosteus aculeatus williamsoni—Unarmored threespine stickleback.
 **Typhlichthys wyandotte*—Blind cavefish.¹
Eucyclogobius newberryi—Tidewater goby.
 Rare or unique fishes, include some 56 species, viz.:
 **Scaphirhynchus albus*—Pallid sturgeon.⁴
 **Coregonus reighardi*—Shortnose cisco.^{5 4 6}
 **Salmo clarkii spilurus*—Rio Grande trout.⁷
Salmo gilae—Gila trout.⁷
Novumbra hubbsi—Olympic mudminnow.
Dionda diaboli—Devils River minnow.⁷
Gila crassicauda—Thicktail chub.¹
Gila cypha—Humpback chub.³
Eremichthys acros—Desert dace.
 **Hybopsis meeki*—Sicklefin chub.⁴
Lepidomeda albivallis—White River spinedace.
 **Meda fulgida*—Gila spikedace.
Moapa coriacea—Moapa dace.
 **Notropis amnis*—Pallid shiner.
 **Notropis anogenus*—Pugnose shiner.
 **Notropis ariommus*—Popeye shiner.
 **Notropis illecebrosus*—Silverband shiner.
 **Notropis xaenocephalus aletes*—Coosa shiner.
Tiaroga cobitis—Loach minnow.
Catostomus microps—Modoc sucker.¹
Chasmistes liorus—June sucker.³
 **Cycleptus elongatus*—Blue sucker.
 **Moxostoma atripinne*—Blackfin sucker.
 **Xyrauchen texanus*—Humpback sucker.
 **Noturus* (sp.)—Neosho madtom.
 **Noturus insignis*—Madtom.¹
Satan eurystonus—Widemouth blindcat.
Trogloglanis pattersoni—Toothless blindcat.
Crenichthys baileyi—White River killifish.
Crenichthys nevadae—Railroad Valley killifish.
Cyprinodon diabolis—Devils Spring pupfish.⁴
Cyprinodon elegans—Comanche Springs pupfish.
Cyprinodon macularius—Desert pupfish.
Cyprinodon radiosus—Owens Valley pupfish.
Cyprinodon rubrofluvialis—Red River pupfish.⁵
 **Fundulus catenatus*—Northern studfish.
Gambusia gaigei—Big Bend gambusia.
Gambusia nobilis—Pecos topminnow.
Lepomis symmetricus—Bantam sunfish.
 **Crystallaria asprella*—* * * darter.¹
Etheostoma acuticeps—Sharphead darter.¹
 **Etheostoma cragini*—Arkansas darter.
Etheostoma fonticola—Fountain darter.⁷
 **Etheostoma histrio*—Harlequin darter.¹
 **Etheostoma nianguae*—Niangua darter.
Etheostoma okaloosae—Okaloosa darter.
 **Etheostoma squamiceps*—Flathead darter.¹
Hadropterus shumardi—River darter.⁷
Iotichthys phlegenthontis—Least chub.
 **Percina uranidea*—Stargazing darter.¹
Cottus asperrimus—Rough sculpin.
Eucalia inconstans—Brook stickleback.
Amblyopsis rosae—Ozark cavefish.
 **Amblyopsis spelaeus*—Blind cavefish.
Plagopterus argentissimus—Woundfin.
Hysterothorax traskii—Tule perch.

Depleted fishes, include some 18 species, viz:

- **Alosa sapidissima*—Atlantic shad.⁵
- Salmo salar*—Atlantic salmon.⁷
- **Salvelinus aureolus*—Sunapee trout.^{5 4 2}
- Salvelinus malma*—Dolly Varden.
- **Salvelinus oquassa*—Blueback trout.^{5 4 2}
- **Osmerus mordax*—American smelt.⁵
- Gila robusta elegans*—Bonytail chub.^{3 5}
- **Hybopsis dissimilis*—Streamline chub.
- Phenacobius mirabilis*—Suckermouth minnow.
- **Moxostoma carinatum*—River redhorse.
- Cyprinodon nevadensis*—Amargosa pupfish.
- Esox masquinongy ohioensis*—Ohio musky.⁵
- Micropterus notius*—Suwannee bass.²
- Micropterus treculi*—Guadalupe bass.²
- **Microgadus tomcod*—Atlantic tomcod.⁵
- **Stizostedion vitreum glaucum*—Blue pike.⁵
- **Menidia beryllina*—Tidewater silverside.⁵
- Cottus bendirei*—Malheur sculpin.

Peripheral fishes, include at least nine species, viz:

- Campostoma ornatum*—Mexican stoneroller.
- Gila ditaenia*—Sonora chub.
- Gila purpurea*—Yaqui chub.
- Notropis chihuahua*—Chihuahua shiner.
- Notropis proserpinus*—Proserpine shiner.
- Lucania parva*—Rainwater killifish.
- Gambusia senilis*—Blotched gambusia.
- Poecilia formosa*—Amazon mollis.
- Etheostoma grahami*—Rio Grande darter.

Restored fishes, includ at least two species, viz:

- Gambusia geiseri*—Largespring gambusia.
- **Archoplites interruptus*—Sacramento perch.

Abundant fishes, all others, apparently also include these three species, nominated (subject to reassignment) judging from available information:

- Rhinichthys evermanni*—Umpqua dace.
- **Lepomis punctatus*—Spotted sunfish.^{5 6}
- Chologaster agassizi*—Spring cavefish.²

AMPHIBIANS

Endangered forms include these three species:

- **Haideotriton wallacei*—blind salamander.
- Typhlomolge rathbuni*—Texas blind salamander.²
- Bufo exsul*—Black toad.²

REPTILES

Peripheral forms include this species:

- Chelonia mydas mydas*—Green turtle.

Restored forms include these two species:

- Alligator mississippiensis*—American alligator.
- Crocodylus acutus*—American crocodile.

MAMMALS

Endangered forms include these two species:

- Arctocephalus philippii, townsendi*—Guadalupe fur seal.²
- **Balaenoptera musculus*—Blue whale.

Rare or unique forms include these two species:

- **Monachus schauinslandi*—Hawaiian monk seal.
- Enhydra lutris*—Sea otter.

Peripheral forms include these two species:

- **Monachus tropicalis*—Caribbean monk seal.¹
- Trichechus manatus*—West Indian manatee.⁴

*New nomination, SFI survey.

¹ Possibly extinct.

² Possibly rare or unique.

³ Taxonomic validity doubtful.

⁴ Possibly endangered.

⁵ Population status confused.

⁶ Possibly depleted.

⁷ Possibly peripheral.

