BALD EAGLE PROTECTION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON THE ENVIRONMENT

OF THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

S. 2547

FOR THE PROTECTION OF THE BALD AND GOLDEN EAGLES

H.R. 12186

TO STRENGTHEN THE PENALTIES IMPOSED FOR VIOLATIONS OF THE BALD EAGLE PROTECTION ACT, AND FOR OTHER PURPOSES

H.R. 14731

TO AMEND THE FISH AND WILDLIFE ACT OF 1956 IN ORDER TO PROVIDE FOR THE EFFECTIVE ENFORCEMENT OF THE PROVISIONS THEREIN PROHIBITING THE SHOOTING AT BIRDS, FISH, AND OTHER ANIMALS FROM AIRCRAFT

JUNE 29, 1972

Serial No. 92–63

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1972

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BALD EAGLE PROTECTION ACT

THURSDAY, JUNE 29, 1972

UNITED STATES SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON THE ENVIRONMENT,
Washington, D.C.

The subcommittee met at 10:05 a.m., in room 5110, New Senate Office Building, Hon. William B. Spong, Jr., presiding.

Present: Senator Spong.

OPENING STATEMENT BY SENATOR SPONG

Senator SPONG. The meeting will come to order.

This morning the Subcommittee on the Environment will consider three bills, two designed to give increased protection to bald and golden eagles by increasing the penalties for killing them, and one which would amend Public Law 92–159 which passed during the first session of this Congress and which provides a criminal penalty for shooting animals from aircraft. This amendment would give the Interior Department the authority to enforce that law.

The problem of providing adequate protection to our national symbol is one of increasing importance as the numbers of these glorious birds dwindle and we get reports such as the one of over 500 bald and golden eagles gunned to death from aircraft in the winter of 1970. This one incident typifies the problems with which all three bills are attempting to deal.

(The bills and agency comments follow:)

Staff member assigned to this hearing: Lee Tyner.

92D CONGRESS
1ST SESSION

S. 2547

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 1971

Mr. MCGEE introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

For the protection of the bald and golden eagles.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That that part of the first section of the Act of June 8, 1940 (16 U.S.C. 668), which precedes the proviso is amended to read as follows: "That (a) whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as hereinafter provided, shall knowingly take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export, or import, at any time or in any manner, any bald eagle commonly known as the American eagle, or any golden eagle,

alive or dead, or any part, nest, or egg thereof of the foregoing eagles, shall be fined not more than $5,000 or imprisoned not more than one year, or both; except that in the case of a second or subsequent conviction for a violation of this section committed on or after the date of the enactment of the Bald and Golden Eagles Protection Amendments Act, the penalty shall be a fine of not more than $10,000 or imprisonment for not more than two years, or both:".

SEC. 2. (a) The first section of the Act of June 8, 1940 (16 U.S.C. 668), as amended by this Act, is further amended by adding at the end thereof the following new subsections:

"(b) The commission of each taking or other act prohibited by this section with respect to a bald or golden eagle shall constitute a separate violation.

"(c) On and after the date of the enactment of the Bald and Golden Eagles Protection Amendments Act, any lease, contract, license, permit, or other agreement entered into by the Secretary of the Interior, Secretary of Agriculture, or the head of any other Federal department or agency with any person involving or affecting the public lands of the United States shall contain a provision the effect of which shall be to provide that in any case in which such person who is a party to such lease, contract, license, per-

mit, or agreement is convicted of a violation of this section that such lease, contract, license, permit, or agreement (as the case may be) shall, on the date such conviction becomes final, be deemed void and of no effect. In no case shall the United States be liable for the payment of any compensation, reimbursement, or damages in connection with any lease, contract, license, permit, or agreement voided in accordance with any such provision contained therein.

"(d) As used in this section, the term 'prison' includes any individual, corporation, association, partnership, or other entity.".

(b) Section 4 of such Act of June 8, 1940, is amended by deleting "willfully".

SEC. 3. The provisions of the first section and section 4 of such Act of June 8, 1940, as such provisions existed on the date immediately preceding the date of the enactment of this Act, shall continue to be applicable with respect to violations of the first section of such Act of June 8, 1940, which occurred prior to the date of the enactment of this Act.

SEC. 4. This Act may be cited as the "Bald and Golden Eagles Protection Amendments Act".

92D CONGRESS
2D SESSION

H. R. 12186

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8, 1972

Read twice and referred to the Committee on Commerce

AN ACT

To strengthen the penalties imposed for violations of the Bald Eagle Protection Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act entitled "An Act for the protection of the bald eagle", approved June 8, 1940 (16 U.S.C. 668), is amended—

(1) by inserting "(a)" immediately before "Whoever",

(2) by inserting "knowingly, or with negligent disregard for the consequences of his act", immediately before "take";

(3) by striking out "shall be fined not more than

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$500 or imprisoned not more than six months, or both: *Provided,*" and inserting in lieu thereof the following: "or whoever violates any permit or regulation issued pursuant to this Act, shall be fined not more than $5,000 or imprisoned not more than one year or both: *Provided,* That in the case of a second or subsequent conviction for a violation of this section committed after the date of the enactment of this proviso, such person shall be fined not more than $10,000 or imprisoned not more than two years, or both: *Provided further,* That the commission of each taking or other act prohibited by this section with respect to a bald or golden eagle shall constitute a separate violation of this section: *Provided further,* That one-half of any such fine, but not to exceed $2,500, shall be paid to the person or persons giving information which leads to conviction: *Provided further,*"; and

(4) by adding at the end thereof the following new subsections:

"(b) Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in this Act, shall take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any bald eagle, commonly known as the American eagle,

or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to this Act, may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. In determining the amount of the penalty, the gravity of the violation, and the demonstrated good faith of the person charged shall be considered by the Secretary. For good cause shown, the Secretary may remit or mitigate any such penalty. Upon any failure to pay the penalty assessed under this section, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing any such action, the court must sustain the Secretary's action if supported by substantial evidence.

"(c) The head of any Federal agency who has issued a lease, license, permit, or other agreement authorizing the grazing of domestic livestock on Federal lands to any person who is convicted of a violation of this Act or of any permit or regulation issued hereunder may imme-

diately cancel each such lease, license, permit, or other agreement. The United States shall not be liable for the payment of any compensation, reimbursement, or damages in connection with the cancellation of any lease, license, permit, or other agreement pursuant to this section."

SEC. 2. Section 2 of the Act of June 8, 1940 (16 U.S.C. 668a), is amended by striking out the period at the end thereof and inserting the following: ": *Provided further*, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking, possession, and transportation of golden eagles or eggs or nests thereof for the purposes of falconry."

SEC. 3. Section 3 of the Act of June 8, 1940 (16 U.S.C. 668b) is amended to read as follows:

"SEC. 3. (a) Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this Act may, without warrant, arrest any person committing in his presence or view a violation of this Act or of any permit or regulation issued hereunder and take such person immediately for examination or trial before an officer or court of competent jurisdiction; may execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this Act; and may, with a search warrant, search any place. The Secretary of the Interior is authorized to enter

into cooperative agreements with State fish and wildlife agencies or other appropriate State authorities to facilitate enforcement of this Act, and by said agreements to delegate such enforcement authority to State law enforcement personnel as he deems appropriate for effective enforcement of this Act. Any judge of any court established under the laws of the United States, and any United States commissioner may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

"(b) All bald or golden eagles, or parts, nests, or eggs thereof, taken, possessed, sold, purchased, bartered, offered for sale, purchase, or barter, transported, exported, or imported contrary to the provisions of this Act, or of any permit or regulation issued hereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid in the taking, possessing, selling, purchasing, bartering, offering for sale, purchase, or barter, transporting, exporting, or importing of any bird, or part, nest, or egg thereof, in violation of this Act or of any permit or regulation issued hereunder shall be forfeited to the United States.

"(c) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds

from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act: *Provided*, That all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary of the Interior or by such persons as he may designate."

SEC. 4. Section 4 of such Act of June 8, 1940 (16 U.S.C. 668c), is amended by inserting "poison" immediately after "shoot at," and by striking out "otherwise willfully".

Passed the House of Representatives February 7, 1972.

Attest: W. PAT JENNINGS,

Clerk.

92D CONGRESS
2D SESSION

H. R. 14731

IN THE SENATE OF THE UNITED STATES

JUNE 6, 1972

Read twice and referred to the Committee on Commerce

AN ACT

To amend the Fish and Wildlife Act of 1956 in order to provide for the effective enforcement of the provisions therein prohibiting the shooting at birds, fish, and other animals from aircraft.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13 of the Fish and Wildlife Act of 1956 (85 Stat. 480–481; Public Law 92–159) is amended by adding at the end thereof the following new subsections:

"(d) The Secretary of the Interior shall enforce the provisions of this section and shall promulgate such regulations as he deems necessary and appropriate to carry out such enforcement. Any employee of the Department of the

Interior authorized by the Secretary of the Interior to enforce the provisions of this section may, without warrant, arrest any person committing in his presence or view a violation of this section or of any regulation issued hereunder and take such person immediately for examination or trial before an officer or court of competent jurisdiction; may execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this section; and may, with or without a warrant, as authorized by law, search any place. The Secretary of the Interior is authorized to enter into cooperative agreements with State fish and wildlife agencies or other appropriate State authorities to facilitate enforcement of this section, and by such agreements to delegate such enforcement authority to State law enforcement personnel as he deems appropriate for effective enforcement of this section. Any judge of any court established under the laws of the United States, and any United States magistrate may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

"(e) All birds, fish, or other animals shot or captured contrary to the provisions of this section, or of any regulation issued hereunder, and all guns, aircraft, and other equipment used to aid in the shooting, attempting to shoot, capturing, or harassing of any bird, fish, or other animal in

violation of this section or of any regulation issued hereunder shall be subject to forfeiture to the United States.

"(f) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with the provisions of this section; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this section, be exercised or performed by the Secretary of the Interior or by such persons as he may designate."

Passed the House of Representatives June 5, 1972.

Attest: W. PAT JENNINGS,

Clerk.

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U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 22, 1971.

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

DEAR MR. CHAIRMAN: This responds to your request of September 23 for comment on S. 2547, a bill "for the protection of the bald and golden eagles".

We recommend that the bill be enacted with amendments to further strengthen the sanctions imposed for violations of the Act of June 8, 1940, pertaining to the protection of bald and golden eagles.

S. 2547 would further amend the Act of June 8, 1940 (54 Stat. 250), as amended (16 U.S.C. 668) to increase from $500 or six months imprisonment or both to $5,000 or one year imprisonment or both the penalty for first violation of said Act, and to impose a further penalty of $10,000 or two years imprisonment or both for conviction of a second or subsequent violation. The bill would also make conviction dependent upon proof of knowing violation, and amend section 4 of the Act to delete a requirement that the Government show a willful violation in connection with molestation or disturbance of protected species. Section 2(a) would require that all leases "involving or affecting the public lands" provide for cancellation in the event of a lessee's conviction under the Act.

Events of recent weeks have caused justifiable concern that existing law, which prohibits the taking of bald and golden eagles except as approved in specified cases by the Secretary of the Interior, is an inadequate deterrent to wanton destruction of these majestic birds. Secretary Morton has made clear this Department's commitment to criminal prosecution of individuals responsible for the death of American eagles. We agree with the sponsors of this legislation that increased penalties, together with a requirement of less specific criminal intent, will serve to deter future violations of the Act and to make more effective the prosecution of alleged violators.

To accomplish the latter objective, we recommend that line 8, page 1 of S. 2547 be amended to read as follows: "provided, shall knowingly, or with negligent disregard for the consequences of his act, take, possess, sell, purchase, bar—".

We also suggest that, in addition to the monetary penalties and incarceration provided by S. 2547, the Act be amended to provide for the seizure and confiscation of property used to perpetrate a violation.

This would be accomplished by amending section 2 of S. 2547 to add a new subsection 1(d) to the Act of June 8, 1940, as follows, and by changing the designation on line 9, page 3, from "(d)" to "(e)": "'(d) All firearms, devices and other equipment, vessels, vehicles, and other means of transportation, including aircraft, used by any person when knowingly engaged in pursuing, hunting, taking, capturing, killing, or attempting to take, capture, or kill any bald or golden eagle in violation of this Act shall be subject to forfeiture to the United States and may be seized and held pending the prosecution of any person arrested for violating this Act and upon conviction for such violation, such forfeiture shall be adjudicated as a penalty in addition to any other provided for violation of this Act. Such forfeited property shall be disposed of and accounted for by, and under the authority of the Secretary of the Interior.'"

It is our recommendation, further, that section 2(b) be revised as follows, to broaden the definition of "take": "(b) Section 4 of such Act of June 8, 1940 (16 U.S.C. 668c), is amended by adding the word 'poison' after the words 'shoot at,' and by deleting the words 'otherwise willfully'."

The word "prison" on line 9, page 3 should read "person".

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

NATHANIEL P. REED,
Assistant Secretary of the Interior.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., December 14, 1971.

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 the Department of Justice on S. 2547, a bill "For the protection of the Bald and Golden Eagles."

The Act of June 8, 1940, as amended (16 U.S.C. § 668 *et seq.*), commonly known as the Bald Eagle Protection Act, makes it a petty offense punishable by a fine of not more than $500 or imprisonment for not more than six months, or both, to take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import at any time or in any manner, any bald eagle commonly known as the American eagle, or any golden eagle, alive or dead, except those taken prior to June 8, 1940. Section 4 of the Act, *inter alia*, defines "take" as including pursue, shoot, shoot at, wound, kill, capture, trap, collect, or otherwise willfully molest or disturb.

Section one of S. 2547 would amend the Act by, in effect, inserting "knowingly" before "take" and increasing the penalty to a fine of not more than $5,000 or imprisonment of not more than one year, or both, for a first offense, and to not more than $10,000 or imprisonment of not more than two years, or both, for a second or subsequent offense.

Section 2 of the bill would further amend the Act by making each taking or other prohibited act a separate violation. Section 2 would also provide that any lease, permit, or other agreement entered into by the Secretary of the Interior, Secretary of Agriculture, or the head of any other Federal agency, with any person affecting public lands shall contain a provision voiding the agreement upon that person's conviction of a violation of the Act. The term "person" as used in the Act is defined to include corporations, associations, partnerships or other entities. Section 2 of the bill would delete the word "willfully" from section 4 of the Act. (16 U.S.C. § 668c).

Section 3 of S. 2547 provides, in effect, that the amendments shall apply only to those violations occurring subsequent to enactment.

Although Section 4 styles the bill as the "Bald and Golden Eagles Protection Amendments Act," we question whether the word "Amendments" should precede the word "Act." Also, the word "prison" on line 9 of page 3 should read "person."

Whether this legislation should be enacted involves questions concerning which the Department of Justice defers to the Departments of the Interior and Agriculture.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 28, 1972.

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

DEAR MR. CHAIRMAN: This responds to your request for comment on H.R. 12186 as passed by the House of Representatives, an Act "To strengthen the penalties imposed for violations of the Bald Eagle Protection Act, and for other purposes".

We recommend that H.R. 12186 be enacted by the Senate.

In commenting to your Committee on S. 2547, a bill that would also strengthen penalties for violations of the Act of June 8, 1940 (54 Stat. 250; 16 U.S.C. 668), we noted that increased penalties would serve to deter future violations of the Act and would make more effective the prosecution of persons responsible for the death of American eagles. In addition to the provisions of S. 2547, House-passed H.R. 12186 would (1) authorize conviction upon a less specific showing of criminal intent than is now required; (2) require that a "finder's fee" of not more than $2,500 be paid to persons "giving information which leads to conviction"; (3) provide a civil penalty of $5,000 to be imposed by the Secretary for each violation; (4) authorize the issuance of permits for the "taking, possession, and transportation of golden eagles or eggs or nests thereof for the purposes of falconry"; (5) provide specifically for enforcement by the Secretary of the Interior, to include seizure of animals taken and equipment used in violation of the Act; and (6) broaden the definition of "take" as used in this Act to include the poisoning of bald or golden eagles.

Your Committee will note that several of these provisions have been recommended as amendments to S. 2547. The payment of a "finder's fee" is presently

authorized by section 9 of the Migratory Bird Treaty Act (16 U.S.C. 709a), which provides that funds appropriated pursuant thereto may be used to "cooperate with local authorities in the protection of migratory birds and make the necessary investigations connected therewith". Recent appropriations acts have allocated approximately $50,000 annually to the Bureau of Sport Fisheries and Wildlife for this purpose. Similarly, there exists authority to make grazing privileges subject to cancellation where a grazer has violated or failed to comply with any Federal or State law or regulation concerning the conservation or protection of natural resources or the environment. On March 1, the Department published a proposed rule (*Federal Register*, Vol. 37, No. 41) which specifies *inter alia*, that: "(t)he violation of, or failure to comply with, any Federal or State law or regulation concerning the conservation or protection of natural resources or the environment may result in the cancellation or reduction of a lease where (i) grazing land administered by the Bureau of Land Management is involved or affected, and (ii) such violation or failure to comply is related to a grazing use authorized by said lease."

Although re-enactment of these authorities would serve no substantive purpose, we defer to the judgment of your Committee concerning any deterrent effect that may be achieved by their reiteration.

There exist but 10–20,000 golden eagles in North America, and 20–30,000 northern bald eagles. The prompt enactment of H.R. 12186 will help to protect these majestic birds, aptly described by the Congress in 1940 as "a symbol of the American ideals of freedom".

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

NATHANIEL P. REED,
Assistant Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 28, 1972.

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

DEAR MR. CHAIRMAN: This responds to your request for comment on H.R. 14731 as passed by the House of Representatives, a bill "To amend the Fish and Wildlife Act of 1956 in order to provide for the effective enforcement of the provisions therein prohibiting the shooting at birds, fish, and other animals from aircraft".

We recommend the enactment of House-passed H.R. 14731.

Public Law 92–159 added to the Fish and Wildlife Act of 1956 16 U.S.C. 742a *et seq.*) a new section 13 which provides, *inter alia*, a criminal penalty for the the use of an aircraft to shoot or harass any bird, fish or other animal. H.R. 14731 would amend section 13 to require that the prohibition contained therein be enforced by the Secretary of the Interior. The bill would also authorize the delegation of this enforcement authority pursuant to appropriate agreement with State fish and wildlife agencies, and would provide for forfeiture of animals taken and equipment used in connection with a violation of section 13.

Since enactment of P.L. 92–159, our Bureau of Sport Fisheries and Wildlife has been requested by several States and national conservation organizations to participate actively in the enforcement of that law. Because P.L. 92–159 contains no allocation of enforcement authority, it has not been possible for this Department to comply with those requests and, thus, to achieve the objective intended by Congress. We are prepared to accept the responsibility for enforcement of section 13, and have been advised by the Department of Justice that it has no objection to our doing so.

As passed by the House of Representatives, H.R. 14731 contains three technical amendments recommended by this Department. These amendments are intended to broaden the search authority of Federal game agents, to confer upon the courts discretion to determine whether or not forfeiture of animals taken or equipment used in violation of the Act is appropriate in a particular case,

and to conform this Act to nomenclature established by the Federal Magistrates Act (82 Stat. 1107, 28 U.S.C. 631). We believe that, as passed by the House, H.R. 14731 will meet the need for effective enforcement of section 13.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

NATHANIEL P. REED,
Assistant Secretary of the Interior.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., June 29, 1972.

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 the Department of Justice on H.R. 14731, a bill "To amend the Fish and Wildlife Act of 1956 in order to provide for the effective enforcement of the provisions therein prohibiting the shooting at birds, fish, and other animals from aircraft."

Recently enacted by Public Law 92–159, section 13 of the Fish and Wildlife Act of 1956, 85 Stat. 480, provides that whoever while airborne in an aircraft shoots at or harasses any bird, fish or other animal, or knowingly participates in using an aircraft for such purposes, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

By adding three new subsections to section 13, H.R. 14731 would authorize, *inter alia*, employees of the Department of the Interior to make arrests, execute search warrants, and seize and cause the forfeiture of certain items used in violation of section 13.

On the question of the enactment of this legislation, the Department of Justice defers to the Department of the Interior.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Attorney General.

Senator SPONG. Before we hear from our first witness I want to say that Senator McGee, the author of one of the bills before us, wanted very much to be here this morning, but he is out of town. He has long been concerned about the plight of the eagles, and it was before his Appropriations Subcommittee that the Wyoming eagle slaughter was first reported. His statement will be printed in the record of these hearings.

(The statement follows:)

STATEMENT OF HON. GALE MCGEE, U.S. SENATOR FROM WYOMING

Just over a year ago, I opened hearings before my Appropriations Subcommittee on the Environment on the then somewhat mysterious discovery of about 50 dead bald and golden eagles in central Wyoming. At first, the incident was an anomaly. We were baffled. Could it be air pollution, or DDT, or even high concentrations of mercury in the environment we asked ourselves?

Of course, it turned out that in almost all cases the eagles had succumbed to thallium sulfate, a very unspecific poison considered so dangerous to handle and so persistent in the environment that the United States Government had suspended its use in predator control programs in 1967.

Through the investigative efforts of the Department of the Interior, it was finally discovered that the eagles had been feeding on carcasses laced with the poison as a method of predator control. Eventually, the owner of the land where

the carcasses were found was prosecuted and fined—not for destroying bald eagles, but for killing antelope without a license and out of season so that their carcasses could be baited with poison.

It proved out that this incident was only a prelude to what would be disclosed a short two months later when before the same subcommittee, helicopter pilot James O. Vogan told a story of ferrying gunners over the skies of Wyoming and Colorado where they allegedly shot an estimated 500 bald and golden eagles with shotguns. The final prosecution of those thought to be responsible in this case is still pending in the courts. Yet, I think it is important to note that the gunners, the men named who actually did the killing, have been convicted in a state court of killing bald eagles and each were fined an average of $50.

The purpose of recounting this information is that it points to some of the apparent weaknesses of the 1940 Act for the protection of bald eagles and later amendments controlling the killing of golden eagles.

There can be little quarrel with the intent of the 1940 law. It would seem that the language is quite clear:

"Whereas the Continental Congress in 1782 adopted the bald eagle as the national symbol; and

"Whereas the bald eagle thus became the symbolic representation of a new nation under a new government in a new world; and

"Whereas by that Act of Congress and by tradition and custom during the life of this Nation, the bald eagle is no longer a mere bird of biological interest but a symbol of the American ideals of freedom. . . ."

The problem is then with the mechanism of the law, with the difficulty of proving intent when these birds are destroyed from afar, or indirectly with the apparent lack of a strong deterrent factor built into the law through strong and equitable penalties. Thus, it is the purpose of S. 2547, which I have entitled the "Bald and Golden Eagles Protection Amendments Act," to improve, if not to entirely rectify, the problems associated with the 1940 law.

These are some of the changes my bill would work in the original Act of 1940:

The word "knowingly" has been added to the criminal intent criteria of the law. The Department of the Interior has recommended that the language "or with negligent disregard for the consequences of his act" also be added to this criteria to make prosecution for violations of the act more assured. I agree with this recommendation and intend to add it to my bill.

The penalty provision of the bill is increased from a $500 fine and/or six months imprisonment to a $5,000 fine and/or one year imprisonment for conviction of a first violation. The destruction of each eagle would constitute a separate violation of the law. The second and subsequent convictions would be subject to a $10,000 fine and/or two years imprisonment.

Another recommendation of the Interior Department with which I fully agree and also intend to add as an amendment to my bill, calls for the confiscation of property used to "perpetrate the violation."

One of the strongest provisions in my bill, one which strikes hard at the pocketbook of those convicted—more so than fines alone—would require language to be written in federal leases, contracts, licenses, permits and other agreements which would automatically void these privileges on conviction.

There is no question in my mind that my bill will strengthen the present law while permitting some latitude for special situations such as highly specific and careful predator control.

For example, the provision in the original Act allowing the Secretary of the Interior to issue permits for the taking of golden eagles for the protection of domestic livestock remains intact. I should also say here that I agree with the alternative to killing these birds which is in the House of Representatives bill, H.R. 12186, which would allow golden eagles to be captured and used in the art of falconry.

The problem of predator control is closely tied to the question of discovering suitable ways to protect the vast majority of bald and golden eagles which do not threaten livestock interests. Ultimately, there must be a reckoning with those few who insist that the only way to control a few predators is to kill the entire species. It is somewhat doubtful that some individuals will ever recognize that there may be other even more inexpensive ways of controlling problem eagles; in which case, it is important to have a strong and effective law to deter future wanton killings of our national bird.

The American bald eagle is considered an endangered species. Because of its general sensitivity to human encroachment, its habitat is constantly shrinking.

A respected authority on the bald eagle in my home state of Wyoming, Mr. John Turner, has written about the future of the species. "A dominant sign that a species is suffering disastrous reproduction failures," he said, "is a declining proportion of young in the population. Not only has the total number of bald eagles . . . crashed, but the percentage of juvenile birds has also declined significantly."

Can we do without these majestic birds? I believe that Mr. Turner sums up this question rather appropriately: "The obvious answer is 'probably so.' Man has proven to be a very adaptable organism. For the present, he has adapted adequately to the ugly and sterile surroundings of concrete wastelands, carpets of his own refuge, poisoned air and water, and raped landscapes. Then again, the loss of these unique wildlife species might reflect more than just the erosion of the quality of life on this planet. Their possible extinction, as well as those of other animal forms, might be an early warning system serving notice that we as a nation, as a world, as a species may well be in the process of triggering the end of life itself."

All of us, I believe, can appreciate the concern evident in John Turner's words, and I hope that this Subcommittee will honor the commitment made by the Continental Congress in 1782 in selecting the American Bald Eagle as our national bird by favorably reporting my bill, S. 2547.

Senator SPONG. Our first witness this morning is a very distinguished conservationist, the Honorable Nathaniel P. Reed, Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Mr. Reed, we are pleased to welcome you, and will you identify your associates for the record?

STATEMENT OF HON. NATHANIEL P. REED, ASSISTANT SECRETARY OF THE INTERIOR FOR FISH AND WILDLIFE AND PARKS; ACCOMPANIED BY SPENCER H. SMITH, DIRECTOR OF THE BUREAU OF SPORT FISHERIES AND WILDLIFE; HENRY HANSEN, ACTING CHIEF, DIVISION OF MANAGEMENT AND ENFORCEMENT; AND MICHAEL HARVEY, CHIEF, DIVISION OF LEGISLATION AND REGULATORY MANAGEMENT, BUREAU OF LAND MANAGEMENT

Mr. REED. Thank you, Mr. Chairman. Accompanying me are Mr. Spencer H. Smith, Director of the Bureau of Sport Fisheries and Wildlife, Mr. Henry Hansen, Acting Chief, Division of Management and Enforcement, and Mr. Michael Harvey, Chief, Division of Legislation and Regulatory Management, Bureau of Land Management.

I am extremely pleased to have the opportunity to testify on these important legislative proposals which will perfect previous legislation that recent developments have shown to be inadequate.

The Federal Government, through the Department of the Interior, and in cooperation with State agencies and our counterparts in Canada and Mexico, recognizes a responsibility for the protection of all wildlife. For this reason we are gratified that the Convention Between the United States of American and the United Mexican States for the Protection of Migratory Birds and Game Mammals was amended March 10, 1972, to provide protection of the Migratory Bird Treaty Act to 32 additional families of birds. Of particular significance was the inclusion of the six families that encompass all the birds of prey, including both the bald and golden eagle, under specific consideration here today. Eagles in the United States are thus now afforded double

barrel protection, under both the Migratory Bird Treaty Act and the Bald Eagle Protection Act.

Although this broadened mantle of protection gives greater flexibility for apprehending violators, the allowable penalties and coverage under either of the existing acts are not sufficient deterrents to prevent the loss of eagles.

For example, the eagle kills in Wyoming resulting from poison could not be successfully prosecuted under the Bald Eagle Act then effective, and it is doubtful that prosecutions would have been successful under the Migratory Bird Treaty Act had the eagles been then covered. This and other large eagle kills in the West indicate a need for increased penalties and coverage.

Protection of endangered and unique fauna is of paramount interest to the American people. The public does not understand our inability to protect these majestic birds of prey, or other wildlife. The legislation we have under discussion today would close a number of loopholes and provide more effective protection for some of our majestic wildlife species.

H.R. 12186 would further amend the Bald Eagle Act to increase from $500 or 6 months' imprisonment or both to $5,000 or 1 year imprisonment or both the penalty for first violation of said act, and to impose a further penalty of $10,000 or 2 years imprisonment or both for conviction of second or subsequent violation, dependent upon proof of "knowing" violation, and amend section 4 of the act to revise the definition of "take" to include "poison," and to delete a requirement that the Government show a willful violation in connection with molestation or disurbance of protected species. Each taking or other act prohibited would constitute a separate violation. Also included in H.R. 12186 is provision for a "finders fee," civil penalties, and authority for forfeiture. Recent events indicate the need for these provisions to provide an adequate deterrent to unnecessary, and in some cases, wanton destruction of eagles.

A new provision of the act which we consider to be a significant step in progressive wildlife management is the authority to allow the use of golden eagles for the sport of falconry. When all the birds of prey were afforded Federal protection under the recent amendment to the Migratory Bird Convention with Mexico, we assured the State game administrators that we would provide for the legitimate use of these birds in the field sport of falconry.

Among the raptors proposed for highly controlled and restricted use in falconry is the golden eagle. In close cooperation with the falconry committee of the International Association of Game, Fish and Conservation Commissioners, and with the North American Falconers Association, we are developing falconry regulations with an early target date for adoption.

We support H.R. 12186 and recommend its passage except as noted in our report. We defer to the judgment of the committee concerning somewhat redundant provisions for cancellation of grazing leases and the finders fee.

H.R. 14731 would provide the Secretary of the Interior with needed authority to enforce certain provisions of the Fish and Wildlife Act of 1956 as amended by public law 92–159, authorizes delegation of en-

forcement authority to appropriate State agencies, and provides for forfeiture in connection with violations.

Public Law 92–159, November 18, 1971, amended the Fish and Wildlife Act of 1956 by adding a new section making it unlawful for anyone while airborne to shoot or attempt to shoot for the purpose of capturing or killing any bird, fish, or other animal, or to harass any bird, fish, or other animal, or to knowingly participate in using an aircraft for any of these purposes. This law contained no specific provision for enforcement. Therefore, H.R. 14731 is needed to assign responsibilities for enforcement. Because of its general, overall responsibility for wildlife management, the Department of the Interior is the logical Federal agency in which to vest this authority.

We support H.R. 14731, and recommend its enactment.

Mr. Chairman, that concludes my statement. We would be pleased to answer any questions you and other members of the subcommittee might wish to ask.

Senator SPONG. Well, thank you very much, Mr. Reed. What is the current population status of eagles in the United States?

Mr. REED. Mr. Hansen will be able to give us an up-to-date answer on that, Mr. Chairman. Mr. Hansen.

Mr. HANSEN. Yes, Mr. Chairman, we are dealing with two subspecies of eagles. In order to discuss this we need to define them: the southern and the northern bald eagle.

The southern race of the bald eagle is the one that is on our list of endangered native species. Its breeding range occurs generally in northern California south to Baja; central Arizona, New Mexico, northern Texas, Oklahoma, Missouri, southern Illinois, western Kentucky and Virginia; south to the gulf coast and Florida. We feel that there are only between 300 and 350 pair of southern bald eagles in this race at the present time.

The northern race of bald eagle which breeds generally north of the range of the southern race to the limit of trees across the continent, throughout most of Alaska and out to the end of the Aleutian chain in Alaska. There may be as many as 20,000 to 30,000 birds in this group. Our population estimates, particularly along the coast of British Columbia and Alaska where these birds are most numerous, are not very accurate, but we do have a few intensive study areas within this that we can expand on, and estimate that this population is healthy. Of these we estimate there may be as many as 1,000 individual birds in the contiguous United States, primarily the north central States, Great Lakes States, New England, and Chesapeake Bay.

We estimate the population of golden eagles to be between 10,000 and 20,000, mostly west of the Mississippi River. There are a few along the Appalachians and the mountains of the east. We feel that this population is holding its own generally, and is increasing slightly in certain restricted areas.

Senator SPONG. This is somewhat parochial, but how about eagles in Virginia?

Mr. REED. You are very lucky, Mr. Chairman. You have probably in the tidewater area of the Chesapeake somewhere between 15 and

18 percent of the surviving endangered species: the southern bald eagle. Probably 15 to 20 pairs. We certainly wish to thank everybody who has taken good care of these nests down there. They have become sort of a symbol of your countryside. The great interest, not only in the bald eagles, but in the osprey, has really given us tremendous assistance in management. We are everlastingly grateful to the owners of marshlands who have really made some tremendous efforts to take care of both those great birds of prey.

It is a remarkable thing how sometimes a population has to get well down before people realize what a tremendous value they have, and that is certainly true in your great coastal area in Virginia and also in Maryland. We are very, very pleased to have so much tremendous public interest in the plight of both birds.

Senator SPONG. Thank you. What is the current status of the eagle cases in Colorado and Wyoming?

Mr. REED. Mr. Hansen, would you bring us up to date?

Mr. HANSEN. Yes. Briefly, on May 10, 1972, a 62-count criminal investigation was filed in U.S. District Court in Denver charging the operator of a Wyoming flying service, a rancher and a gunner with shooting 62 golden eagles from helicopters. On the following day, May 11, 1972, a 374-count criminal investigation was filed in the U.S. District Court in Cheyenne charging the owner of a Wyoming ranch and the operator of a flying service with killing 363 golden eagles, three bald eagles and seven Canada geese by gunfire from a helicopter. All but one count charged the killing of individual birds during a 2-month period in late 1970 and early 1971. The last count charged that the defendants conspired with 11 unidentified coconspirators to kill the birds.

Maximum penalty upon conviction of each count of killing a bird is 6 months in prison and $500 fine under current statutory authority, and for conspiracy the same.

Firm dates for the arraignment of the defendants will be announced shortly according to the U.S. Attorney handling the case in Wyoming.

Senator SPONG. Thank you. Do you have reason to believe that eagles are still being killed illegally in the United States?

Mr. HANSEN. Yes, we do. Following leads developed in the Wyoming case we are continuing our eagle investigation there and elsewhere. This is a general pattern for all game law and wildlife violations. We have found this to be true with eagles, and on this basis we are continuing our investigation.

Senator SPONG. What progress is being made in protecting eagles from electrocution in the West?

Mr. HANSEN. We are very gratified to report that substantial progress has been made within the past year to correct this situation. Electrocution on power transmission poles in the West has been a low grade but constant source of eagle deaths for many years. The problem in general has been well identified and is now well understood. A great many specific electrocution sites have been located and corrective modifications to the power transmission system have been developed.

Cooperation between land and resource management agencies, both Federal and State, and the various power administrations, has been excellent. We are getting on top of this situation very well.

Mr. REED. There is a meeting, Mr. Chairman, of the power companies, the National Audubon Society, the National Wildlife Federation, the Colorado Department of Fish and Game, Rural Electrification Administration and the Bureau of Sport Fisheries and Wildlife in September, in Denver, Colo., to again go over some of the emergency work that is being implemented by the power companies to get their stringers further apart. As you know, the great problem is when the bird lands with his wings outspread and takes off with his wings outspread. He can make contact between two wires and that will electrocute him. And, of course, the power line is a place which a bird of prey enjoys sitting on because he has a great view of the countryside and can see his prey. So they are naturally attracted. If the stringers are placed further apart it avoids the problems of accidental electrocution.

Senator SPONG. Thank you. You mentioned the use of golden eagles in falconry in your statement. What will be the effect on the golden eagle populations if they are allowed to be used in falconry?

Mr. REED. Very, very minimal, if any. I was privileged as a boy to be brought up by a man who had golden eagles as falcons in the summer. They only took a very minimal number of birds, one or two every third year. These birds were taken young. With the population figures that we gave you, and the golden eagle's reproductive rate, it can well stand this minimal take.

Very few falconers take a golden eagle. It is a bird which has to have a great deal of exercise, a great deal of food, and is not an easy bird to train. When trained, however, they are one of the greatest spectacles on the face of this earth. Absolutely superb.

Senator SPONG. Could you explain so we will have it in the record of these hearings the inconsistency which subsection (c) on page 3 of H.R. 12186 is designed to eliminate?

Mr. REED. Yes. Mr. Harvey, will you answer that?

Mr. HARVEY. Certainly. Senator Spong, I believe what you are referring to is the fact that under present grazing regulations issued by the Department of the Interior, the grazing lease issued under one section of the Taylor Grazing Act contains a provision which is essentially what subsection (c) of H.R. 12186 would provide: Cancellation or reduction of the lease upon a violation of a Federal or State law relating to protection of mammals or birds. However, our grazing licenses and permits issued under section 3 of the Taylor Grazing Act do not contain such a provision. Section (c) of H.R. 12186 would provide that both types of grazing privileges would contain the same provision.

Senator SPONG. Thank you very much, Mr. Harvey. Do you have a finder's fee in any of the laws administered by Interior?

Mr. HARVEY. Yes, we do. Under the Migratory Bird Treaty Act there is a finder's fee that we have used in our work, in our undercover work to buy information when necessary of illegal activities, particularly in market hunting.

Senator SPONG. How is it working?

Mr. HARVEY. We use this primarily in enforcement in the Migratory Bird Treaty Act with waterfowl. To my knowledge we have not used it in the sense that it is being asked for in the amendment of this law.

Senator SPONG. Do you think it would aid you in enforcing the law?

Mr. HANSEN. I think yes, it would aid materially.

Senator SPONG. Do you agree?

Mr. REED. Yes, sir.

Senator SPONG. Please explain, with examples, what is gained by deleting "willfully" and substituting for it "knowingly or with negligent disregard for the consequences of this act."

Mr. SMITH. Senator Spong, what we are addressing here is the difference between a person "willfully" commiting an act and a person "knowingly" causing a damage to a fish and wildlife resource. The current legislation under consideration indicates a person must knowingly cause a damage to the resource. We feel that this type of language would certainly improve our authority for enforcement. The present language is "willful." We are suggesting the change to "knowingly." Our position would have been much stronger in the recent Eagle cases had we had the language that is being proposed. For example, if an individual in placing a poison should kill an eagle we have to prove that this was a willful action. With the change in language this will indicate to us that if the person using the poison knows that the poison has the capability to kill wildlife, and is using it with negligent disregard for the consequences of his act, it makes our enforcement position much stronger.

Senator SPONG. So it would be easier to gain conviction?

Mr. SMITH. Correct, sir.

Senator SPONG. What effect would the change in language have on power companies as far as the electrocution is concerned?

Mr. SMITH. I know of no effect that this would have on present operation of power companies, Senator. We will provide a legal opinion to you on the impact of this language change on future transmission line construction.

(The following information was subsequently received for the record:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., July 20, 1972.

MEMORANDUM

To: Director, Bureau of Sport Fisheries and Wildlife.
From: Associate Solicitor, Territories, Wildlife & Claims.
Subject: H.R. 12186, An Act to Strengthen the Penalties Imposed for Violation of the Bald Eagle Protection Act, and for other purposes.

We have your memorandum of July 19, 1972, inquiring as to the liability of power companies under the provisions of H.R. 12186.

The proposed legislation, in accordance with the protection provided by the third clause of Section 9 of Article I of the United States Constitution, could not be interpreted as operating *ex post facto*. This means that power companies would not be liable for acts committed prior to the date of enactment. However, since power lines have a tendency to destroy eagles, such lines erected after the date of enactment should provide such safeguards as are available in order for the power companies to avoid the charge of acting with "negligent disregard for the consequences" of their acts. This obligation would be no more of a burden upon power companies than upon any other person or organization performing operations which had a tendency to destroy wildlife. In every case, reasonable precautions would have to be taken to prevent the killing of eagles.

C. BREWSTER CHAPMAN, Jr.,
Associate Solicitor,
Territories, Wildlife and Claims.

Senator SPONG. You state that you are prepared to handle the enforcement responsibilities under H.R. 14731. How do you propose

to do so, and what is your capability for handling this activity along with the enforcement of already enacted or pending legislation, such as the Bald Eagle Act amendment we are considering today?

Mr. SMITH. Yes, we feel that we are prepared to handle the enforcement requirement of the act. Our enforcement force is somewhat overcommitted. However, the Bureau of Sport Fisheries and Wildlife is looking forward to overcoming this inadequacy. I do not see the need for a great increase of personnel to enforce this particular law. We operate our field force on an area basis, and it is a matter of maintaining a surveillance attitude from an enforcement standpoint.

Senator SPONG. Why do these two administration supported bills have different language on, first, the authority for conducting a warrantless search, and second, the mandatory nature of the forfeiture section?

Mr. HANSEN. Relative to warrantless searches, the statutory authority for searches with a warrant are construed by the courts to withhold authority for warrantless searches. In H.R. 14731 we suggested the language "with or without warrant as authorized by law," which the House accepted, to avoid adverse construction by the courts. This conforms well to other Federal laws concerning enforcement.

Senator SPONG. And this is what you prefer?

Mr. HANSEN. Yes. We would need this to work most effectively.

Relative to the mandatory nature of forfeiture, it is a practical thing; mandatory forfeiture hamstrings a court or jury. They may be inclined to find the violator not guilty rather than impose the additional penalty of the forfeiture, which in the case of an aircraft, plane or helicopter involved in cases now under consideration, would be very great, and probably out of proportion with the size or nature of minor or lesser violations. If it is mandatory that the court must confiscate this equipment, they would turn a man loose rather than impose such a heavy penalty upon him. So, we suggest the language "subject to forfeiture," which the House accepted. This leaves the court the discretion, on a case-by-case basis, of imposing forfeiture if they think the case merits it. They would not need to in minor cases; they could find a man guilty and impose a lesser fine or penalty.

Senator SPONG. It appears that Public Law 92–159 even as amended by H.R. 14731 will not provide for adequate enforcement in the case of polar bears and other sea mammals shot from aircraft on the high seas. Please comment on this.

Mr. HANSEN. We believe that we do have general authority now to assert jurisdiction over U.S. citizens on the high seas. In the past, however, we have had this authority stated in specific legislation. For example, the Fur Seal Act of 1966, as amended, prohibits the taking of sea otters on the high seas by U.S. citizens. Indeed, this act could be further amended to include walrus and polar bears. In this way protection would be afforded these sea mammals from aircraft hunting on the high seas, by prohibiting generally their being taken.

Even if Public Law 92–159 was amended to include language that persons "and U.S. citizens on the high seas" would be prohibited from shooting from aircraft, complete protection to the polar bear would not be achieved. It would not prohibit the taking of the polar bear by means other than aircraft.

Mr. REED. This is a very serious problem, Senator Spong, one that involves many nations. The majority of the bears that are being shot

on the polar ice cap were not then in the United States, and they did not come from the United States. They came from another country or other countries. I spent a great deal of time investigating their status as an endangered species, and could not go that route simply because sufficient numbers were there to make stretching the law so far that it was improper. The passage of the new endangered species legislation would give us the opportunity to reexamine their status.

A very delicate situation exists with the countries where these bears emanate from. We need additional authority to protect the polar bear on the high seas. Aircraft flying or other methods of transportation from the United States into territories of other countries or close to other countries to shoot polar bears may have, in years to come, serious impact on international relationships.

Senator SPONG. Thank you. Could you give us 5-year cost estimates concerning this legislation? You can provide it for the record later.

Mr. REED. We would be delighted to, sir. We are in the process of reexamining our entire budget for enforcement as an entity, and we would be delighted to give you projections on costs of this legislation.

Senator SPONG. Well, thank you very much, for your help.

Mr. REED. Thank you, Senator. It was a great pleasure to be here.

(The following information was subsequently received for the record:)

COST OF LEGISLATION

In the event this legislation is enacted into law, it is estimated that the maximum cost to the Federal government to be $100,000 the first year and the four succeeding fiscal years thereafter. The above estimate does not include cost for enforcing this legislation outside of the territorial waters of the United States.

Senator SPONG. Miss Cynthia Wilson. Good morning, Miss Wilson.

Miss WILSON. Good morning, Mr. Chairman.

Senator SPONG. We are pleased to have you with us.

STATEMENT OF CYNTHIA WILSON, WASHINGTON REPRESENTATIVE, NATIONAL AUDUBON SOCIETY

Miss WILSON. Mr. Chairman, the National Audubon Society enthusiastically supports H.R. 12186, and we urge a prompt and favorable report on the bill as passed by the House with one change which I will outline below. I have added a second minor change, too, which is not in my text.

The golden eagle, like the bald, has been the victim of a long slide downhill in North America. It has been virtually expirpated as a nesting species in most of the Eastern and Midwestern States. Wholesale shootoffs by gunners in airplanes, such as occurred legally in the 1950's and until 1962 in western Texas and New Mexico, and such as occurred illegally in the winter of 1970–71 in Wyoming and Colorado, constitute an intolerable drain, perhaps irreversible, on eagle breeding stocks in the Western States. Moreover, the bald eagle has been seriously affected by the food chain magnification of the persistent pesticides and by other forms of environmental pollution.

Our research director, Alexander Sprunt IV, who has conducted the Continental Bald Eagle Survey for the last 10 years, estimates

that there are only 1,000 breeding pairs of bald eagles in the lower 48 States. And the Interior Department, of course, has given you other estimates of figures of specific races.

The best example of the need for this legislation is the case in Wyoming last year when more than 20 bald and golden eagles were poisoned. Subsequent investigation revealed that the poisoned baits were antelopes shot out of season by a prominent sheep rancher, Mr. Van Irvine, and four accomplices. There was no doubt in anyone's mind that the eagles were killed by feeding on the poisoned antelope carrion, yet charges of violating Federal law by killing eagles could not be brought against the men. Why? Because it could not be proved that Irvine and his accomplices were trying to kill eagles. They claimed they were trying to kill coyotes. The term "willfully" in present law makes it almost impossible to prove a poisoning case in court. So Mr. Irvine got off with a figurative slap on the wrist, the minimum fine for violating State game laws, on a plea of nolo contendere. His accomplices went scot free.

During the House hearings on this bill, we expressed the view that it would be just as hard to prove "knowingly" as "willfully." The committee added "or with negligent disregard for the consequence of his act," and we hope that this phrase will make it possible to prosecute any future violations of the act fully.

We also urge that there be a mandatory canceling of grazing permits, as in Senator McGee's bill, S. 2547, rather than the discretionary cancellation which is in H.R. 12186. It seems to us that although we are confident that it would be very likely that the Secretary of, say, Interior would go ahead and cancel a permit if this did occur, it seems stronger if cancellation is made mandatory so people would know there wasn't any question about it, this is the way it was going to be.

We do have serious qualms about section 2 of the bill, which provides that the Secretary of the Interior may promulgate regulations to permit the taking of golden eagles or their nests or eggs for the purposes of falconry. Although the committee report says that it expects the Secretary to issue such permits "only where there is a problem with golden eagles committing a depredation on livestock or wildlife," this does not give us much comfort.

The House committee reasoned that "it would be far better to allow them to be taken for falconry purposes than to be killed." We would certainly agree that we don't want to see the eagles killed. But we are concerned that this is a loophole which will be difficult to enforce and will encourage the use of golden eagles for falconry, particularly by taking young illegally from the nests.

For one thing, how can a golden eagle egg or a nestling, for that matter, be considered a threat to livestock, and why are eggs or nests included in the language? If someone is going to take the trouble to capture a live golden eagle which is allegedly depredating livestock, why not "transplant" it to some other area or give it to a zoo with suitable facilities for caring for it? The spectacular nature of this bird used for falconry cannot help but encourage more young people who are untrained or emotionally unfit to care for a wild bird to strive to obtain one.

I would add parenthetically here that every time there is a television program or movie, something like that, showing falconry, I in my office get many, many telephone calls from kids, usually teenagers, saying "where can I get a hawk, I want to become a falconer." Well, if they are sincere and really want to go to the effort of really taking care of a bird—and I know the falconers can tell you that it is a big job—that is one thing. But we are concerned about the kid who goes out and captures a young hawk, or say if he captured a young eagle and doesn't take care of it and then it dies, and this happens. That is what really concerns us.

There are already too many environmental pollutants, as well as man-caused threats to the populations of eagles and other birds of prey, to encourge additional drains on these species. We urge the committee to give this matter serious consideration, as we question the wisdom of this loophole.

We also wish to endorse H.R. 14731, to give the Interior Department authority to enforce Public Law 92–159. At the time that law was passed, we had assumed that Interior could enforce it, but apparently this is not the case. Thus to make it clear that they can go and get on with the business of enforcing it, we urge the committee to report that bill favorably so they can get to work on it.

And we thank you, Mr. Chairman, for the opportunity to express our views.

Senator SPONG. Well, thank you very much for your appearance and your testimony.

At the House hearing Mr. Callison suggested an amendment to another bill which would allow the use of birds other than bald eagles for purposes of falconry provided they are not rare or endangered. In response to questioning he said, and I quote, "We do not think there should even be a temptation for the Secretary of the Interior to issue any permit for the use of the bald eagle in falconry. The golden eagle in our view is questionable also. But we could concede that the judgment ought to be made on the basis of the status of the golden eagle. If it is a rare or endangered species its use in falconry should be prohibited."

Has the Audubon Society changed its position since that testimony?

Miss WILSON. No, we haven't changed our position. I don't know whether Interior officially has the golden eagle on its rare list or not. I am not sure of that point. But as I say, our concern is the encouragement of people who aren't fit to take care of wild birds going out and capturing them and then they die, and then they think "oh, well, try again." That is our big concern.

Senator SPONG. Well, thank you very much.

Miss WILSON. Thank you, Mr. Spong.

Senator SPONG. Mr. Robert Hughes. Mr. Hughes, we are going to receive your statement in its entirety in the record, and you may testify therefrom in any manner that you choose.

STATEMENT OF ROBERT C. HUGHES, CHAIRMAN, NATIONAL WILDLIFE COMMITTEE, SIERRA CLUB

Mr. HUGHES. Thank you, Senator. I am glad I made it in time. The trains are running a bit late this morning.

You have our complete statement on H.R. 12186 (plus some additional material we sent over). I have two more to give you on H.R. 14731 and S. 2547.

I would like to address myself primarily to H.R. 12186.

I am Robert Hughes, chairman of the Sierra Club's National Wildlife Committee. The Sierra Club is an international environmental organization with 140,000 members founded in 1892 to explore, enjoy and preserve the Nation's forests, waters, wildlife and wilderness. We thank you for this opportunity to present our views on the Bald Eagle Protection Act which you are considering today.

The Sierra Club is deeply concerned with the condition of these two birds. We recognize the very serious need for increases in the penalties for violations of the Bald Eagle Protection Act. But we find that in this, and almost all wildlife legislation, there is very little enforcement, and what little enforcement there is is not often carried out satisfactorily. We have sent you some additional material on that, but in 1970 the Bureau of Sport Fisheries and Wildlife said that the management and enforcement program is relegated to a low priority status. Tomorrow, unless they have since changed their plan, they intend to reduce their southeastern game management positions, which are essentially enforcement positions, from 174 to 155. This reduction of enforcement personnel is not very compatible with enforcement of this legislation or any other wildlife legislation, and increasing penalties are not going to change the situation.

You and the House have been working consistently and hard and well in passing good wildlife legislation. But the provision for enforcement—increases in enforcement staff in Interior may be necessary—has been inadequate. In fact one of these bills, H.R. 14731, being discussed today is a result of an oversight on the part of Congress in not providing for the enforcement of anti-aerial hunting provisions, an indication to me that enforcement often is not a major concern.

There are a couple of sections in H.R. 12186 that we find objectionable. One is giving the Secretary permission or authority to determine good faith on the part of the violator and thus mitigate the penalty. We can't believe that anybody taking a bald or a golden eagle in violation of this law could have acted in good faith, and we see no valid reason for giving the Secretary this authority. A violation is a violation. If I go through a red light my good faith in not seeing that red light is not going to be any excuse.

On page 3, line 25 of this bill, the word "may" appears, and we say it should be the word "shall." This is in reference to revocation of permits of grazers who may be convicted of a violation of this act. In S. 2547 provision is much more positive for revocation of permits if a person is convicted under the Bald Eagle Act.

On page 4, lines 6 through 12, we propose the deletion of the wording "Provided further, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking, possession, and transportation of golden eagles or eggs or nests thereof for the purposes of falconry." Mr. Chairman, we believe that this provision completely violates sound wildlife protection principles. We recently testified before the House committee that the removal of raptors from the wild for sporting purposes is unjustified and

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called for a moratorium on falconry until we know the status of the various raptor populations, many or most of which are declining. There has been no scientific evidence brought forth since then to cause us to alter this opinion.

We believe that the same principles followed in the very good bill that is coming out of the Senate on marine mammals should pertain also to the eagles and the other raptors; that if you are going to manage them, manage them to achieve an optimum sustainable population and declare a moratorium on the taking or use of until you know whether they can withstand the taking.

Only a few weeks ago we heard of the removal of two peregrine nestlings from a nest in California. The falconers say that they can control their own house and keep their own house clean, but there is not a student of falconry or a student of raptors anywhere that can't give you other examples of abuse. California has managed to lose with the taking of two birds a very significant proportion of its peregrine falcon population. In 1970 there were only five nesting peregrines in California.

If we legalize the taking of golden eagles for falconry what are we going to do to the golden eagle population? In the east we have a remnant golden eagle population, a very small one. If the Secretary issues permits for taking of these birds, taking 12, 20, he will be authorizing taking the major portion of the population.

I have included in the statement that we have sent you a list of golden eagle counts at the Hawk Mountain sanctuary in Pennsylvania. These counts, Dr. Spofford feels, are a significant portion of the eastern population. He also says the continuous decline in this flight does not show any indication of a possible recovery.

In the west nobody knows what golden eagle populations are involved or where they come from. Nobody knows how many there are. Nobody knows what the effects of taking for sporting purposes would be. So until we do, until the Congress can be assured that the use of golden eagles in falconry will not in any way adversely affect the golden eagle populations we don't think there should be any taking for sporting purposes.

Mr. Chairman, we do urge the passage of legislation to strengthen the penalties provided for in the Bald Eagle Protective Act. We do urge passage of H.R. 14731, which gives enforcement provisions to the aerial hunting law, a law which, by the way, is greatly abused and has some very bad loopholes in it. And we ask that you continue to show the great concern for wildlife that you have been showing over recent years.

I was talking to some people in your State just a couple of days ago, and your bald eagle population is not reproducing at a rate high enough to keep the species viable in Virginia.

So we do need not only greater penalties, we need greater enforcement, and we need Congress to say to Interior and to whoever else may be authorized to enforce the law, here is the money, hire the people, go out and enforce all of these laws we are passing.

Thank you, Mr. Chairman.

Senator SPONG. Well, thank you very much, Mr. Hughes.

In the House report there is language with regard to falconry which says that only those golden eagles will be used which would be de-

stroyed anyway because they are committing depredations on livestock or wildlife. Are you familiar with that?

Mr. HUGHES. I haven't seen the House report. If anybody can prove that a golden eagle is taking livestock then that golden eagle should be removed from the wild population, preferably alive. But to use them for sporting purposes I am not so sure. We are creating then a chance for a very few people with a lot of money probably to get this bird and use it. And it is not going to be an opportunity that is going to come by honestly very often for falconers.

There is not much evidence that golden eagles cause any serious depredation in the West. Most of the evidence is hearsay. A golden eagle is seen on a carcass, golden eagle is seen flying away from something that is dead; but you could probably count on the fingers of two hands, the number of actual incidents of kills witnessed and proved to be that of a golden eagle.

I don't think that the administrative procedures necessary to enforce falconry laws, limit falconry in golden eagles to those that are causing trouble in the West could be handled without a lot of machinery in the Interior Department.

Senator SPONG. Do you believe that the authority to enter into cooperative agreements with the States will help enforcement problems, especially the manpower problems that you have mentioned?

Mr. HUGHES. If the States are willing to do this—most of the States are concerned with their resident species. They are concerned with their game species—very few States care anything about nongame species—and are funded by fish and game licenses. And unless in these agreements Congress also provides the money you are not going to really get much concern on the part of fish and game people. We have almost none in my home State of New Jersey. Our fish and game people could generally care less about nongame species. In a State like California they are somewhat more enlightened. They are doing quite a bit for nongame species.

Agreements can be very good things. On the way down here I was reading the endangered species hearings, and one of the things pointed up there was this very problem of agreements with the States and whether or not the States would or could enforce them. Yes, the more people you get out there enforcing them the better, but not only State people substituting for Federal people.

Senator SPONG. Has your organization testified with regard to wildlife law enforcement before any appropriations committee?

Mr. HUGHES. No, sir; we didn't catch up on those hearings. We weren't aware of them.

Senator SPONG. Well, I thank you very much for your appearance here this morning.

Mr. HUGHES. Thank you very much.

(The statement follows:)

STATEMENT OF ROBERT C. HUGHES, CHAIRMAN, SIERRA CLUB'S NATIONAL WILDLIFE COMMITTEE

Mr. Chairman and members of the Committee, I am Robert C. Hughes, Chairman of the Sierra Club's National Wildlife Committee. The Sierra Club is an international environmental organization with 140,000 members founded in 1892 to explore, enjoy and preserve the nation's forests, waters, wildlife and wilderness.

We wish to thank you for this opportunity to present our views on H.R. 12186, an act to strengthen the penalties imposed for violations of the Bald Eagle Protection Act.

We are deeply concerned with the condition of the two species of eagles native to North America, the bald eagle and the golden eagle. The bald eagle is endangered south of Alaska and many of its populations continue to decline. Although not legally endangered, the golden eagle populations in many cases are either in decline or are unstable and on the point of decline. Both species need additional legislative protection. Although protection is vitally needed, this legislation does not meet the needs of these declining, persecuted birds.

This act would propose to insert into the law the phrase "knowingly or with negligent disregard for the consequences of his act." Under current law, it is quite beyond belief that anyone could mistake a bald or golden eagle for some legal bird. Both eagles are protected by federal legislation. Both eagles are protected by the recently amended treaty with Mexico. They are also protected by most state laws. What possible mistake in identification could be made? Whatever the alleged mistake in identification, it would also have to involve a protected raptor. We believe that the act of taking, regardless of motive, or expression of ignorance by the taker, should be treated as a violation just as would any violation of a traffic law.

The penalties are increased in this bill. Very good. Current penalties are grossly inadequate. However, as this Committee must well know, the enforcement of the current law leaves much to be desired. Simply increasing the penalty without making adequate provision for enforcement is to really do nothing. We still await, 10 months after the discovery of the violation, disposition of the case involving the slaughter of eagles in Wyoming.

The Bureau of Sport Fisheries and Wildlife in its *Report Of The Task Force On Program Priorities*, May 1970, stated, "The Management and Enforcement program is relegated to a low priority status with no increase in funding; redistribution of resources is recommended to emphasize investigation of ecological disasters, early warning system, and training of State agents; and direct enforcement and control of depredations are to be de-emphasized."

Although Congress has written much excellent wildlife legislation in recent years, it has done virtually nothing to insure that the legislation is enforced. Effective June 30, 1972, tomorrow, the Bureau of Sport Fisheries and Wildlife's 174 Game Management Agent positions are scheduled to be reduced to 155. This type of personnel reduction is hardly compatable with enforcement of existing and future legislation and increasing the penalties won't help much.

Just what is happening? Frederick A. Williams, Regional Supervisor, Bureau of Sport Fisheries and Wildlife, Division of Management and Enforcement, Atlanta, Georgia, stated in testimony before the House Subcommittee on Fisheries and Wildlife Conservation, "The incredibility of reducing Federal protection potential is further accentuated by the scope and magnitude of expanded enforcement responsibilities from new or amended wildlife acts which have become law in the past 10 years. They include a 1960 amendment to the Migratory Bird Treaty Act making commercialization of birds a felony; amendment of Sections 42 and 43 of the Lacey Act the same year to prohibit importation of injurious reptiles, amphibians, fish, etc., and imposing additional conditions on record keeping; 1962 amendment to Bald Eagle Act to include protection for golden eagles; passage of Endangered Species Act of 1966 imposing importation controls; passage of Endangered Species Conservation Act of 1969 which amended Lacey and Black Bass Acts to protect foreign and native endangered species and regulate foreign and interstate commerce of wildlife; 1971 amendment to Bald Eagle Act increasing penalty provisions; 1971 legislation regulating the hunting of all wildlife from aircraft; agreement on provisions of Migratory Bird Treaty between the United States and Japan; and recent amendment of the Convention between the United States and the United Mexican States for protection of Migratory Birds and Game Mammals which, among other important changes, brings raptorial birds under protection of the Federal Migratory Bird Treaty Act. All cost of implementing these new laws has been absorbed, essentially, within the existing frame of personnel and financial resources available to this Division."

"The enforcement arm of the Bureau of Sport Fisheries and Wildlife appears to be the only Federal Agency which imposes a ceiling on expenditure of funds for ongoing criminal investigations."

Congress' lack of concern for enforcement is pointed up by the above mentioned 1971 legislation on hunting from aircraft where enforcement was com-

pletely forgotten. The key to the entire enforcement situation is in Mr. William's statement where he illustrates the inadequate funding for enforcement.

Mr. Williams further states in his testimony, "This total lack of adequate means to meet program demands has created a dilemma for the enforcement supervisor, necessitating attack on wildlife law violations not as they are detected or identified, but rather on a priority basis. The alternative is an overextension of efforts which fosters mediocrity so that quality performance is no longer attainable."

He further points up the failure to provide for adequate enforcement of the type of legislation you are considering today by stating, as an example, that there are 4 Game Management Agents in Georgia and 146 Tax Agents employed by the IRS in the same state. Compare the figure of 146 tax agents for one state with the proposed total Game Agent allowance of 155 for the entire 50 states as of tomorrow, June 30.

Mr. Chairman, we request that the entire statement by Mr. Williams, a very important document with great relevance to this issue, be inserted into the record following our testimony. In addition, we request that an editorial from the Louisiana Conservationist to which Mr. Williams refers be inserted.

We certainly hope that you will give serious consideration to enforcement of the laws including this one. Obviously enforcement legislation of some type is needed to prevent the excellent legislation on wildlife protection from becoming a mockery.

With this in mind, we urge the deletion of the wording on lines 8 through 12 of page 3 which reads, "In determining the amount of the penalty, the gravity of the violation, and the demonstrated good faith of the person charged shall be considered by the Secretary. For good cause shown, the Secretary may remit or mitigate any such penalty." We do not believe that any taker of bald or golden eagles can demonstrate good faith nor can he show good cause. The gravity of every violation is of equal seriousness. To grant the Secretary this power to override the law is to emasculate the law.

Also on page 3, line 25 appears the word "may". We urge that this word be changed to "shall". Conviction of any person under this act should be sufficient cause to restrain the violator from commercial use of public lands. He will have demonstrated that he cannot be trusted with the wildlife population and there is no way to police his actions in the future. He has violated the trust placed in him by the American people through the laws that allow him to utilize the public lands for his own profit. The authorities currently are loath to remove violators from public lands. The grazing of domestic livestock on our Federal lands at current rates is a public subsidy and a cause of extensive habitat destruction. Must we also subsidize the destruction of our eagles?

On page 4 lines 6 through 12 it is proposed to insert the wording, "Provided further. That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking, possession, and transportation of golden eagles or eggs or nests thereof for the purposes of falconry."

Mr. Chairman and members of this Committee, this provision is needless and completely violates sound wildlife protection principles. We recently testified before a House Committee that the removal of raptors from the wild for sporting purposes is unjustified and called for a moratorium on falconry until we know the status of the various raptor populations, many or most of which are declining. No scientific evidence has been brought forth to cause us to alter our opinion.

This is the same principle we followed in our testimony before the Senate and House on marine mammal legislation when we urged a taking moratorium until it could be proven that the species would benefit from the taking. The wording in S. 2871 Section 2(6) should be applied to raptors and to all wildlife including the golden eagle, as well as to marine mammals. This very sound philosophy states, ". . .—and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that *the primary objective of their management should be to achieve an optimum sustainable population* keeping in mind the optimum carrying capacity of the habitat and the health and stability of the . . .—ecosystem. (emphasis added)

The falconers have been loud and strong in presenting their minority opinions and have obviously been very successful in reaching the Congress. They propose their model law be enacted in the various states. They propose federal recognition of falconry as a legitimate sport. They state their willingness to keep clean their own house. There is not one serious student of raptors who can-

not tell of one or more cases of abuse by falconers in their zeal to carry out their activities. Only a few weeks ago we heard of the removal of two nestling peregrine falcons from a guarded nest in California. Two men have apparently been arrested and we have been informed by the Department of the Interior that the case is under investigation. We ask that our letter to Interior and their reply which was rather uninformative and a newspaper article on this subject be inserted into the record following our testimony. This case is just one incident of abuse. We can expect more.

These peregrine falcons are a legally endangered species and protected by the Endangered Species Conservation Act. They are protected by the Convention with Mexico. They are protected by California law. It will be most interesting to see what if anything is done in the way of enforcement of existing legislation. If past history is any indication we can expect, at most, a slap on the wrist and California will have lost a major portion of its peregrine population. The 1970 estimate was 5 nestling pairs.

What can we expect if the Secretary under the powers proposed in the act determines that falconers can remove golden eagles or eggs or nests from the wild in the eastern United States? Extirpation of the golden eagle as a breeding bird with eventual complete extinction in the east.

We include at this point in our testimony a yearly count of the migrating golden eagles past Hawk Mountain in Pennsylvania each fall since the counts began in 1934 excluding the war years of 1943 through 1945. An examination of these figures will show a continuous decline. Dr. Walter Spofford, one of the leading raptor specialists with a major interest in the golden eagle has written, ". . . Hawk Mountain figures . . . for the golden eagle are probably a significant part of the remnant eastern North American population of this species. . . . The continuous decline in this flight does not show any indication of a possible recovery. . . ."

1934	39	1955	57
1935	66	1956	48
1936	54	1957	46
1937	73	1958	41
1938	31	1959	31
1939 (record high year)	83	1960	38
1940	72	1961	52
1941	55	1962	40
1942	35	1963	28
1946	69	1964	28
1947	34	1965	34
1948	40	1966 (record low year)	16
1949	47	1967	36
1950	68	1968	39
1951	54	1969	28
1952	80	1970	25
1953	31	1971	35
1954	40	1972	??

Gentlemen, what the count for 1972 will be we don't know, but the prospects are not good. I would like to invite each of you to visit Hawk Mountain this Fall and learn first hand about the raptors and their status in society and to see the enjoyment watching them flying free and wild brings to thousands of people. Should you wish to see the golden eagles in migration visit the Mountain in late October to mid-November. The bald eagles fly in late August through September usually.

Writing recently in *American Birds*, a publication of the National Audubon Society, February 1971, Dr. Spofford writes, "At best a very rare resident of our eastern mountains, the golden eagle now appears well on the way to becoming a vanishing remnant." Mr. Chairman, we request that the complete brief text of Dr. Spofford's writings be included at the end of our testimony because they contain a great deal of factual, scientific information on the status of the golden eagle in the east.

Certainly the removal of even a dozen golden eagles from the eastern population would be catastrophic and would constitute the removal from the wild of a major portion of the population. This situation is conceivable if the provision for golden eagle falconry remains in the law.

In the west as we all well know, the golden eagle despite the enforcement efforts possible under current funding and emphasis is being constantly harassed and killed by stockmen. There is considerable controversy over the status of the western golden eagle populations. Some will argue that the population is healthy. Others will argue that it is weak and declining. We don't know. We don't even know how many golden eagle populations are involved in the west and the effects of the various predation efforts on them.

Until we do know the status of the golden eagle should we allow its removal from the wild for sporting purposes? No, we should not. Until the evidence is in and until there is no doubt that the golden eagle populations are healthy and at optimum capacity, we should grant the bird complete protection from all takers except where necessary to provide scientific information needed to insure the bird's survival.

We do urge the passage of legislation to strengthen the penalties imposed for violations of the Bald Eagle Protection Act, but legislation that is meaningful and that does not contain the harmful provisions of H.R. 12186. We most strongly urge that the Congress act to provide for adequate mandated enforcement of this law and of all other wildlife protection laws.

For much of our wildlife time is running out. Failure to provide enforcement of the wildlife laws now will render enforcement later unnecessary because the wildlife the laws were designed to protect will be gone. We wish to thank you for this opportunity to present our views on S. 2547, a bill for the protection of the bald and golden eagles.

We have discussed our concern for the condition of both of these eagles in our statement today on H.R. 12186, our concern for the lack of enforcement of this type of legislation, and our concern for the possible effects of falconry on the golden eagle populations in the United States.

S. 2547 does contain the vital provision for the mandatory loss of permit by public land users who are convicted for a violation of this law. Writing this provision into the law will have an effect on the actions of permit holders who are currently free to violate with no fear of loss of rights.

S. 2547 does not provide for the use of the golden eagle in falconry. This is commendable. We might point out that with federal recognition of falconry and the legalization of the use of the golden eagle in this sport, an effect could eventually be felt on the European and Asian populations of golden eagles. We presume that falconers could import golden eagles for use in their activities. If you pass H.R. 12186 with the golden eagle falconry provision intact, you will be creating an enlarged demand and a new market for a species of wildlife that probably cannot withstand the pressure of the increased taking. Until we have the necessary scientific evidence on the golden eagles and on all other birds of prey, we should follow the logic being considered in the marine mammal legislation and declare a moratorium. The other course could result in protective action being taken too late. We wish to thank you for this opportunity to present our views on H.R. 14731, an act to amend the Fish and Wildlife Act of 1956 in order to provide for the effective enforcement of the provisions therein prohibiting the shooting of birds, fish, and other animals from aircraft.

The failure of the Congress to enact these provisions when first outlawing airplane hunting (with significant exceptions) serves to point up the general lack of Congressional interest and concern for enforcement of wildlife laws. Our statement today on H.R. 12186 discusses in more detail our concern for the enforcement provisions of wildlife laws and their effective use.

We support the enforcement provisions for illegal acts when hunting from airplanes. We would also suggest that the Congress close the loopholes which allow for the continued abuse of hunting through the use of airplanes under certain conditions.

NATIONAL WILDLIFE COMMITTEE,
Trenton, N.J., May 28, 1972.

HON. ROGERS MORTON,
Secretary, Department of the Interior,
Washington, D.C.

SIR: I am sure your office is aware of the recent incident at Morro Bay, California, where individuals removed two peregrine falcon nestlings from the nest despite efforts to prevent such action. I understand from an AP wire service

notice that two of the individuals involved were captured but that the birds were not recovered.

I would assume this activity constitutes both a violation of the endangered species act of 1969 and of the recently signed treaty with Mexico.

What action is the Department of the Interior taking in this matter?

Sincerely,

ROBERT C. HUGHES, *Chairman.*

Enclosure.

FALCONS WORTH $5,000—ROUND-THE-CLOCK GUARD FAILS TO STOP BIRDNAPING

Birdnapers sneaked past a guard, scaled steep and massive Morro Rock and stole two rare peregrine falcon fledglings from their nest.

The 3-week-old birds, reported worth $5,000 each, are on the endangered species list. California Fish and Game officials said only 12 are known to exist in California.

The birds were stolen last week despite a round-the-clock guard that bird fanciers posted just offshore from this tiny seaside community midway between San Francisco and Los Angeles.

On the night of May 8 two youths eluded sentinels to reach the nest but were arrested when they descended. The baby birds were found in a paper sack at the base of the rock and returned to the nest, police said.

Last week a 3-man team, equipped with climbing ropes and walkie-talkies, got to the nest at the 480-foot level. Police said two of the men were arrested, but the third escaped with the falcons. The birds are still missing.

Fish and Game officials say the fledglings are quite friendly to humans and valued for their use in falconry.

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
Washington, D.C., June 15, 1972.

MR. ROBERT C. HUGHES,
Chairman, Sierra Club,
Trenton, N.J.

DEAR MR. HUGHES: This is in response to your letter of May 28.

The alleged theft of two immature peregrine falcons from their nest near Morro Bay, California, is under active investigation by U.S. Game Management Agent-in-Charge, Jack E. Downs, 4008 Federal Building, Sacramento, California.

Agent Downs has not as yet advised this office of his findings or of the legal action to be taken. As soon as he does, we will reply further.

Sincerely yours,

HARVEY WILLOUGHBY,
Acting Assistant Director.

THE BREEDING STATUS OF THE GOLDEN EAGLE IN THE APPALACHIANS

(By Walter R. Spofford) [1]

Both the low productivity of Appalachian eagles and the decline in the fall flight . . . bear a close resemblance to the corresponding decline in the breeding success of Bald Eagles and Ospreys, together with the almost complete disappearance of the Peregrine Falcon in the same Appalachian regions.

During the last two decades about a dozen active nesting sites of the Golden Eagle have been located in northern parts of the Appalachian Highlands. Because of the vulnerability of this shy eagle to various adverse environmental influences, little has been published concerning those few pairs known to be nesting in our eastern mountains, and the locations of these should probably remain unrevealed. Although such nesting was largely unknown during the first half of the century, most sites are actually not new but appear to have been used for decades and even longer. These sites are at scattered locations in the more remote parts of the Appalachians, with several nests in both New York and Maine, one in New Hampshire and two in the Gaspé. There are several more "suspected" sites, including one in the Maritime Provinces.

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[1] Aviana, Etna, New York 13062.

Several of those active in the 1950's now appear to be abandoned. In New York, activity at some sites appears to wax and wane, apparently related to the frequency with which eagles are shot or trapped there. More than a dozen eagles have been killed at one location since the 1930s. After three were killed between 1948 and 1950, no nesting activity was noted there and a bird killed in early April 1960 may have been the last recorded at that site.[2]

It is difficult to obtain quantitative information on the breeding success of this secretive eagle. Great care must be taken to avoid more than minimal disturbance in making a nest check, and any such observation is preferably done late in the season. Golden Eagles may desert their eggs and even their young chicks under close scrutiny, and keeping an eagle off its eggs in cold weather may be disastrous. Nestings are often sited in remote forested and mountainous terrain where both accessibility and visibility are limited. The home range of a pair—fifty or even a hundred square miles in extent—usually harbors more than one nest, often on separate cliffs; sometimes one of the nests may even be in a tree. Eagles may rebuild and decorate any or all of these alternate nests at various times throughout the year, and an apparent failure at one "fresh" nest may be due to the ultimate selection by the pair of a new or unknown alternate nest. Uncertain food supply, difficult to obtain, (and other factors) may lead to irregular breeding. Finally a once- or twice-yearly check, often through a telescope from a distance, may be insufficient to establish the true status of the breeding attempt. Because of the very low breeding success of these Appalachian nestings, it seems preferable to speak of "active sites" rather than actual nests.

An "active site" is an eagle home range with at least one eagle on location over the years, and these usually exhibit one or more nest platforms. A single bird may secure a mate and the site again shows nesting activity, or the single may also disappear and the site become inactive. Sometimes a supposedly inactive site again becomes active, but it may never have been proven that such a site was really inactive. Some data on eight active sites is presented in Table 1, and some additional information is given about some of these sites. Site MPB has been used since antiquity; it is a remote mountain cliff overlooking forest, lakes and marsh. Human disturbance close to the cliff is slight, but lumbering, camping, boating, fishing and some trail travel is occurring with increasing frequency in the immediate vicinity. Most checks at this site in June or July have revealed fading green pine "decorations" on the three nests, but probable presence of young was indicated only four times in 11 years. Two fledgings on August 1, 1957 marked the only certainly successful nesting, but the third nest, not discovered until July 1961, much higher on the cliff, had some white streaking at the nest that year, suggesting possible use in a previous year.

I discovered nest FMI as a small pile of sticks in 1955; it was first used as a nest two years later. Discussion with a local game warden led to the discovery of an alternate site for this pair several miles away in a remote mountain valley; three nests here indicated use for many years. This site probably produced a fledging in 1956. Ten miles away Golden Eagles were reported to have nested about 1920, before a road was built close by. The new nest, first used in 1957, was close above the same road and incubation took place with the roar of lumber trucks below; it soon was noticed by local people picking blueberries when the adults came in, close over their heads, with prey. Eventually a state game officer stayed here on weekends to prevent disturbance of the nest. An eaglet was raised here again in 1960 but another attempt in 1962 failed. Again in 1963 a chick was raised, but this time in one of the nests on the more remote cliff. Although the roadside nest was repaired again in 1966, there has been no further activity.

Nest HCA was reported abandoned after 1896, but was discovered, in use again, by a timber crew in 1951. Three young were probably fledged here in six years, but early activity in 1957 was followed by nest failure. Neither of the two nests on this cliff was even decorated in subsequent years, although a pair of eagles was seen for a few more years. No alternate nest-site is known in this location and both nests on the cliff disappeared a few years ago.

A timber operator reporting a pair of eagles over a small lake in 1956 led to the discovery of site YLF, and the eaglet banded here in 1957 was the first nestling banded east of the Mississippi River. Both nests at this site were built up over

[2] Most information about New York State nests is the result of the untiring efforts of Mr. Greenleaf Chase of the N.Y. State Conservation Dept.

the years since but all nesting failed. Extensive camping, boating and fishing occur here now and hikers climb regularly above the nest cliff which is now abandoned. In 1966 an alternate nest was discovered in the canopy of a huge white pine overlooking another lake nearby. While apparent incubation was observed by a guide here in 1966, in 1967 (from April to early June) and in 1968, each nesting attempt failed. In 1969 a large eaglet disappeared from the nest during a violent storm in early July.

Site MOJ lies in a great forest reserve and timber operators seem the only possible human disturbance. Probably one eagle was produced in three years of observation.

There is a published reference to an observation of an eagle at site YFC in 1926, and various sightings of one or more birds into the 1960s, but a nest was not discovered until 1961. Located in a niche of a cliff in a remote and trackless mountain notch, the eagle pair actively built up this nest each March and April for the next four years, but each nesting failed, apparently early in the season, and the site is now abandoned.

Site YEB has a long history, a nest in the same site having been known since at least 1915. Although many nests eventually fall out and are rebuilt, this site shows no debris below and no evidence of having tipped out, at least in recent decades. Closely overlooking a small fishing lake and visible from a ledge overlooking the nest at short range, this site has been much molested, including shooting into the nest by boys. A CCC camp nearby in the 1930s was a particular disturbance, but nevertheless fisherman told me that during the 1930s and 1940s the birds frequently raised young here. An adult was shot in the nest about 1950 and the site is now largely inactive, although the nest is sometimes built up and decorated with fresh red pine tips. Although much interrupted by visitors to the overlook ledge in 1967, incubation continued into early June before the nesting attempt was abandoned with the failure of the presumed egg(s) to hatch.

The only known nest at site YHG is in a huge white pine on a steep hillside overlooking rolling wooded hills, creeks and swamps. The pair was first reported here in 1957 but no nest was discovered until a few years ago when an observer hunting warblers in the Adirondacks spotted the empty nest platform. In 1970 one young fledged during the first week of August.

In the 78 eyrie-year checks at these eight sites over the past twenty years only twelve eaglets are known to have fledged—one eaglet every 6½ years, for a productivity of only 0.15 per site per year. If active nests only instead of sites are considered, the figure is still only 0.2, which is far below that of eagles breeding in the Mountain States, where productivity ranges from 0.8 to 1.4 per active nest.

TABLE 1.—NESTING STATUS OF 8 GOLDEN EAGLE SITES OVER A 20-YEAR PERIOD

Site	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	A	B	C	D2
MPB					N	y?	YY	y?	N	N	N	-----	y?	-----	N	----------				d	10	9	5	2
MFI					N	Y?	Y	N	N	Y	N	N	Y	B	N	N	n	----------		n	14	11	4	4
HCA	N	Y?	N	Y	Y	N	y–	BB	n	BB	BB	n	----------							f	12	7	4	3
YLF							Y	N	I–	N	N	N	N	N	N	I–	I–	I–	Y–	B	14	13	2	1
MOJ									Y?	N	-----	N	----------								3	3	1	1
YFC							BB	BB	BB	BB	N	N	N	N	N	n	----------			n	10	5	0	0
YEB						n	n	-----	N	N	d	n	----------			N	I–	N	d	n	11	5	0	0
YHG							BB	BB	BB	BB	----------						n	n	n	Y	4	1	1	1
T		1	-----	1	1	1	4	-----	1	1	----------		1	----------						1	----------			

KEY TO SYMBOLS

Y: large eaglet or fledgling
y: small eaglet
N: nest built up for occupancy
B: eagle on location
d: nest decorated with green leaves

n: nest present but no recent work
f: nest fallen out
–: nest failed
?: uncertain

A: Total all nest checks
B: Total active nests
C: Probable total eaglets in nest
D: Probable total fledged eaglets
T: Total fledglings per year

Certainly a few more eagles may have fledged than appear in the table, but taking into consideration unknown alternate sites and other factors, this could at best only double the figure and it is probably less. With a probable loss of at least 75% of young eagles before reaching reproductive maturity at some five years, it takes eight years of subsequent breeding at 1.0 per year for a pair to replace itself. With an Appalachian rate of at most 0.3 per nest per year, it would take an incredible 25 years for pair replacement, which is probably beyond the life-span of most eagles.

There is good reason to believe that the present low breeding success of the Golden Eagle is a new development. At one Adirondack site on the upper Hudson River, local fishermen have assured me that nesting success was frequent during the 1940s. At another site over a lake frequented by fishermen, young were watched in the nest many times over the years before 1950.

Not only is the reproductive success low at known nesting sites in the Appalachians but the fall migration of Golden Eagles past Hawk Mountain at Kempton, Pennsylvania has dropped markedly in the last twenty years. Most of these birds probably come from northern Quebec. A nestling banded at Wakeham Bay on the Hudson Strait by Dan Berger on July 26, 1968 was netted at Hawk Mountain and released on October 23 of the same year by C. J. Robertson, Jr. A few of the fall migrants have an Appalachian origin. An eaglet I banded in the nest in Maine on July 10, 1963 was "found dead" in southern Pennsylvania in early November of that year.

The count of Golden Eagles at Hawk Mountain for the last 25 years is given in Table 2, where the averaged sums of each five-year period in the last 15 years show a marked decline. Even allowing for the facts that the present reporting is more complete than in earlier years, and that more than one observation point is now utilized in the record, it seems indisputable that the apparent 20 percent reduction in the fall flight is real and considerable. Although it may be argued that human interference is important at a few of the Appalachian locations, this does not appear to be a significant factor for the populations north of the St. Lawrence River. It seems clear that both the low productivity of Appalachian eagles and the decline in the fall flight occurring in the last decades bear a close resemblance to the corresponding decline in the breeding success of Bald Eagles and Ospreys, together with the almost complete disappearance of the Peregrine Falcon in the same Appalachian regions. The evidence now seems overwhelming that the explanation is the accumulation of DDT residues, with its breakdown product DDE being responsible for eggshell thinning and disappearance of the eggs.

This would account for the number of nests examined which show evidence of having been well occupied, but without eggs, or young. I showed such a nest to Leslie Brown, who was insistent that an egg collector must be active at this site. However, it now seems probable that Golden Eagle eggs have thinned, become broken and perhaps even been eaten, as has been demonstrated in the Peregrine Falcon.

TABLE 2.—HAWK MOUNTAIN, PA., COUNTS OF GOLDEN EAGLES: 5-YEAR AVERAGES FROM 1946 THROUGH 1970

	1946–50	1951–55	1956–60	1961–65	1966–70
	69	54	48	52	16
	34	80	46	40	36
	40	31	41	28	39
	47	40	31	28	28
	68	57	38	34	25
5-year average	51.6	52.4	40.8	36.4	28.8

The Golden Eagle over much of its range in the northern hemisphere is not as high in the trophic level of the ecosystem as are the falcons, bird-killing hawks and fish-eating birds. Feeding largely upon lagomorphs (cottontails and jackrabbits), on marmots, ground squirrels and formerly prairie dogs, the Golden Eagle is generally close to the second consumer level (C–2). Such low-level carnivores usually do not have as much opportunity to concentrate environmental poisons such as DDT and the other persistent pesticides. Within the Appalachian region, however, the Golden Eagle is closer to the C–4 or C–5 level.

The generally densely wooded Appalachians contain little open country suitable for the hunting tactics of the Golden Eagle, and swamplands, bog country and marshland provide an important food resource for this generally open-country eagle. One of the most frequently noted prey species for nesting Golden Eagles is the American Bittern, and more than 20, as well as several young Great Blue Herons, were brought to a nestling eaglet at one location. Bittern remains have been found at all nests for which I have information, and Great Blue Herons at three nests. Although snowshoe hare, cottontail and marmot are also commonly preyed-upon species, others include such birds as both Ruffed and Spruce Grouse, flicker, crow, Com. Raven and even such top predators as Red-tailed Hawk, Broad-winged Hawk and Barred Owl. Other mammals include red fox, Virginia deer fawn, muskrat and even mink.

The bitterns and herons are well known as top predators in aquatic food chains, and it is clear that hawks, owls and foxes are also in a position to have concentrated considerable amount of pesticide residues. The food habits of Appalachian Golden Eagles thus make them highly susceptible to the same kind of food-chain poisoning that has been established in the Bald Eagle, Osprey and Peregrine, but actual samples from both eagles and their prey are yet to be analyzed.

At best a very rare resident of our eastern mountains, the Golden Eagle now appears well on the way to becoming a vanishing remnant.

A Statement on Program Needs of the Division of Management and Enforcement, Bureau of Sport Fisheries and Wildlife

The precarious status of our migratory game bird heritage commands intensification of efforts to identify and neutralize any act or influence not compatible with, or harmful to, proper husbandry and preservation of this precious natural resource. Accordingly, witnesses here today feel a compelling responsibility to apprise this Committee of certain forces and prevalent attitudes which portend serious dissipation of migratory birds and threaten relinquishment or abandonment of the Federal enforcement program for wildlife as presently constituted.

These misgivings with respect to future programs for the Division of Management and Enforcement, Bureau of Sport Fisheries and Wildlife, are not unfounded, as is evident when one relates recent action significantly reducing the authorized number of Game Management Agents to the findings and recommendations set out in a Bureau document titled, "Report of the Task Force on Program Priorities," submitted May 1970. Pertinent points from this and other documents indicate clearly that recent management decisions affecting the Bureau's enforcement program constitute acquiescence to these recommendations with attendant reorientation of program emphasis and a consequent lessening of protection for migratory birds. Among other important impacts, the following conclusions and recommendations, or inferences, are found in that report:

The Management and Enforcement program is relegated to a low priority status with no increase in funding; redistribution of resources is recommended to emphasize investigation of ecological disasters, early warning system, and training of State agents; and direct enforcement and control of depredations are to be deemphasized (page 10).

Magnitude and potential of the State enforcement capability and overlapping efforts points up that depredations control and continuing routine enforcement at the Federal level in some States are considered low priority activities, and a gradual reduction of Federal involvement in routine enforcement work can take place without a corresponding loss of Federal program control (page 50).

Implementation of these recommendations is clearly evident from various instructions issued by the Directorate subsequent to this report which prescribe that program emphasis shall be directed toward control of importation and interstate transportation of wildlife, endangered species, training of State and Bureau law enforcement officers, enforcement of the Eagle Act, and environmental monitoring activities; and most recently, requires that the authorized staff of 174 Game Management Agent positions be reduced to 155, effective June 30, 1972.

Contemplated Reduction of Federal Protection for Migratory Birds

Let us evaluate briefly the consequences of these actions. With regard to dependence upon the States for protecting migratory birds, there is no assurance whatever this responsibility would be assumed unless accompanied by authority

for State control. Subsequent to proclamation of the convention between the United States and Great Britain for the protection of migratory birds, December 8, 1916, and approval of the Migratory Bird Treaty Act on July 3, 1918, such authority and responsibility have been vested in the Federal Government, and can only be redelegated to the States by Act of Congress. Therefore, any consideration of such change by administrative decision is completely irrelevant, despite plans or proposals to the contrary.

In viewing this proposition objectively, it is an established fact there is very little independent State enforcement of Migratory Bird Regulations; and there is little or no prospect of improvement in this area as long as authority for management and preservation of this resource rests with the Federal establishment. States are concerned primarily with management of resident resources and expect the Bureau to administer its own protection for migratory birds. In the absence of Federal protection, indications are overwhelming that disrespect for Federal regulations would intensify significantly with disastrous impact on the resource. In discussing this general topic with Mr. George Shields while he was Director of the Maryland Department of Game and Inland Fish a few years ago, he stated candidly that, "In the absence of Federal enforcement in Maryland, hunters would deplete the waterfowl resource within five years."

Despite significant upgrading of employment and performance standards in recent years, most State enforcement personnel serve in an atmosphere of political or other influence-oriented intimidation, and either are not permitted unencumbered freedom in exercise of authority, or are inhibited by other factors from impartial and/or effective administration of their offices.

To whatever reasons it may be attributed, this lack of State capability to provide the quality protection for migratory birds contemplated by Presidents and Legislators alike, when in their wisdom these treaties and acts were approved, was first officially acknowledged in 1920 in a Supreme Court opinion written by the renowned Justice Holmes who stated that,

"Here a national interest of very nearly the first magnitude is involved. It can be protected only by national action in concert with that of another power. The subject matter is only transitorily within the State, and has no permanent habitat therein. But for the treaty and the statute, there soon might be no birds for any powers to deal with. We see nothing in the Constitution that compels the government to sit by while a food supply is cut off and the protectors of our forests and of our crops are destroyed. It is not sufficient to rely upon the states . . ."

Therefore, to seriously consider or imply yielding responsibility for protecting migratory birds, or even the relinquishment of continuing routine enforcement, would represent dereliction of duty in direct violation of Federal laws and the intent of Congress, and would surely hasten the ultimate decimation of these birds well before this takes place through loss of habitat or environmental degradation.

The Bureau's own Game Management Agents appearing here before your Committee represent some of the most important waterfowl States in the Atlantic and Mississippi Flyways and will be happy to confirm, statistically, State attitude toward and contributions in the enforcement of Federal regulations governing hunting and other utilization of migratory birds.

CURRENT PROGRAM DEFICIENCIES

The incredibility of reducing Federal protection potential is further accentuated by the scope and magnitude of expanded enforcement responsibilities from new or amended wildlife acts which have become law in the past ten years. They include a 1960 amendment to the Migratory Bird Treaty Act making commercialization of birds a felony; amendment of Sections 42 and 43 of the Lacey Act the same year to prohibit importation of injurious reptiles, amphibians, fish, etc., and imposing additional conditions on record keeping; 1962 amendment of Bald Eagle Act to include protection for golden eagles; passage of Endangered Species Act of 1966 imposing importation controls; passage of Endangered Species Conservation Act of 1969 which amended Lacey and Black Bass Acts to protect foreign and native endangered species and regulate foreign and interstate commerce of wildlife; 1971 amendment to Bald Eagle Act increasing penalty provisions; 1971 legislation regulating the hunting of all wildlife from aircraft; agreement on provisions of Migratory Bird Treaty between the United States and Japan; and recent amendment of the Convention Between the United States and the United Mexican

States for Protection of Migratory Birds and Game Mammals which, among other important changes, brings raptorial birds under protection of the Federal Migratory Bird Treaty Act. All cost of implementing these new laws has been absorbed, essentially, within the existing frame of personnel and financial resources available to this Division.

The following table of Agents employed in the 12 Southeastern States of Region 4, Puerto Rico, and the Virgin Islands, verifies the static nature of personnel available to the enforcement program during the past decade, and illustrates how few and thinly spread are Agents who conduct this program.

U.S. GAME MANAGEMENT AGENT POSITIONS FILLED

State	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
Alabama	3	3	3	3	3	3	3	3	3	3	3
Arkansas	3	3	3	3	3	3	3	4	5	4	4
Florida	3	4	4	4	4	4	5	6	6	6	6
Georgia	3	3	3	3	3	3	4	3	3	4	4
Kentucky	2	2	2	2	2	2	2	2	2	2	2
Louisiana	7	7	7	7	7	7	7	7	6	7	7
Maryland	7	8	8	8	7	7	6	6	6	5	5
Mississippi	3	3	3	3	3	3	2	3	3	3	3
North Carolina	7	6	7	7	7	7	6	6	3	4	4
Puerto Rico/Virgin Islands	1	1	1	1	1	1	1	1	1	1	1
South Carolina	2	2	2	3	3	3	3	3	3	3	3
Tennessee	2	3	3	2	2	3	3	3	2	3	2
Virginia	3	3	2	2	2	2	2	2	2	2	2
Total	46	48	48	48	47	48	47	49	45	47	46

As early as 1962, the Division of Management and Enforcement made a comprehensive study of its organizational staffing pattern, and in light of responsibilities existing at that time and additional program elements anticipated with advent of future new laws and amendments to existing ones, the field staff needs were projected at 205 positions. This preceded by several years passage of the Endangered Species Conservation Act or any broad awareness that deterioration of the environment would create the intense public concern evident today. Yet over the years, these personnel needs have largely been ignored, or were rebuffed perennially under rationale that budgetary constraints preclude any staff expansion for the time being.

Passage of the Endangered Species Conservation Act of 1969 created new authority and responsibility which, if fully implemented in context of its total purview, would require a doubling of manpower and funds now available to the Division for enforcement purposes. Not one additional employee, however, or one additional dollar of budgeted funding has been made available to the Management and Enforcement program in Region 4 for administration of this Act. Nevertheless, a token effort has been made to monitor and regulate importations and interstate commerce in wildlife and parts thereof. Here, again, cost of such involvement has been mostly absorbed, with a further diminution of protection for migratory birds. Thus, experience with this new Act to date only more firmly identifies and establishes immediate need for additional resource support, if meaningful strides are to be made to safeguard threatened wildlife species.

This total lack of adequate means to meet program demands has created a dilemma for the enforcement supervisor, necessitating attack on wildlife law violations not as they are detected or identified, but rather on a priority basis. The alternative is an overextension of efforts which fosters mediocrity so that quality performance is no longer attainable. This choice has been rejected with the result that investigation of many suspected violations is being deferred indefinitely to the ultimate detriment of the resource. A current "case" of major proportions illustrates this point.

Conceived more than two years ago in Region 4 from suspicion that the endangered American alligator was being exploited for its valuable hide, this investigation has proliferated to the extent that over 460 individual violators have been identified in seven southeastern States who unlawfully slaughtered and marketed the hides of over 127,000 alligators from 1968 through 1971, with a gross value exceeding $4,140,000. Unfortunately, some 350 of these poachers will circumvent prosecution by expiration of statutes of limitation in most States. Prosecution of the remaining 112 individuals on multiple counts in State and/or

Federal court is currently underway in 13 Federal judicial districts and 5 states. The "case" is still under intense investigation with new leads being explored on a continuing schedule, additional violations being detected intermittently, and no end to this project in sight. Direction and investigative expertise is provided by Game Management Agents assigned either full or part-time, who have set aside during such assignments attention to any protection for migratory birds or other duties. To date, over five man years have been expended on this "case" alone, with prospects that equally as much additionally time to conclude all facets of the investigation will be required.

The ultimate impact of this case is interesting to contemplate. It is big, with wide ramifications and serious overtones of national and international conspiracy and intrigue. At least a dozen investigators could be usefully deployed full-time to continue this investigation, but prospect of this appears infeasible under present funding constraints. Moreover, evidence of other violations of a similar nature and significance has been discovered during this investigation, but further attention to such activities must be postponed indefinitely for lack of sufficient resources to expand present enforcement surveillance.

To further illustrate emphatically the paucity of resources available for enforcement of migratory bird regulations and other Federal wildlife laws, contrast, if you will, the Bureau's force of four Game Management Agents in all of Georgia at the present time, with a complement of 146 Alcohol-Tobacco-Firearms Tax Agents employed by the Federal Internal Revenue Service in this State alone—just nine less than the total number of Game Management Agents authorized for all the United States after June 30 of this year. This reflects vividly the lack of any but token support for this important tool of wildlife management.

The low priority ascribed to the Federal wildlife protection effort in the *Task Force Report* represents documented manifestation of the unhealthy, and uniquely inexplicable attitude toward enforcement almost universally evident in wildlife administrators who are schooled in the biological sciences. This indifference, and in many instances outright antipathy, is not common to officials in the Federal establishment alone: it pervades the entire wildlife conservation field from State game department to private conservation agency. To many of the nation's top wildlife managers and administrators, enforcement programs are tolerated only as instruments of the judicial establishment, with questionable merit for management support; their value is seldom acknowledged or acclaimed by high wildlife officials, but rather are demeaned as unworthy of equal status and support alongside other more popular programs which offer some tangible benefit unencumbered by the stigma of police constraints. Few persons in this field have gained the insight or demonstrated a conviction to assert the positive role of enforcement as prerequisite to an efficient game management program.

The most notable example of such refreshing enlightenment among our contemporaries is Dr. Leslie L. Glasgow, former Director of the Louisiana Wild Life and Fisheries Commission and Assistant Secretary of the Interior for Fish, Wildlife, and Parks, and presently Director, School of Forestry and Wildlife Management, Louisiana State University. He accurately assessed the role of protection in wildlife management programs in the November–December 1966 issue of the *Louisiana Conservationist.* All wildlife workers would do well to emulate the principles so logically espoused in that editorial, a copy of which is submitted with this paper to provide for your review and consideration a guide to the emphasis which enforcement must command to assure effective stewardship of our wildlife resources.

Deficiency of funding to satisfactorily implement authority and responsibility under Federal laws governing the taking, possessing, importation, transportation, or other utilization of wildlife is no less critical than the insufficiency of line personnel to meet total program demands. (The enforcement arm of the Bureau of Sport Fisheries and Wildlife appears to be the only Federal agency which imposes a ceiling on expenditure of funds for ongoing criminal investigations.) The validity of this assertion has been personally verified by high officials representing several such agencies. They are not hamstrung by restrictions on funds for investigations. Accounts for this purpose are open-ended. To them, any such curtailment or bar to the effective control of criminal activities is completely infeasible and unacceptable. And mark well this indictment: most persons who commit violations of wildlife laws do so with malice aforethought and are in fact motivated by criminal intent. Activities of such persons on any appreciable scale account for a tremendous loss to the resource, outside the range contemplated by

harvest within framework of regulatory controls. Accordingly, there must be no interruption of protective custody, unless serious loss to the resource is an acceptable alternative.

Why, then, should protection of our wildlife heritage be administered with any less zeal or support than is afforded revenue-producing measures having none of the cherished aesthetic considerations which characterize the natural things of this earth? If our wildlife resources are worthy of the careful and wise management demanded by this nation's conservation constituency, they surely command sufficient support to insure continuity of protective custody. Any less consideration mocks the noble efforts of all who in the past have striven so valiantly to preserve this resource for enjoyment of generations to come. Wildlife enforcement programs must be released forthwith from the shackles of budgetary constraints so that, henceforth, optimum control may be exercised over those who disdain and contemptuously flaunt harvest or other necessary administrative controls to the detriment of this public trust. More likely than not, such positive action alone is all that is necessary to assure preservation of these species. Many of our sophisticated game management techniques and practices are merely experimental endeavors to improve upon nature. But from all of man's technological advances there has yet to be any proof that progress toward this end has been realized. In great measure, nature has proved to be an adequate game manager when left to her own devices and a little protection from the cupidity which today characterizes too many who profess the title of sportsman.

NEED TO UPGRADE SUPPORT RESOURCES

The cost of adequate enforcement effort will be nominal when measured by benefits which will accrue, and review of past budget factors and estimates of program needs will put the question of cost in proper perspective.

MANAGEMENT AND ENFORCEMENT PROGRAM—REGION 4: 12 SOUTHEASTERN STATES, PUERTO RICO/VIRGIN ISLANDS

Fiscal year	Allotment	Number of agents	Average per agent	Average "operations" money per agent
1972	$1,306,100	47	$27,800	$4,200
1971	1,152,200	46	25,000	2,845
1970	1,104,300	47	23,500	3,000
1969	1,024,625	45	22,800	3,000
1968	973,136	49	19,900	2,950
1967	923,737	47	19,700	2,800

The most pressing need is additional funds for so-called operations, and to upgrade equipment. "Operations" includes all costs except salaries and personal benefits, and major equipment. For the Agent, this allotment must cover travel; vehicle operation, maintenance, and repair for automobiles, boats, and motors; communications; and miscellaneous materials, supplies, and minor equipment. It must support his program for all 12 months of the year. Investigations must cease or be curtailed if depletion of funds is threatened before the end of the fiscal year.

The Agent is not permitted to work on certain holidays when hunters and fishermen flock to fields and streams in pursuit of their chosen sport, for work on such holidays requires extra compensation which has not been available to this program in recent years. Therefore, opportunity for increased violations of game and fish laws during such periods is accelerated. A sustained, aggressive program of protection and regulations administration has not been possible in Region 4 since Fiscal Year 1966 because money and manpower were not available to conduct such program on a continuing 12-month basis. The only remedy for this deplorable situation lies in extending to the Bureau's enforcement Division the same budgetary latitude for "operations" under which other Federal enforcement agencies long have functioned.

Full program capability with optimum benefits to the public we serve is possible with the manpower and budgetary considerations requested for Fiscal Year 1974. This request contemplates an increase of 21 Game Management Agent posi-

tions assigned strategically to bolster administration of migratory bird and endangered species protection and to increase program capacity for surveillance of the environment in 12 southeastern States, Puerto Rico, and the Virgin Islands; and conversion of 12 field secretaries from part-time to full-time to satisfy the need for additional clerical assistance and maintain open lines of communication for receipt of violation reports, inquiries, complaints or environmental contamination, and otherwise provide the services expected from government agencies. It will update worn-out and obsolete equipment and provide a two-way radio communications system, indispensable to efficiency of any modern enforcement program and safety of its personnel. Funds for "operations" will be sufficient to conduct a vigorous, sustained program throughout the full fiscal year capable of response to the needs of all important program elements currently identified for priority consideration. All of this can be accomplished through the modest increase of personnel identified above and an increase in funding of $850,700 more than the $1,265,000 budgeted for Fiscal Year 1973.

We are not so conversant with the entire program as to suggest total resource requirements for conduct of a viable program on a national scale. It is speculated, however, that such needs are proportionately parallel to those identified for Region 4, reflecting as a whole a very modest stipulation in total resource commitment compared to consequences of continued inadequate support for an irreplaceable wildlife endowment. Our Bureau can readily identify total funding and personnel required to initiate remedial action to correct these program deficiencies.

The recent edict on reduction of enforcement personnel imposed an additional requirement which will obstruct further progress toward creating a grade structure framework for Game Management Agents commensurate with the code of excellence required of this profession. The arbitrary establishment of GS–9 as journeyman grade for these employees stultifies previous efforts and objectives to upgrade the potential for professional competence in this employment category. This would have been accomplished by imposition of educational standards for Game Management Agents comparable to Bureau positions in the biological science series. This suppression of grade level will evoke performance mediocrity, discourage interest in employment, and unwittingly categorize these employees as second class enforcement officers.

There is no acceptable rationale to support disparity between the journeyman grade for Game Management Agents at *GS–9*, Alchol-Tobacco-Firearms Tax Agents of the Treasury Department at *GS–11*, Bureau of Narcotics and Dangerous Drugs at *GS–12*, or Special Agent of Customs at *GS–11 or 12*, etc. None of these positions involves supervisory responsibility, and each requires the same basic proficiency for investigating and prosecuting criminal activities. Duties of Game Management Agents involve, additionally, a comprehensive knowledge and performance capablity in the field of wildlife management. Yet his job is classified two or three grades below other Federal enforcement positions significantly less sophisticated and demanding of public scrutiny than his own. This discriminatory classification is totally unwarranted, and command summary reconsideration in the name of fair play and progressive personnel management.

ENFORCEMENT AUTHORITY

The most serious deficiency confronting Bureau Agents today is the critical lack of authority for basic law enforcement actions entailed in routinely monitoring various hunting, fishing, or other wildlife utilization activities to determine compliance with regulatory controls. Would this Committee believe that unless a search warrant is first obtained, or the hunter is placed under physical arrest, or the hunter consents, a U.S. Game Management Agent has no power to:

1. Examine a hunter's gun to determine its shell capacity; or
2. Require a hunter to disclose contents of his hunting coat for inspection and count of game birds to ascertain compliance with the daily bag limit; or
3. Require opening of a car trunk for count of birds known to be locked therein, even though he has adequate probable cause to believe that such vehicle contains many birds in excess of the lawful limit?

Now we trust this does not turn out to be a regrettable admission against interest. We know that many here today are enthusiastic hunters, and we would feel badly if you employed this knowledge to claim immunity against our social contacts with one another in the field. Hopefully, you will share our concern with this problem and assist in obtaining corrective legislation.

Such complete lack of authority for officers charged with responsibility to administer Federal treaties, acts, and regulations is inconceivable in this day and age of legal sophistication and intrigue. But more than this, these Agents even lack authority to carry a firearm. Despite repeated documentation of these deficiencies periodically since 1965, with continuous warning of administrators as to possible consequence of Agents acting outside scope of their lawful authority, no relief for this problem has been achieved to date. The frustration of enforcement efforts and mental stress to the Agent, aware of and functioning in this climate of insecurity and legal inadequacy, has seriously inhibited professional competence and attention to duty.

Our inadequacies in this respect were first clearly perceived upon a finding by the Tenth Circuit Appellate Court in *Joseph Aiuppa,* Appellant vs. *United States of America* on November 9, 1964. Defendant was convicted of unlawful possession and transportation of migratory birds after the United States District Court, District of Kansas, Arthur J. Stanley, Jr., Judge, denied a motion to suppress evidence. Defendant appealed. The Court of Appeals, Murrah, Chief Judge, held that a statute giving enforcement Agents of the Interior Department authority with a warrant to search any place impliedly withheld power to make a warrantless search on probable cause.

This decision prompted careful review and reappraisal of authority in its entire range, and your witness personally submitted a report on this subject to the Directorate on August 24, 1965. It identified, explicitly, extent of the Agent's enforcement deficiencies, and recommended prompt attention for remedial Congressional action. Although fleeting interest was expressed at the administration level in subsequent years, and faltering attempts were made periodically to initiate action, no relief has been obtained, and Federal protection efforts still are severely handicapped by these deficiencies. A more in-depth look at the whole problem should confirm importance of this issue.

WARRANTLESS INSPECTION OF VEHICLES

Very little hunting of migratory birds is done without aid of vehicles in transporting the hunter between place of abode and site where hunting is done. Additionally, in the case of waterfowl hunting, boats probably are used in most trips for travel to and from the blind or place of concealment. At conclusion of the hunt, game is carried by the hunter in his boat from blind to the landing, boat dock, or club house. Thereafter, game and hunting paraphernalia are stored in the automobile and return trip home is completed. Mourning dove hunters conclude hunting in fields and woods, and likewise store game and hunting gear in cars and proceed homeward.

These hunters may have killed in excess of lawful bag limits, or taken protected species. The Agent has no way to determine this, however, except by physically inspecting and counting the game; yet, because he did not actually witness such violations, he has no lawful authority to make an examination or count—even if there were probable cause to believe such violations had been committed. This deficiency in our authority was first confirmed in the *AIUPPA* case cited above where probable cause was unquestionably sufficient to justify a warrantless search, and where such search disclosed the unlawful possession of several hundred mourning doves in excess of legal limits.

Game Management Agents are confronted with hundreds of similar situations each hunting season. We stop and inspect hunting boats coming from blinds in marshes and lakes, and cars of hunters along roads en route to public highways. When hunters boarding vehicles after storing gear and locking the trunk are approached, such vehicles are checked to determine compliance with regulations. Failure to make these inspections would reduce, immeasurably, effectiveness of our protection program.

INSPECTION OF GAME BAGS, ETC.

Under normal field procedure, Agent approaches the hunter, identifies himself, and requests an inspection of gun, license, and game bag. With few exceptions, the hunter acquiesces, and examination and count are conducted without objection. The hunter usually accepts this approach as a matter of course. U.S. Game Management Agents make thousands of such inspections annually, but with few exceptions, all are made unlawfully—the Agent has no authority to conduct such inspection. We have been so advised by our Solicitor's office.

Some officials within our own Department have questioned whether need for authority we seek would be sustained at higher echelons, in view of today's Constitutional issues on individual rights and police authority. Logical rebuttal to this misgiving is found in Section 704 of the Migratory Bird Treaty Act regarding authority of the Secretary of the Interior, ". . . to determine when, to what extent, if at all, and by what means . . ." migratory birds may be taken and possessed. It is unreasonable to believe that Congress in its wisdom would impose full authority for the Secretary to administer this resource, yet intend that his Agents should have no authority to determine compliance with Departmental regulations. We think the statute carries implied consent for Agents to inspect hunters' game bags, guns, etc., even though the Act only prescribes authority to search and seize with a warrant, and to arrest any person committing a violation of the Act in their presence or view. However, we have no security in this belief, as can be attested by witnesses here today from personal experience and recent challenges of their authority for routine inspection activities.

All manner of similar inspection situations are recognized and accepted without reservation as prerequisite for efficient administration of wildlife laws. Accordingly, this problem does not address itself primarily to impact on program effectiveness, but rather to the wisdom of knowingly exceeding lawful authority. The question of need is elementary. On the other hand, when an officer knowingly and willfully exceeds his authority, which Game Management Agents do in most contacts with hunters, they put themselves, their profession, and their Service in jeopardy.

PRESENT AUTHORITY

In the matter of search, authority of Bureau officers is so limited as to preclude, almost entirely, any effective determination of hunter compliance with Federal conservation laws and regulations unless they deliberately exceed their authority. At present, lawful search of a hunter's game bag, hunting coat, or other paraphernalia, or inspection of his gun, hunting blind, boat or other vehicle used in hunting or transporting migratory birds can be made only: (*a*) with a warrant, or (*b*) incident to a lawful arrest, or (*c*) by consent of the person searched. With respect to the first procedure, nature of our protection program seldom affords opportunity to obtain a search warrant. By the time one could be obtained, opportunity to benefit by its use long since would have passed. Little practical enforcement of wildlife regulations could be accomplished under ordinary "field patrol" 'conditions if search warrants must be obtained before making routine inspections of hunters and their gear. In the second situation, Bureau officers rarely make an actual arrest. Where violations are detected, suspects are advised that a subsequent notice to appear in court will be received. This procedure is of mutual benefit to both parties and permits more efficient utilization of the officer's time. In the third situation, hunters must consent to a search of their game bags, etc. This approach is most commonly employed by Bureau officers. Although denial of request to search is not often encountered, when such refusal is met, unless the officer has actually witnessed the suspect commit a violation (which would authorize an actual arrest and search incident thereto), he is without authority to make any count of the hunter's bag or other check for compliance with regulations.

Legal requirements for a "consent" search are exacting, as a person who consents to a search waives his constitutional rights. A distinction must be made between submission to the apparent authority of an officer and unqualified consent. Mere acquiescence in a search is not necessarily waiver of a valid search warrant. For a person to waive his rights, it must clearly appear that he voluntarily permitted or expressly invited and agreed to the search, being aware of his rights in the matter.

In the Appellate Court decision in *Aiuppa* vs. *United States*, the ruling that the Migratory Bird Treaty Act does not authorize a warrantless search bars any future lawful search of vehicles (including boats, cars, and planes) by Bureau officers except under three conditions enumerated above. These, indeed, represent grave limitations on the Agent's ability to ascertain compliance with Federal wildlife laws. Future investigations by Bureau officers in strict conformance with current, lawful authority will render their efforts virtually ineffective; and, as public awareness of this situation spreads, may lead eventually to a complete breakdown in respect for and compliance with these laws.

The only acceptable remedy is broadening of our authority by Congressional action to allow warrantless inspection of vehicles upon probable cause, and to

require that those who hunt migratory birds submit to inspection as a condition of such hunting.

To the best of our knowledge, all States have laws empowering conservation officers to accomplish such inspections and/or make such warrantless searches. Similarly, other Federal agencies have statutory authority for inspection without warrant. Warrantless searches are authorized for liquor violations in Indian country, Customs search of persons and baggage. Coast Guard authority to board and search ships, Customs officers search of vessels and vehicles at any place in the United States or within the customs waters, etc.

CONSTITUTIONAL ISSUES

We doubt that any Constitutional issues are involved in the authority we seek. We have no desire or interest whatever in infringing any citizen's privacy, or rights granted under Article IV of the Constitution. The authority needed to inspect a hunter's gun, game bag, boat, car, etc., however, is an indispensable condition for effective protection of wildlife resources. In recent months our Washington office has given this problem considerable attention, and has developed a proposed bill to correct various inadequacies in the area of search and seizure powers under Federal wildlife acts. With minor adjustments in this draft to reflect recently identified points of weakness in present authority, a final document accurately reflecting the Bureau's needs will be ready for consideration. We hope your Committee will review this proposal carefully, and if in your judgment corrective action is warranted, we earnestly request your support for this measure.

BAITING

Baiting, or the lure and attraction of game by hand-deposited feed to the area where it is hunted, is viewed by witnesses here today as the most detrimental of all methods employed by unscrupulous hunters in taking mourning doves and waterfowl. No other violation is practiced so insidiously, or persistently, or contributes so successfully to the unlawful, excessive harvest of these birds. Use of bait has intensified and expanded in recent years, and appears to reflect competitive efforts to assure a continuous supply of birds at the gunning site throughout the season. This increased incidence of baiting also is directly proportionate to the continuing decline of this resource.

History of the baiting problem is replete with court decisions confirming its harmful effects and rejecting interpretations which would nullify its intent and beneficial application. Hard core proponents of the practice have persisted, however, in efforts to mitigate the restraints this regulation imposes by seeking legislation to establish scienter as an element in a charge for this offense. Enforcement officers who are fully conversant with attitudes and philosophies of hunters recognize the subtle motives which prompt support for this move. We decry these efforts as inconsonant with the needs and welfare of wildlife, particularly at a time when intensified protection is essential to mitigate losses from disease, various forms of toxication, habitat shrinkage, and environmental degradation.

Our dedicated concern for preservation and maintenance of migratory birds has induced a continuing study of this problem and reappraisal of the regulatory constraints and their relative effectiveness by Agents in areas where baiting is intensive. We have resisted efforts to relax controls and have periodically recommended measures to amend those features not congruent with practical administration.

The most recent Bureau effort to prescribe a framework for acceptable control is reflected in a proposed bill to amend the Migratory Bird Treaty Act. This draft has been subjected to a comprehensive critique by a committee of highly competent Agents, with particular expertise in all aspects of this subject. Consequence of this assignment is the drafting of a workable alternative proposal which provides a statutory base under which effective determent will be possible through implementation of preventative enforcement measures. The protection afforded migratory game birds under this law will transcend any consideration not in the best interest of the birds. This is the primary motivation of our proposal.

No rule which would enhance utilization of this resource outside the bounds of reasonable, conservative guidelines must be sanctioned if the grand sport of bird hunting is to survive the ravages of the 20th Century.

RECAPITULATION

This statement reflects personal opinions and conclusions of the writer, enthusiastically endorsed by other witnesses appearing and testifying before your

Committee today. Deficiencies in funding and personnel identified herein relate only to the Management and Enforcement program in Region 4 of the Bureau of Sport Fisheries and Wildlife. From previous assignment in a staff capacity at the Washington level and intimate association with supervisors of other Regional programs, your witness is aware that comparable shortages of funds and manpower are equally important to the administration of those programs. Disparities and inadequacies in grade structure, authority, State protection potential, and statutory control adversely affect the national program.

This paper attacks and brings into focus certain actions and attitudes which may evoke lively rejoinder. Should this Committee see fit to extend its interest to a further exploration of questions this hearing may stimulate, your witnesses humbly pledge their availability in any role to resolve these problems and fulfill the program needs identified here today. Whatever future course this meeting may induce, we are completely confident that each issue will be carefully and objectively evaluated, and we pledge our gratitude for any improvement which may be realized in our capability to provide a better public service.

We have no personal interest at stake, outside our concern as private citizens for a resource we appreciate and enjoy. Our only motivation is complete dedication to the total program of wildlife conservation and environment preservation. We are consecrated unreservedly to support of program thrusts recently identified by our Bureau Director. Also, we acknowledge validity of recent administrative decisions and organizational considerations which, hopefully, auspicate additional actions to enhance future program direction.

Hopefully, the opportunity afforded us here today will convey an accurate assessment of the problems and deficiencies which preclude optimum contributions by the Division of Management and Enforcement toward full attainment of all Bureau and Departmental objectives. Accordingly, we conclude this presentation by reiterating and summarizing these issues as follows:

Contemplated reduction of Game Management Agents will seriously impair protection for migratory birds, endangered wildlife, and environmental surveillance.

* * * * * * *

Funds and manpower available to support Federal responsibilities for wildlife protection and preservation are critically deficient—a situation which surely Congress did not intend when it approved laws which prescribe these obligations.

* * * * * * *

Lack of proper authority to search vehicles upon probable cause, and to conduct inspection of persons and their gear when engaged in the privilege—not a right—of utilizing wildlife, is an affront to U.S. Game Management Agents and a peril to their persons, profession, and employer.

* * * * * * *

Baiting accounts for serious, morally harmful and corrupt exploitation of migratory birds. Present controls are grossly inadequate and inequitable. A statutory base is recommended to establish a framework of authority for control measures which will effectively destroy incentive for, and eliminate this practice, forever.

Submitted by: Frederick A. Williams, Regional Supervisor, Bureau of Sport Fisheries and Wildlife, Division of Management and Enforcement, Atlanta, Georgia.

Affirmed by: Willie J. Parker, U.S. Game Management Agent-in-Charge, Maryland; D. Warren Lupton, U.S. Game Management Agent-in-Charge, North Carolina; David L. Hall, Assistant U.S. Game Management Agent-in-Charge, Louisiana.

[From the Louisiana Conservationist]

(Louisiana Wildlife and Fisheries Commission)

EDITORIAL

Game management originated in Asia and Europe where the earliest step was the restriction of game kill. In the United States the first game laws were enacted over 150 years ago. They set forth the seasons in which game could lawfully

be taken and the methods by which it could be harvested. Since that time game law enforcement has been a necessary step in management and it is now more important than at any time.

Law enforcement is a basic and essential step in game management. It is the foundation on which management is built. Unless this foundation is solid, little can be built upon it. Without it, only meager gains can be made from the more technical management practices.

Why is law enforcement so essential to our wildlife program? It is necessary to protect the resources we have and those that we will develop. Although significant gains have been made in educating the public, education has not progressed to the point where we can curtail enforcement. Eventually we hope to reach this goal.

Some parishes have many acres of excellent deer habitat yet very few deer are present. Why? Probably because of lax enforcement or too many free ranging dogs or both. A few hunters should not be allowed to kill mottled ducks during the special teal season for these violations may well be the reason for discontinuing this fine hunt. Alligator poachers and hide buyers should not be permitted to drive the alligator to extinction for their own personal gain.

A basic American concept is that game belongs to the people and that the State is the administrator for non-migratory species. Any time a poacher takes game illegally he is stealing valuable public property. He spends very little to carry out his stealing. On the other hand a legal hunter is willing to spend at least one hundred dollars to bag a deer. Therefore the poacher hurts the economy of the area from which he is stealing.

Enforcement is a big factor in assuring a more even distribution of the kill among hunters. A few hunters kill eight (8) or ten (10) deer per season. Enforcement keeps this practice to a minimum and gives other hunters an opportunity to kill a deer. Game bag limits for other species are enforced for the same reason.

In programs such as turkey transplanting, rigid law enforcement is necessary for establishment of birds in areas from which they have been eliminated. The success of reintroduced or newly introduced species may depend on good enforcement. We have many acres of habitat that are suitable for turkeys which will be stocked as quickly as we can obtain them. The game law violator must not be allowed to kill this seed stock.

Law enforcement is the basis of considerable revenue for the Commission through the sale of hunting and fishing licenses. Without enforcement, how many licenses would be purchased? Quite a few but there isn't any doubt that sales are greater because of enforcement. In addition to direct revenue from the sale of licenses, federal aid funds for fish and game work are prorated to the states on the basis of the number of licenses sold plus other factors.

Activities such as development, research and education are also important in our wildlife program. There may be a day when law enforcement can take a back seat, but that day has not yet arrived. Because of its importance, game law enforcement is being stepped up at all levels.

ENVIRONMENTAL DEFENSE FUND,
East Setauket, N.Y., July 10, 1972.

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

DEAR SENATOR MAGNUSON: Thank you for your letter of June 26th requesting the views of our organization on H.R. 12186, S. 2547, and H.R. 14731. We appreciate the opportunity you have provided us to comment on these bills. Our comments follow:

H.R. 12186, page 4, lines 8 to 12: We trust that any permits granted for the taking of golden eagles for the purpose of falconry will be carefully screened and kept to an absolute minimum. Although not an endangered species, the golden eagle has greatly decreased in numbers in recent years, due largely to poisoning, trapping, and shooting. We do not believe that it is in the best interests of the preservation of this bird that many individuals should be removed from the wild breeding stock, except in an area where it can be shown that there is a population sufficiently adequate to withstand such attrition.

H.R. 14731 and S. 2547: We have no specific comments on these two bills, except to state that they have our heartiest support, and to express the hope that they can be rigidly enforced.

Again, may we express our thanks for your courtesy in inviting our comments on the above bills.

Very sincerely,

DENNIS PULESTON,
Chairman, Board of Trustees.

Senator SPONG. Mr. Charles Harry. We are pleased to have you with us, Mr. Harry.

STATEMENT OF CHARLES W. HARRY, ACTING PRESIDENT, NORTH AMERICAN FALCONERS ASSOCIATION

Mr. HARRY. Thank you, Mr. Chairman.

I am Charles Harry, and I represent the North American Falconers Association. As acting president of that organization, I very much appreciate the opportunity you have provided me to present the viewpoint of the falconers on the proposed legislation.

The North American Falconers Association, in addition to the more normal interest in the welfare of our national symbol, has a special interest in the welfare and continued existence of the golden eagle. With these interests in mind, we support in its entirety the passage of H.R. 12186 as originally presented. We feel that the passage of this bill with its radically increased "bite" will provide greater, and deserved, protection to our native eagles.

I would like to direct my next comments to that portion of H.R. 12186 which provides for the use of golden eagles for the purposes of falconry. There has been in the last year much activity and legislation with regard to the raptorial birds. The signing of the Mexican and Japanese treaties has placed raptorial birds under the authority of the Federal Government.

The Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, House of Representatives, heard in September 1971 lengthy testimony on the protection of hawks, eagles, and owls. Falconry was discussed in depth, and the use of golden eagles for falconry was spoken of in a positive nature by the majority of organizations and individuals present.

Falconry is recognized by the Interior Department and the vast majority of the States as a legal method of taking game. It is regarded by field biologists, game management authorities, and conservationists as one of the most conservation oriented outdoor recreations.

As we see it, there are three significant points worthy of discussion when considering the use of the golden eagle for falconry.

The first is the effect that "a take" for falconry may have on the status of the golden eagle population. In a study compiled with the aid of nationally recognized golden eagle experts, Dr. James W. Grier concludes in July 1971 that "the generally subjective impression of most persons is that golden eagle populations are sizable and stable—relative to bald eagles—in most areas of the Western United States, including Alaska."

The Interior Department in the aforementioned hearings indicated they have no objection to a regulated take of golden eagles and further expressed a preference for the removal of live eagles for falconry rather than authorize the killing of them where their control is necessary.

The golden eagle has long been used in falconry and today is used in many European and Asian countries. History has shown, including a few preact birds held in this country, that the number of persons employing these birds has been small, and this is likely to remain the case. Thus we anticipate no real impact on the population status.

The second point I would like to discuss is the potential risks of working with a powerful and possibly dangerous bird. The eagle has the potential to be dangerous because it is a strong bird. It is perhaps pertinent to note that far more potentially dangerous possessions such as lions, leopards, and cheetahs, are seldom questioned. To my knowledge, there is a minimum of prerequisites, if any, to the possession of these animals. In the case of eagles, the basic falconry techniques are applicable and, with experience and the resultant respect gained for any potential danger, no difficulty should be anticipated in the training and employment of the golden eagle in falconry. History, as recorded in numerous publications and as given in expert testimony, indicates that these birds can be unbelievably tame and gentle when handled properly.

The latter issue, "when handled properly"—that is experience—introduces my third and final discussion point: the selection process to be used to determine who should possess golden eagles. We believe the Bureau of Sport Fisheries and Wildlife can develop and employ an effective screening technique to assure that only highly qualified applicants are permitted to possess these birds for use in falconry.

With both our broad interest and our special interests in mind, and with the general support from biologists and conservation organizations, we strongly support and urge passage of H.R. 12186 to strengthen the penalties imposed for violation of the Bald Eagle Protection Act and allowing for the use of golden eagles in falconry.

I thank you.

Senator SPONG. Well, thank you very much for your testimony. Would you give us a brief description of the sport of falconry—I have some idea, but I would like the record to reflect this—and an estimate of the number of falconers in the United States and the numbers and kinds of birds they use.

Mr. HARRY. Yes, I would define the sport of falconry as primarily the taking of a normally wild raptor and teaching it to hunt in association with yourself. The birds generally know by instinct how to hunt, and effectively all you are doing is gaining its confidence so that you may use it in its very natural process of taking wild quarry.

A survey was conducted, I believe during the summer of last year, and it has been provided in other testimony that there are approximately 2,000 falconers in this country and Canada. Of the 2,000 falconers, I suspect something in excess of 60 percent employ the more common raptorial birds such as the redtailed hawk.

Senator SPONG. Beg pardon?

Mr. HARRY. Approximately 60 percent employ the common raptorial birds such as the native redtailed hawk.

Senator SPONG. What are raptorial birds generally?

Mr. HARRY. We include in raptorial birds hawks, eagles and owls. Vultures, although raptorial, are not employed in falconry.

Senator SPONG. Hawks, eagles, and owls?

Mr. HARRY. That is correct.

I do not have knowledge of, or present with me, the statistics on the rest of the birds that are used. I am sorry I cannot give you that information at this time but I can provide it later if you so desire.

Senator SPONG. Is that information available to you?

Mr. HARRY. I believe such information has been provided in testimony to the House Committee on Merchant Marine and Fisheries in regards to H.R. 10482 or, if not, I know the person that conducted the survey which I have in mind. I could get the information from him in a short period of time.

Senator SPONG. If you can just submit it later for the record, we would very much appreciate it.

Mr. Harry, what is the position of your organization on H.R. 14731, which would give the Department of the Interior the authority to enforce the shooting of animals from aircraft?

Mr. HARRY. We also favor that bill, Mr. Chairman, in that we believe such an arrangement would improve the protection afforded all eagles and other large animals or birds.

Senator SPONG. Well, I thank you very much for your appearance, and we will look forward to receiving the statistical information from you.

(The statement follows:)

STATEMENT OF THE NORTH AMERICAN FALCONERS ASSOCIATION

The North American Falconers Association supports in its entirety the passage of H.R. 12186 as it stands in its original presentation. Certainly we feel that the passage of this bill will afford greater protection to our native Eagles than they have enjoyed to date. It is our feeling that more effective protection will be forthcoming by increasing rather radically "the bite" of the Bald Eagle Act.

With this in-total support in mind, we would like to direct our comments to that portion of H.R. 12186 which provides for the use of *Golden* Eagles for the purposes of falconry.

There has been in the last year much activity and legislation with regard to the raptorial birds. The signing of the Mexican and Japanese treaties has placed raptorial birds under the authority of the Federal Government; an action long desired and supported by many persons and organizations including the North American Falconers Association. In September 1971 the Sub-committee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries House of Representatives heard lengthy testimony with reference to the protection of hawks, eagles, and owls. During this testimony falconry was discussed to some length, and the use of Golden Eagles for this purpose was spoken of in a positive nature by the majority of organizations and individuals present.

Falconry is recognized by the Interior Department and the vast majority of the states as a legal method of taking game. Field biologists, game management authorities, and conservationists regard the activity as one of the most conservation orientated outdoor recreations.

It is conjectured the Golden Eagle has been used in falconry since man discovered the value of trained raptors. It was widely used in classical times and today is used in many European and Asian countries. There are also some preact birds held in the United States. Always, the number of persons involved with these birds has been small, and this is likely to remain the case for several reasons.

When considering the use of the Golden Eagle for falconry purposes several points come to mind. These are (1) the status of the bird in the wild state and any effect that "a take" for falconry purposes may have on the species (2) the potential risks of working with a powerful and potentially dangerous bird, risks not only to the falconer but perhaps to other persons or property, and (3) who would be licensed to work with such birds and under what conditions? These three points are discussed in the following paragraphs.

What is the status of the Golden Eagle in the wild state? Can a "regulated take" be made without danger to the species?

James W. Greir, in a study compiled with the aid of several nationally recognized Golden Eagle field experts (Craighead, Murphy, Spofford, Nelson, Boeker, Kochert, Leopold, Ray, Ryder) in July 1971 concludes that "The generally subjective impression of most persons is that Golden Eagle populations are sizeable and stable (relative to bald eagles) in most areas of the western U.S. including Alaska".

When one is further aware of the latest available field research data which indicates that vast numbers of these birds are being killed senselessly, the extremely small numbers taken by a few highly qualified falconers cannot seriously be thought to have any effect on the population dynamics of the species.

Is the Golden Eagle too dangerous a bird to work with in falconry and who would be qualified to possess such a bird?

Certainly it must be stated that a bird of this size has the potential to be dangerous. The eagle is a semi-dangerous bird because it is a strong bird. There are, however, many other far more dangerous animals in private possession. We refer specifically to lions, leopards, cheetahs and many other species. These potentially dangerous possessions are seldom questioned.

Similarly there are people qualified to handle eagles, including a rather well-known wildlife biologist by the name of Dr. Frances Hamerstrom, a lady in her 60's. She has kept and used eagles in falconry for years, so we doubt if she feels they are dangerous in the care of a competent falconer.

In opposition to the danger of a good watchdog, which is primarily pointed towards the stranger, any danger from an eagle is primarily pointed towards the owner or falconer. The key to safe utilization of Golden Eagles in falconry appears to lie in the selection process determining who should possess them.

The North American Falconers Association believes the Bureau of Sport Fisheries and Wildlife can screen applicants effectively to ascertain that only highly qualified and experienced falconers are permitted to possess these birds.

In addition to the above statements offered in support of the use of Golden Eagles in falconry, the following pertinent statements were made at the Hawk, Eagle, and Owl hearings held in September 1971.

Mr. Jame Ruos—Bureau of Sport Fisheries and Wildlife, Interior Department: "Eagles, especially Golden Eagles, have been successfully used by falconers for thousands of years. Where healthy populations exist *we have no objection to a regulated take of Golden Eagles* for this purpose by a relatively few exceptionally well qualified falconers. Also in specific situations where the control of eagles is necessary to protect wildlife or private property, we would prefer the removal of such eagles alive for falconry rather than authorize the killing of them."

Mr. Roland C. Clement, Vice-President/Biology—National Audubon: "We are currently preparing testimony that will put us on record as favoring such an amendment providing strict and uniform regulation of falconry is provided, something akin to present bird banding permits issued by the Bureau of Sport Fisheries and Wildlife. *It would otherwise seem incongruous to allow the killing of Golden Eagles because they take an occasional lamb and forbid the use of a few raptor species by properly licensed and regulated falconers*".

Mr. Charles Callison, Executive Vice-President, National Audubon: "We do not think there should even be a temptation for the Secretary of the Interior to issue any permit for the use of the bald eagle in falconry. The Golden Eagle, in our view is questionable also but *we will concede that the judgment probably ought to be made on the basis of the status of the Golden Eagle*".

Dr. James W. Grier, Department of Ornithology, Cornell University: "I have probably handled more bald eagles than any other person alive. In addition I have experience with a few Golden Eagles in the wild and in captivity.

When handled properly these birds can be unbelievably tame and gentle, but they still have the equipment and ability to be dangerous. *Some people feel that for this reason, no one should be allowed to possess eagles. I do not share those feelings;* my intention at emphasizing this point was to stress the importance of only qualified persons being allowed to possess eagles in falconry."

Mr. Stanley Marcus—President, North American Falconers Association: "Under strict permit we will certainly support the use of the Golden Eagle for falconry purposes, for this can be attained without danger to the species or man." (Private correspondence—unpublished)

Col. Kenneth R. Hampton—National Wildlife Federation: "The National Wildlife Federation endorses in principal the sport of falconry provided it is properly regulated and does not involve the removal of endangered species from the wild except for specified purposes under permit."

We hope the above has made it apparent that the usage of Golden Eagles in falconry has broad and general support from biologists and conservation organizations. Thus, we strongly support and urge the passage of H.R. 12186 to strengthen the penalties imposed for violation of the Bald Eagle Protection Act and allowing for the use of Golden Eagles in falconry.

(The following information was subsequently received for the record:)

VIENNA, VA., *July 10, 1972.*

Senator WILLIAM B. SPONG,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SPONG: I want to again thank you for the opportunity to testify on 29 June 1972 in regards H.R. 12186 and 14731. I very much appreciated the opportunity to express the interests of the North American Falconers Association.

At these hearings you requested certain statistics in regards "the number of falconers in the United States and the numbers and kinds of birds they use." I have prepared and have enclosed a more complete answer to that inquiry. I hope the format and information are adequate in that you had indicated an interest in such information for the record.

You had also requested for the record a brief description of the sport of falconry. Not being quite sure of your desires, I have perhaps erred on the side of brevity in my oral response (and as slightly modified in my editing for your Mr. James B. Olsen). I would be very glad to expand on the answer provided or, if it is your desire, to provide a *short* description of training and hunting techniques employed.

Sincerely,

CHARLES W. HARRY,
North American Falconers Association.

NUMBER OF FALCONERS AND NUMBER AND KINDS OF BIRDS

Number of falconers

Independent surveys, some conducted by proponents of falconry and others by detractors, have indicated between 1,000 and 2,000 active falconers in the United States. These surveys were conducted in the 1969–70 period. Estimates by falconers are generally less than the 2,000 figure for that time period. Other estimates, probably gleaned in part from data such as the outstanding State permits issued, are believed to be excessive in that many of the issued permits are not exercised. Allowing for a reasonable growth factor since the time of these surveys, it is believed the present number of active falconers in the United States is 2,000 individuals, at most.

Number of birds

The number of raptorial birds presently held by falconers is likewise not accurately known. Depending on their interests and ability, experienced falconers employ two or sometimes three birds for falconry at any given time. The beginning or neoteric falconers, who substantially outnumber experienced falconers, typically limit themselves to one bird at a time while learning the art of falconry. Some falconers because of their keen interest in and intimate knowledge of raptorial birds employ them in breeding projects but these birds should not generally be, and have not herein been, included in assessments of birds employed in falconry.

The only known information as to the actual number of raptorial birds held for falconry or other purposes is contained in a paper entitled "Estimations Relative to Birds of Prey in Captivity in the United States of America". This paper summarizes a survey conducted for the 1969–70 period by Mr. Thacker of Ohio State University. Mr. Thacker was then and is now Secretary of the North American Falconers Association. Based predominantly on information supplied by state agencies, an estimate of 1,225 birds held under falconry permits

was obtained for that time period. It is probable that some of these birds were being held by petkeepers or pseudo-falconers since some State permit systems, if any exists, make no allowance for distinction between these individuals and practicing falconers.

The full text of this paper, including a listing by states of birds held "for falconry", was entered by Mr. Stanley Marcus (then President of North American Falconers Association) in his testimony in support of H.R. 10482 during the September 10, 1971 hearings before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, House of Representatives. This paper has also been published in full text in the July-August 1971 periodical of Raptor Research Foundation, Inc. (c/o Department of Biology, University of South Dakota) and, in condensed form, in the April 1972 issue of Hawk Chalk by the North American Falconers Association.

At any time, some falconers will be without any raptor as a result of purposely or accidently returning their bird to the wild or as a result of its death, natural or other. Best information available indicates a good survival rate of those raptorial birds returning to their wild state after having been used in falconry. As an example, Dr. Dean Amadon and Dr. Leslie Brown stated: "Most, or all, of the breeding Goshawks in Britain at the present time are thought to be falconer's escapees, and it is very improbable that they would have established themselves in any other way." (from Eagles, Hawks and Falcons of the World, an Audubon publication).

A reasonable best guess would establish employment of between 1 and 2 birds per falconer, on a time average basis, at any given time. In conjunction with the above estimate of 2,000 falconers and assuming 1.5 birds per falconer, one would establish the number of birds in use by falconers as a maximum of 3,000 birds.

It is pertinent to note that the 3,000 represents the estimated number of birds being held by falconers in the United States during any of the latter years. It is not the number of raptorial birds taken by falconers in any years to date. Typically, experienced falconers are able to retain their birds for several years. The number of birds borrowed from the wild in any one year would be substantially less than, certainly less than one-half of, those birds being held for falconry. It can be seen from the above that the number of raptorial birds taken captive in the immediate years is less than 1,500 birds per year for falconry.

Kinds of birds

The kinds of raptorial birds used varies primarily according to the interests of the falconer, his personal preferences of raptor and quarry and the character of the vegetation in the area in which he pursues his sport. Certain birds are more suited for hunting open regions while others are better adapted to wooded terrain. Many of the raptorial birds, because of their particular hunting techniques and normal quarry, are not very suitable for falconry and are therefore not generally used.

The best information as to actual species employed in the United States is contained in the aforementioned paper by Mr. Thacker. The pertinent information, species and percentage of total, is given below:

Species	*Percentage*
Genus Buteo/Parabuteo:	
Red-Tailed Hawk, Ferruginous Hawk, Swainson's Hawk, Harris Hawk, Rough-Legged Hawk	58
Genus Accipter:	
Goshawk, Coppers Hawk, Sharp-Shinned Hawk, etc	13
Genus Falco:	
Sparrow-Hawk, Merlins, Prairie Falcon, Peregrine Falcon, Gyr-Falcon, Saker Falcon, Lanner Falcon, Luggar Falcon	1
Others	1
	100

Other pertinent results are given in the following quote of the author:

"It is estimated that 58% of all raptors worked with belong to the Buteo or Parabuteo genus and this percentage may well be too low. These birds are extremely common and if the majority of falconers are indeed working with this percentage, then falconry cannot be considered being harmful to the continuance

of the birds of prey. Twenty-eight percent, it is estimated, work with falcons. Again, however, between 10% to 12% of this 28% is made up by the American Sparrow Hawk, a most common raptorial bird throughout the United States of America; the remaining percentage being spread over a fuller spectrum of falcons."

It can be seen from the above 58% use of Buteos/Parabuteos and 12% use of the American Sparrow Hawk that falconers typically employ the more common raptors for falconry purposes. There is no reason to expect these percentages to change significantly in the near future except that favorable legislation may make available golden eagles, heretofore unavailable to falconers in recent years. If so, only a limited number of falconers would be interested in and qualified to procure these birds. It is anticipated they would constitute a very low percentage, perhaps 1 or 2 percent, of the falconers and therefore have little impact on the above statistical information as to birds typically employed.

Senator SPONG. Mr. Bernard Fensterwald. Good morning.

STATEMENT OF BERNARD FENSTERWALD, JR., COUNSEL, COMMITTEE FOR HUMANE LEGISLATION, INC.

Mr. FENSTERWALD. Good morning, Mr. Chairman. If it would save the committee time I would be very happy to have this rather brief statement printed in the record and then comment even more briefly on two suggested amendments to the bill with respect to shooting from aircraft.

Senator SPONG. Well, we will receive your statement for the record, and you may comment upon it in any way you wish, and I bless you for your brevity.

Mr. FENSTERWALD. Thank you, sir. The first amendment has to do with the subject raised by Mr. Reed, which is the polar bear. There are approximately 10,000 to 15,000 polar bears left in the world. These are all in the Arctic, which is a huge area, and their number is declining. He pointed out that the Department of the Interior would like to have jurisdiction to prevent the killing of polar bear by airplanes from Alaska. He also said that there was no jurisdiction over airplanes flying beyond the 3-mile limit. If the chairman is willing, I would like to submit a very brief legal memo on that point because I think the Department of the Interior is wrong. I believe you will find with respect to aircraft with U.S. registry, as with ships of U.S. registry, that the jurisdiction of the United States accompanies them wherever they go, and it has nothing to do with the territorial limits. Therefore, a plane flying in or out of Alaska, particularly if it is an American plane, can be regulated by the U.S. Government.

However, Mr. Reed is correct in one thing. The present bill, which was passed last year, reads that the act is applicable only if the animal is shot while the aircraft is airborne. In the case of polar bear this is normally not true. Normally two airplanes are used; one lands on the ice cap; and the other herds the polar bear within shooting range. There has been a great deal of complaint about this. The State of Alaska says it is going to end this practice at the end of this hunting season.

However, we would propose that the original act which was passed last year be amended just slightly so that it makes illegal the act of either stalking or herding an animal, as well as actually shooting it. We think that this would take care of the shooting of polar bear from Alaska.

The second strengthening of that act is a proposal that we made before the original act was passed, and that has to do with the exception for authorized agents or persons operating under a license or permit. A great number of wolves, foxes, coyotes, et cetera, are now killed under State license or State permit, and I think it is probably the largest loophole in the present act.

We are not opposed to the States or the Federal Government employing persons to kill from aircraft where necessary, but we think this provision for authorized agents, licensees, or permittee leaves such a large loophole in the act that it makes it very difficult to enforce.

We would, therefore, like to see these two strengthening amendments put in the act before it is sent back to conference.

Mr. Chairman, we support all three of these bills. We are not in favor of falconry, but I think the view of the antifalconers has been expressed very thoroughly this morning. And we would like to urge the committee to pass all three bills.

(The statement follows:)

STATEMENT OF BERNARD FENSTERWALD, JR., COMMITTEE FOR HUMANE LEGISLATION, INC.

The Committee on Humane Legislation wishes to thank the Subcommittee and its distinguished Chairman for taking up this legislation in this very busy Session of Congress and at this busy time of the year. We also wish to express our thanks for the opportunity to be heard briefly in favor of all three pieces of legislation.

We believe that both S. 2547 and H.R. 12186 are timely and helpful in the fight to save eagles from extinction. To the extent that the bills differ, we would prefer the Senate bill because it does not contain the falconry exception. However, we believe that either bill would be a great improvement over the present situation.

We are hopeful that the Subcommittee will look with favor upon H.R. 14731 as the present Hunting from Aircraft Act is obviously deficient. Therefore, we wholeheartedly support H.R. 14731.

We would, however, like to suggest one additional amendment to Section 13(a)(1) of the Fish and Wildlife Act of 1956, one not suggested in H.R. 14731, but one which, in our estimation, is much needed.

We would recommend that in Section 13(a)(1) the following change be made: after the word "aircraft" add "stalks, herds, * * *".

The provision would then read: "Any person who (1) while airborne in an aircraft stalks, herds, shoots or attempts to shoot for the purpose * * *."

The purpose of this amendment is to outlaw the hunting of polar bear via aircraft. Generally, the bears are not shot by a person who is actually airborne, but by a person who has stalked the bear by aircraft, but who also has landed before committing the act of shooting the bear.

One would think that this might well be covered by the word "harass" in Section 13(a)(2), but it has not been so construed by the Department of Interior which has maintained that under the present Act the Department does not have the power to stop polar bear "search and destroy" missions, because the shooting is not done by a person who is airborne.

It might also be well to place in the report accompanying the legislation a statement that the Act (as amended) applies to all persons whether stalking, searching, and destroying within the territorial boundaries of the United States or over the high seas *if the airplane departed from or is returning to United States territory.* We can see no jurisdictional problem arising from his prohibition against the use of aircraft to stalk and kill polar bear outside the territorial waters of Alaska or the United States.

Again, we wish to thank the Subcommittee for their attention to these problems and for allowing us to give our views.

Senator SPONG. Well, thank you very much, and we will certainly consider the suggestions that you have made.

I only have one question. Are you familiar with the marine mammal bill which was reported by this committee and is presently on the floor of the Senate?

Mr. FENSTERWALD. I am very familiar with it, Mr. Chairman.

Senator SPONG. Well, I wrote some individual views on it myself. I don't fully concur in everything we did in that legislation. But I wonder if that legislation in your judgment gives further protection to polar bears on the high seas and if it does give sufficient protection perhaps to make your amendment unnecessary.

Mr. FENSTERWALD. The bill as approved by the Commerce Committee would leave the power, I believe, to the Department of Commerce to grant licenses to anyone they felt were entitled for the taking of polar bear. We think that——

Senator SPONG. I think Interior has polar bears.

Mr. FENSTERWALD. I am not sure. It shifted back and forth several times.

Senator SPONG. That's right. Well, let me suggest this. You have been helpful in these suggestions, and we will get a copy of the legislation to you in its present form, the form in which the Senate as a whole will consider it, and I would appreciate for the record your then addressing yourself to my question in terms of your own——

Mr. FENSTERWALD. Mr. Chairman, I think it is possible that the marine mammal bill will help, and I will certainly submit some further views on it. But I think it would be helpful if we could put the suggested amendment in the present act anyway because there are other animals that are actually stalked and herded in addition to polar bear, and these are within the continental limits, and I don't think they will be covered by the Marine Mammal Act. I would rather lean on the side of duplication, rather than have a possible loophole left.

Senator SPONG. All right, we will look forward to hearing from you on that, and we very much appreciate the brief with regard to the 3-mile limit.

(The following information was subsequently received for the record:)

MEMORANDUM ON U.S. JURISDICTION OVER U.S. NATIONALS ABOARD AIRPLANES OF U.S. REGISTRY RETURNING FROM THE HIGH SEAS

It is an axiom of international law that "aircraft have the nationality of the state in which they are registered." (Fenwick, International Law, 3rd Edition, p. 411). In this regard, airplanes are analogous to ships, and both ships and planes are subject to the jurisdiction of the state under which they are registered, wherever they may be. [See Colegrove, International Control of Aviation; Le Roy, Air law; Puffer, Air Transportation; Lissitzyn, International Air Transport and National Policy; D. Goedhuis, "Civil Aviation after the War," Am. Journal, Vol. 36 (1942), 596; M. O. Hudson "Aviation and International Law," ibid., vol. 24 (1930), 228.]

As to jurisdiction over nationals, Hall states: "Its laws travel with them [its nationals] wherever they go, both in places within and without the jurisdiction of other powers. A state cannot enforce its laws within the territory of another state, but its subjects remain under an obligation not to disregard them, their social relations for all purposes as within its territory are determined by them, and it preserves the power of compelling observance by punishment if a person who has broken them returns within its jurisdiction." [International Law, 8th Edition, pp. 56–57]

More recently, Bishop restated this principle:

Under our present ideas of international law, the extent of a state's jurisdiction over its own nationals raises few, if any, international legal questions, except in the relatively rare cases where such jurisdiction is the subject of treaties between the state and some other state. Upholding a judgment for contempt against an American citizen who refused to return from France to testify when ordered to do so, the Supreme Court said in *Blackmer* v. *United States:* "With respect to such an exercise of authority, there is no question of international law, but solely of the purport of the municipal law which establishes the duties of the citizen in relation to his government." [284 U.S. 421,437 (1932). Regarding interpretation of statutes applicable to nationals for acts committed abroad, see American Banana Co. v. United Fruit Co., 213 U.S. 347 (1909) ; U.S. v. Sisal Sales Corp., 274 U.S. 268 (1927) ; Branch v. Federal Trade Commission, 141 F.2d 31 (7th Cir. 1944). Cf. jurisdiction taken over civil proceedings under the Anti-Trust Laws in United States v. Timken Roller Bearing Co., 83 F.Supp. 284 (N.D. Ohio, 1949) ; aff'd and mod., 341 U.S. 593 (1952) ; United States v. Alkali Export Assn., 86 F.Supp. 59 (S.D.N.Y., 1949) ; S. Timberg, "International Combines and National Sovereignty," 95 U. of Pa. L.Rev. 575 (1947)] [International Law, Cases & Materials, 1953, p. 342].

The Comment on the quoted article of the Harvard Research in International Law states that: "The competence of the State to prosecute and punish its nationals on the sole basis of their nationality is universally conceded . . . By virtue of such jurisdiction the state is enabled to prosecute its nationals while they are abroad and to execute judgments against them upon property within the state or upon them personally when they return, or the state may prosecute its nationals after they return for acts done abroad. Under existing international practice, a state is assumed to have practically unlimited legal control over its nationals. This competence is justified on the ground that a state's treatment of its nationals is not ordinarily a matter of concern to other states or to international law."

Thus it would seem clear that (1) if the polar bear were placed on the endangered species list, that (2) if their slaughter by Americans were outlawed, and that (3) if a bear carcass was flown by a U.S. national into the U.S. (i.e., Alaska) after a killing in international waters, the U.S. has more than sufficient jurisdiction under international law to issue valid regulations for enforcement of the law as concerns US. nationals and U.S. planes.

We have outlawed pelagic sealing by U.S. nationals and U.S. ships for many years. The laws are enforceable and enforced. The U.S. could do likewise with respect to the polar bear on the high seas if it declared such slaughter illegal.

Senator SPONG. I would like to thank all of the witnesses today for their testimony. The hearing record will remain open until July 14.

This hearing is adjourned.

Thank you.

(Whereupon, at 11 :10 a.m., the hearing was adjourned.)

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. CLIFFORD P. HANSEN, U.S. SENATOR FROM WYOMING

Mr. Chairman, I very much appreciate the opportunity of presenting this statement before your Subcommittee on S. 2547.

The legislation which is before this Subcommittee would amend the Act of June 8, 1940 (54 Stat. 250) to increase the criminal penalty for taking bald and golden eagles.

The Department of the Interior's favorable report indicates that the increased penalties in this legislation will serve to deter individuals who would unlawfully kill American eagles. I certainly concur in this objective. It is my feeling that penalties should be made as strong as is necessary to deter a potential violator of this Act, and I would urge that this Committee take an objective look at the penalty provisions to make sure they accomplish the purpose of the bill.

However, there is one provision of the bill with which I am truly concerned. I am referring to Sec. 2(c) of the bill which requires the Secretary of Agriculture or the head of any other federal department or agency to terminate any contract, license, permit, or agreement in the event of a lessee's conviction under this Act.

Mr. Chairman, I feel that this language is grossly unfair and is, in fact, discriminatory. It implies that because an individual is a member of a specific working segment in society his penalty should be greater than that of any other citizen.

It further implies that a lessee of public land is more likely to violate this Act than anyone else. This, of course, is a conclusion which cannot be substantiated by the facts.

I contend that there is no more justification for the provisions of Sec. 2(c) than there would be for a provision which prohibited a violator of this law from going onto the forest, fishing in a public stream, or enjoying the national parks.

It is a basic right that the laws should be equal and should be applied equally. This legislation fails in this regard.

Mr. Chairman, Sec. 2 of S. 2547 is inherently unfair and discriminatory. I hope that this Committee will pass legislation to protect the bald and golden eagles, but I hope the Committee will not use this bill as an indictment against the lessees of public lands.

STATEMENT OF CHRISTINE STEVENS, SECRETARY, SOCIETY FOR ANIMAL PROTECTIVE LEGISLATION

On behalf of the Society for Animal Protective Legislation I wish to urge prompt approval of H.R. 14731 to ensure that P.L. 92–159, the Act to provide a criminal penalty for shooting at or harassing animals, birds, and fish from aircraft, can be enforced. The Department of the Interior is the appropriate agency to enforce the Act, and it is vitally important that actions defying the intent of Congress which have taken place in recent months be stopped.

P.L. 92–159 received its major impetus for passage from the public outrage following showing of "The Wolf Men," the NBC television documentary which showed bounty hunters killing wolves from the air in Alaska. Nevertheless, the State of Alaska permitted the carnage to continue until a second wave of public protest caused the Commissioner of Fish and Game, Wallace Noerenberg, to stop issuing permits at the end of March.

Meantime the Army put out for bids an order for wolf fur lined parka hoods on such a scale (250,000) that the last remaining wolves might well have been killed had not still another wave of protest resulted in the suspension of the order.

In South Dakota, massive aerial gunning of foxes has been reported in the press. An estimated 20,000 were killed this winter. The pelts bring $16 each.

There are undoubtedly many more incidents which have not reached the newspapers, in which the intent of Congress in passing Public Law 92–159 is being violated. Violators have not been prosecuted because of a defect in the act: lack of needed enforcement provisions.

Humanitarians throughout the United States look to the Senate to close the loophole and prevent further decimation of wildlife from the air.

NATIONAL WOOL GROWERS ASSOCIATION,
Salt Lake City, Utah, July 3, 1972.

Hon. PHILIP A. HART,
Chairman, Subcommittee on the Environment, Senate Commerce Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR HART: We will appreciate your including this letter in the hearing record on H.R. 12186, to strengthen the penalties imposed for violations of the Bald Eagle Protection Act. This letter sets forth the official position of the National Wool Growers Association on this bill.

We have no objection whatsoever to the increase in the fine and the increase in the length of the prison sentence for violations of this Act, as set forth in the bill. We strongly support convictions for violation of this Act and believe that the penalties for violations should be equal for all citizens.

It is for this reason that we strongly object to the new subsection (c) on page 3 of the bill providing that any person holding a lease, license, permit or other agreement authorizing the grazing of domestic livestock on Federal lands who is convicted of a violation of this Act or any permit or regulation issued thereunder may immediately have his lease, license or permit canceled.

In other words, a recreationist who is operating a snowmobile on Federal property, for example, and who is convicted of a violation of this Act would be subject on first violation to a fine of up to $5,000 and imprisonment of up to one year. Under this bill he would not lose any future right whatsoever to use Federal lands for recreational purposes. On the other hand, if a man has a grazing permit and pays a grazing fee for use of an allotment on Federal lands, he could be subject, upon conviction of any violation of this Act, to a fine of up to $5,000 and imprisonment up to one year and in addition would be subject to the loss of his grazing permit which could result in complete loss of his livelihood, especially if he lives in a semi-arid region of the United States where his grazing allotment on Federal lands is a vital unit in his year-round livestock operation.

The bill in this regard is definitely discriminatory in that it sets a much greater penalty for violation by one citizen than for the same violation by another. We, therefore, doubt the constitutionality of such a provision.

We would strongly and respectfully urge that this obvious discrimination be removed by deleting subsection (c) on page 3 of the bill.

We will deeply appreciate your favorable consideration of our request.

Sincerely,

EDWIN E. MARSH,
Executive Secretary.

NATIONAL WOOL GROWERS ASSOCIATION,
Salt Lake City, Utah, July 3, 1972.

Hon. PHILIP A. HART,
Chairman, Subcommittee on the Environment, Senate Commerce Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR HART: We will appreciate your including this letter in the hearing record on H.R. 14731, to amend the Fish and Wildlife Act of 1956 in order to provide for the effective enforcement of the provisions therein prohibiting the shooting at birds, fish and other animals from aircraft.

When this bill was before the House, no hearings were held but we were advised that the purpose of the bill is to provide enforcement authority to the Secretary of the Interior for Public Law 92–159 which we supported as enacted.

We have no objection to H.R. 14731 as passed by the House. However, we would strongly object to any attempt to amend the bill in any way which would change the authority in Public Law 92–159 to use aircraft for control of predatory animals. With the ban on chemical toxicants for predator control, both by the Executive Order and through action of the Environmental Protection Agency, the need for aircraft control has increased substantially.

Therefore, we support H.R. 14731 in its present form and would respectfully urge its passage in the Senate without amendment.

Sincerely,

EDWIN E. MARSH,
Executive Secretary.

STATEMENT OF JOHN W. GRANDY IV, ADMINISTRATIVE ASSISTANT FOR WILDLIFE NATIONAL PARKS AND CONSERVATION ASSOCIATION

My name is John W. Grandy, IV. I am Administrative Assistant for Wildlife at the National Parks and Conservation Association. I appreciate the invitation of this Committee to submit the views of the NPCA on this important matter.

The National Parks and Conservation Association is the leading national conservation organization concerned primarily with the protection of the National Park System, but also with other major environmental and conservation subjects such as wildlife and forestry.

Mr. Chairman, I appreciate the opportunity to express the views of the NPCA on behalf of its more than 50,000 members on H.R. 12186 and H.R. 14731. I shall first address myself to H.R. 12186, the bill to strengthen penalties imposed for violations of the bald eagle protection act (16 U.S.C.A. 668).

We applaud and commend the intent of H.R. 12186; certainly greater penalties are needed for those malicious persons who would continue to threaten the existence of our bald and golden eagles. However, the NPCA believes that the bill can be measurably improved by adopting the following suggestions (pagination follows the version reported by the House, February 4, 1972, Union Calendar #420):

(1) A provision should be made for a minimum fine between line 20, Page 6, and line 12, Page 7. We suggest that a minimum fine of $500.00 be imposed for each violation.

(2) We suggest that the Secretary of the Interior should be required to publish (in the Federal Register) the reasons for his actions under the proposed new subsection "(b)" between line 15, Page 7, and line 14, Page 8. Specifically, if the Secretary decides not to assess a civil penalty, decides not to assess a maximum, or decides to remit or mitigate a penalty, he should be required to articulate the reasons. This will mean revising the subsection accordingly.

(3) The NPCA believes that the power of the Secretary of the Interior to allow birds to be taken for falconry Section 2, Page 9, lines 1–6, should be limited. Consequently, following partially the House report (92–817, Page 9) of H.R. 12186, we suggest that the following language be added on line 6 following "falconry": ", except that the Secretary shall not permit taking, possession, or transportation of any of the aforementioned for falconry if the golden eagle becomes covered under the Endangered Species Conservation Act of 1969, as amended and the Secretary shall only permit golden eagles which will be taken for depredations on livestock to be taken for purposes of falconry."

H.R. 14731 is an extremely valuable and much needed bill. Enforcement power must be given to the U.S. Department of the Interior as to the method of correcting the oversight in PL 92–159. Our only suggestion concerning H.R. 14731 is that the intention of Congress to halt hunting from the air, as expressed in the House and Senate reports of PL 92–159 and as articulated by Mr. Obey in the Congressional Record of June 5, 1972 (Page # H. 5250), be made perfectly clear. Specifically, H.R. 14731 should state that aerial hunting will not be permitted as a guise of "administering" wildlife resource. This situation as discussed by many people and as explained in the attached release from the Bureau of Sport Fisheries and Wildlife indicates the complexity of the situation, and also indicates the action required if the loophole is to be closed and the intent of Congress followed.

Again, on behalf of NPCA, I thank you for the invitation to testify in this hearing. I urge you to act rapidly and favorably on these bills and our suggested amendments, and if I may be of further help to you, please advise me.

ALASKA WOLF HUNTING

A great deal of public interest has been expressed over recent news media reports concerning the taking of wolves from airplanes in Alaska. We are taking

this means to inform interested individuals about the new law concerning hunting from airplanes and what has occurred in Alaska.

Public Law 92–159 amends the Fish and Wildlife Act of 1956 and the Federal Aviation Act of 1958 to provide criminal penalties and license revocation for shooting birds, fish, or animals from aircraft. Subsection (b) (1) of the Act provides an exception to the prohibition which states: "This section shall not apply to any person if such person is employed by, or is an authorized agent of or is operating under a license or permit of, any State or the United States to administer or protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops, and each such person so operating under a license or permit shall report to the applicable issuing authority each calendar quarter the number and type of animals so taken."

The law became effective on December 18, 1971, 30 days after enactment. In those States that do not now have authority to issue the permits referred to in the amendment, it will be effective 30 days after the expiration of the next regular session of the legislature of such States, which began on or after the date of enactment (November 18, 1971).

It is the current legal opinion, based on the statutory history of Public Law 92–159, that a permit issued by the State, under the authority of the Alaska Game laws, is sufficient to meet the requirements of the exception to the general prohibition against aerial hunting, and that wolves and coyotes may be legally shot from aircraft in Alaska where it is done pursuant to such a permit. Further, it is clear from an examination of Alaska's aerial permit system that indiscriminate taking of animals by air is not intended. The permits set forth the specific geographic area and dates within which the permittee may operate, as well as the specific number of animals he may take. The number of permits issued varies from year to year and from place to place and a report of the permittee's success is required.

Several changes in this regulation and the permit system are presently pending before the Alaska Board of Fish and Game and will be acted upon at their next semi-annual meeting.

In the meantime the Alaska Commissioner of Fish and Game has ordered an end to issuance of permits for wolf hunting by airplane. He stated that members of the Fish and Game Board were considering amendments to the wolf hunting regulations and was sure that Alaska would move toward a change in the regulations to be more restrictive and, thus, in line with the intent of Federal legislation.

THE FUND FOR ANIMALS, INC.,
New York, N.Y., July 14, 1972.

Hon. PHILIP HART,
Chairman, Subcommittee on the Environment,
U.S.Senate, Washington, D.C.

DEAR SIR: I thought that the enclosed material would be of interest to you concerning your recent hearings on the law ostensibly outlawing aerial hunting of animals (PL 92–159).

In fact, the present law is so riddled with loopholes that it is practically useless and has not prevented the hunting of any of the animals that it was intended to protect.

I hope that you will be able to include this material in the hearings record and that it will be helpful.

Thank you.

Respectfully,

LEWIS REGENSTEIN,
National Director.

Enclosures.

[From The New York Times, Apr. 3, 1972]

AERIAL FOX HUNTS STIR FUROR IN SOUTH DAKOTA

(By Robert Lindsey)

PIERRE, S. DAK.—Against the white backdrop of snow, the brilliant orange coat of the small fox was as conspicuous as a red flag. When the fox heard the noise

above, it ran for its den. But the ski-equipped Super Cub dived and circled, the pilot fired his shotgun from an altitude of 25 feet, and the fox fell dead.

In the winter hunting season now ending, South Dakota pilots have killed more than 20,000 foxes from the air—and touched off a bitter furor in this state.

Lured by the highest prices for red fox pelts in recent years—a result of current fashions in fur—more than 110 armed pilots have been stalking foxes from the air with shotguns, and making quite a living at it. The best shots among the pilots have killed an average of 30 or more foxes a day, which nets them more than $500 for a day's work.

The wholesale shooting of foxes from the air—which is legal here because the animal is considered a "predator"—spotlights a subject of growing concern to many Federal wildlife specialists and environmentalists.

BAN SIGNED BY NIXON

President Nixon on Nov. 18 signed into law legislation banning the use of aircraft to hunt or harrass animals, birds, or fish from the air, with one exception. States were allowed to grant permits for aerial hunting of predators. Congress passed the bill following the disclosure that a Wyoming sheep rancher had hired a helicopter pilot to systematically slaughter bald eagles from the air.

Federal and state fish and game officials in several Western states said that they believed the legislation, coupled with strict controls on aerial hunting by some states, had limited the use of airplanes for hunting. Nevertheless, they said that planes were still being used extensively for hunting, legally and illegally.

In Alaska, the authorities said that planes owned by guides were used routinely to carry hunters to remote polar bear grounds, and then to frighten the bears so they ran toward the waiting rifles of hunters. In Montana, state officials said that helicopters had been used to drive elk toward hunters.

In Wyoming, some guides spot elk from the air and radio their location to hunters on the ground, and there have been cases in which hunters have used aircraft as aerial platforms to shoot deer and antelope. In several states, fish and game commission officials say candidly that they are not sure about the extent of illegal aerial hunting because of the difficulty of policing it in remote areas.

CRITICISM OF SHOOTING

Most Western states, such as South Dakota, allow shooting of coyotes and other animals regarded as predators from the air on grounds that the animals prey on livestock. This rationale is under fire around the country by many environmentalists.

Much of the furor here centers on the question of whether the fox is a dangerous predator, or whether hunters have used "predator control" as a legal excuse for the indiscriminate slaughter of wildlife for profit.

The hunters contend that South Dakota has a huge population of foxes and that they are "harvesting a replenishable economic resource," as fur trappers have done in the state for a century or more. The state's Department of Game Fish and Parks agrees that the species is not endangered by the airborne fox-hunting.

But the owners of much of the land on which the airborne hunters make their kills are angry. Many say the foxes should not be killed because they control rodents and jackrabbits. Farmers contend the hunters have killed cattle, pet dogs and deer, and on at least one occasion have narrowly missed a child. Although law enforcement officers say they cannot confirm it, some pilots say that angry farmers have fired on them from the ground.

Emotions over the issue are such that some Dakotans say it might jeopardize the re-election chances this fall of Gov. Richard F. Kneip. The State Legislature voted last month to ban aerial hunting except by citizens on their own property or adjoining land with the owner's permission and under State Supervision.

But the Governor vetoed the measure, saying that it would be too restrictive on landowners. Many sheepmen in the western part of the state insist aerial hunting is necessary to control coyotes and bobcats, especially now because of a recent order by the Federal Environmental Protection Agency banning indiscriminate use of poisons to kill coyotes.

The fox is legally classed as a predator here—its prey includes rabbits, rodents, pheasants and other small animals—but some ecologists and property owners maintain the fox does more good than harm.

One farmer, Jerome Sturm of Watertown, wrote in a letter to the Governor protesting the sky-hunting:

"The foxes are shot so bad (on my property) that there is nothing left to control the jackrabbits, which are eating all the bark off my trees. Have you ever watched a plane run down a fox? The animal doesn't have a chance."

Another farmer, Julius Olesen, said that he had befriended a family of five foxes. "They got so tame I could get real close to them," he said. "But when the winter came the planes shot them."

Edward F. Nielsen, an official of the Game, Fish and Parks Department, estimated that aerial hunters earned about $500,000 this winter. "It's become an awfully big business in South Dakota," he said. The income includes a $2 state bounty for each fox. The Legislature recently voted to abolish the bounty later this year.

To control the growing aerial fox-hunting, Mr. Nielsen's agency last year began licensing the airplane hunters to assure that they at least had minimum flying skills. Because of the public uproar over the hunting, the agency tries to keep planes from hunting on lands whose owners object, by "posting" on flight maps land that is off-limits. But the plan has not worked.

"The problem is that a lot of the aerial hunters didn't pay much attention to us," Mr. Nielsen said. He said that there were 110 licensed aerial hunters, and "10 or 15" who hunted illegally without licenses.

Most of the pilots work as crop dusters during the summer and are experienced at low-altitude flying.

"You fly about as high as a rooftop," explained one of the airborne hunters, Cecil Ice. "You aim a 12-gauge, shotgun out the window and fly the airplane with your knees. The foxes will dodge and duck and jump and run into their hole if you're not quick. It's tricky shooting."

The hunters explain that at that altitude the damage to the pelt by the shot is minimized and few of the pelts are rejected.

Mr. Ice and three partners brought in 191 foxes after one busy weekend recently—for a two-day income of almost $3,500.

A few South Dakota pilots have been supplementing their income by fox hunting for 20 years or more. But this year, a 60 percent jump in prices for fox pelts (to $16) spurred by an unusually high demand by American and foreign furriers caused the ranks of aerial hunters to soar. Not all of them were good at it.

"We had one fellow lay his shot gun down in the plane and it went off and blew out his carburetor," said Howard Ice, a brother of Cecil, who is the state's aviation safety officer.

"If you had $5 for every prop shot off this season you could probably buy yourself a new car" he added. Because of the generally flat terrain in the fox hunting grounds, pilots usually manage to land safe after such incidents.

[From The New York Times, May 25, 1972]

MORE LOOPHOLE THAN LAW

Three months ago President Nixon signed a bill theoretically forbidding the hunting of animals from airplanes. The law, greeted by wildlife enthusiasts with more pleasure than was warranted, now turns out to be full of holes. As a result, so are hundreds of Alaskan wolves, blasted by shotguns from the windows of low-flying planes.

Through what was possibly an oversight the bill gave the Department of the Interior no real enforcing authority to begin with. Representative Dingell of Michigan is trying now to repair that strange omission; but other legislative weaknesses were the price paid to get any law at all passed over objection of the livestock and hunting lobbies. Chief among these weaknesses was the provision excepting hunters with permits issued by state agencies for "aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life or crops. . . ."

With a loophole that size, a state can let its brave aerial hunters go almost as far as they like—and they like to go far in Alaska. Reports from there indicate that a single hunter may take as many as thirty or forty wolves in a year. "Predator control" is not even a pretext in Alaska, where cattle-raising and sheep-raising are minimal and confined to but few areas. The only predator to speak of is man, who can sell a wolf pelt for $200.

Put aside the fact that the wolf happens to be an intelligent and affectionate animal in spite of legends to the contrary. But aside the fact that for every one killed by scatter shot from above, several others probably wander off to die of multiple wounds. There remains the simple truth that the wolf is a link in the ecological chain of Alaska—at least as valuable a link as the hunter.

The wolf, after all, improves the breed of deer and moose by taking out the weak, the sick and the old. The airplane hunter kills indiscriminately, cruelly and either for "fun" or for profit. The law should be drastically amended—and enforced—in favor of the wolf.

[From "Not Man Apart," June 1972]

FARTHEST NORTH: ALASKA REPORT

(By Jim Kowalsky)

ALASKA AERIAL WOLF HUNTING TO CONTINUE

It now appears likely that the Alaska Department of Fish and Game will continue its policy of issuing permits for the aerial shooting of wolves next winter. Despite the enactment of P.L. 92–159 in November 1971, a new Federal law which prohibits such use of aircraft, plus a substantial amount of criticism of the practice from within and without Alaska, ADFG has indicated it intends to continue to allow aerial wolf hunting on a "limited" basis next year.

The length of the season may be curtailed somewhat, the number of permits may be limited for the first time, and some areas may be closed for the season. The exact hunting policies will be handed down some time this summer.

Wallace Noerenberg, ADFG Commissioner in Juneau, steadfastly maintains that the state is issuing such permits within the provisions of the new law, a section of which states that aerial permits may be granted "to administer or protect or aid in the protection of land, water, wildlife, livestock. . . ." A regional U.S. Interior Department Soliciter in Juneau upholds Mr. Noerenberg's contention, while the Alaska Attorney General, in an informal memo to Mr. Noerenberg, points out that P.L. 92–159's language "seems to limit (such permits)—to predator control." So we have the interesting situation of a federal opinion undercutting the State's own advice to itself.

ADFG has, however, sought further clarification of P.L. 92–159 from the U.S. Associate Solicitor for Territory and Wildlife in Washington. This clarification has not been announced as of this writing, but we hope it will differ from that of Interior's regional solicitor by differentiating between sport hunting and predator control.

The wolf in Alaska, in his last significant stronghold, is obviously part of a broader picture, the future of the Alaskan wilderness and its magnificent wildlife. The state has characteristically thumbed its nose at this particular federal law, which it feels restricts its right to manage its wildlife. ADFG in particular is reacting to criticism by insisting that aerial gunnery is OK and should be continued.

Given the nation-wide popularity of the wolf it is virtually assured that Alaska has a very long way to go before it hears the end of this one. Friends of the Earth in Alaska will keep very close tabs.

THE FUND FOR ANIMALS, INC.,
Washington, D.C., May 22, 1972.

Subject: Conservationists urge Interior Department to help save the wolf from extinction.

On Monday, May 22, 1972, a group of conservationists met with Assistant Secretary of Interior Nathaniel Reed to plead for additional protection for the endangered wolf population of North America. Outside of Minnesota and Alaska, the wolf is practically extinct in the United States, with as few as perhaps 60 estimated to remain in the wild. The few thousand wolves in Alaska are being rapidly wiped out, mainly by "sportsmen" using snowmobiles and airplanes. Airborne hunters using shotguns often fire into the herds indiscriminately, killing some and wounding many others which are crippled for life or die a slow and agonizing death.

Despite the fact that wolves play an important role in maintaining the balance of nature, parts of Alaska still pay a $50 bounty on dead wolves. Adding to the

pressure on these animals is the fact that the U.S. Defense Department recently placed an order for 250,000 winter parkas trimmed with wolf skins. Saks Fifth Avenue still sells wolf trimmed fur coats (sample advertisement enclosed), and basketball star Wilt Chamberlain uses wolf skins to decorate his apartment.

Meeting with Interior Department officials today were Jethro, a full blooded Canadian timber wolf; his owner John Harris, President of the North American Association for the Preservation of Predatory Animals; and author and critic Cleveland Amory, President of the Fund for Animals, which has just opened a Washington office. They urged Secretary Reed to place the wolf on the Interior Department's endangered species list, which will ban further imports of wolf pelts and finished products. They also requested that Interior investigate the killing of wolves from airplanes in Alaska, which appears to be illegal under legislation passed last November banning the hunting of animals from airplanes except under certain conditions.

[From the New York Times, Apr. 15, 1971]

THE SOCIAL LIFE OF WOLVES

(By Gordon C. Haber)

MCKINLEY PARK, ALASKA.—Wolves are perhaps the most social of all subhuman vertebrates. A pack of wolves is not a snarling aggregation of fighting beasts, each bent on fending only for itself, but a highly organized, well-disciplined group of related individuals or family units, all working together in a remarkably amiable, efficient manner.

One pack, in Alaska's Mount McKinley National Park, whose behavior I have followed closely for six years, typifies the highly social nature of *Canis lupus*.

The members of this pack are ranked according to the strict convention of a dominance hierarchy—a kind of pecking order—in which each adult knows its position of authority and there are few if any instances of overt strife (in some 900 hours of watching wolves in the wild, I have yet to see a case of all-out fighting within an established pack).

Most important, however, this highly developed social organization seems to result in a very efficient division of labor within the pack, with the top-ranking adults assuming the most important responsibilities. The pack leader or "alpha" male—the strongest, fastest, wisest, most experienced wolf in the pack—has the ultimate decision-making power and his authority is unquestioned. He sires the young of the pack and the pack relies on him in critical situations. His mood usually dictates the mood of the pack, and all regularly acknowledge his authority in a variety of ritualized ceremonies.

It is the second-ranking ("beta") male, however, who directs most of the routine activities of the group, almost as a kind of co-leader or strong assistant to the alpha male. The beta male often takes the initiative when the pack is on the hunt, and during the early part of the denning period he attends to the whelping female even more closely than does her own mate, the alpha male—although all individuals participate to some extent in the duties of hunting and caring for the mother and young.

The beta male's particular attentiveness to the breeding female and her reciprocal attraction to him would almost lead one to conclude they are mates, but our observations of this pack during the courtship and mating period over the past winter indicate this isn't so. So long as the present alpha retains his authority, the top female will remain his and no other male will be permitted to mate with her. And the beta male will have to be content with his role as a vicarious husband and father.

From the way the alpha male "delegates" authority to the beta male to run more routine activities of the pack, it would almost seem that there is some purposeful attempt by him to conserve energy for the most important behavioral responsibilities such as mating and guiding the pack in critical situations—much as an efficient human leader would keep a strong righthand man and reserve himself for only the most important matters. Of course, this type of relationship would also provide the pack with a relatively experienced reserve leader in the event the alpha male were to become badly injured or died suddenly.

The top-ranking female is another key individual in the pack.

During the winter as the pack travels within its territory as a unit continuously on the hunt, she generally plays an active, aggressive role in helping

to detect and capture prey. But during the spring and summer, at which time the pack hunts nightly from a fixed den site, her duties are more domestic. Most of her time during this period of the year is spent at the den caring for her pups. After late May, however, when the young first emerge from the den, she begins to turn some of the pup-tending duties over to one or two subordinate male or female adults or yearlings of the pack. Occasionally she will even leave the pups with a babysitter and light-heartedly trot off with the other adults for a fling on the nightly hunt.

In many ways the social organization of wolves is almost identical to what anthropologists have pieced together as the social organization of early man, or even to that of some primitive human hunter-gatherer societies of today. The well-defined dominance order and disciplined manner in which duties are assigned and carried out, the presence of different generations of the same family living together, the prolonged dependency of the young, the group effort in raising and training them, the cooperative effort of many individuals in hunting large prey—in these and other respects wolves, like our own human ancestors, have developed a highly effective means of coping with a wide variety of ecological conditions.

Perhaps by more intensively studying—not persecuting—a species so similar in behavior to that of our ancestors, we can learn much more about ourselves.

[From The New York Times, Apr. 15, 1971]

RECONSIDER THE WOLF, A SWEET SINGER OF THE WILDS

(By James F. Clarity)

Wolves do not howl to frighten men, but to communicate with other wolves and, possibly, because they get lonely.

This conclusion, reached by an ecologist who has studied wolves closely, was supported yesterday by a group of scientists and naturalists. The group met at the American Museum of Natural History to dispel the image they said the wolf had been given by hunters and in such tales as "Little Red Riding Hood" and "The Three Little Pigs."

"Anybody who says he's been et by a wolf is a liar," said John B. Theberge, assistant professor of ecology at the University of Waterloo in Ontario and author of "Wolf Music," an article in the April issue of Natural History, a magazine published by the museum.

The howls were analyzed and transliterated into musical notes in sketches accompanying the article.

In the article, Professor Theberge said his observations over several summers in Algonquin Provincial Park, Ontario, indicated that wolves howl when they are separated from the pack, when they want to reconvene the pack and when their pups die. They howl less in summer and when it rains, the article said.

One wolf, named Big Gray by Professor Theberge, howled in apparent loneliness when left alone in a cage. "If something akin to what humans call loneliness is felt by wolves," the article said, "and if loneliness causes howling, wolves separated from the pack will howl."

Big Gray and two other wolves, Scamp and Dagwood, were said to be "like two humans of long acquaintance who communicate by means of a familiar gesture.

"I discovered," Professor Theberge wrote, "that my three wolves could transfer information—such as the identity of the wolf, and perhaps its emotional state—by variation in the units of sound."

The tapes of the howls played in the museum auditorium yesterday did not sound much different from the noise made by a large hungry dog whose tail has been stepped on.

Professor Theberge stood on the stage as the first tape produced a shrill wail. "I'm sorry, that was my wife's howl," the professor said. He explained that Big Gray had learned to howl back at Mrs. Theberge's howl.

"Many hunters don't want competition from wolves" in the killing of game, especially deer, he said.

But the game-killing done by wolves was "an essential limitation," he said. Without wolves, he explained, deer herds and other game animals tended to increase in numbers that exhausted their food supply.

But wolves, he added, "have some sort of self-regulating control. When times are good they don't just go on breeding indiscriminately."

L. David Mech, a research biologist for the United States Fish and Wildlife Service and author of "The Wolf," recently published by a division of Doubleday & Co., Inc., said of the animal: "It's not nice and beautiful. It has to kill for a living."

But he added: "There is no documented case in North America of a nonrabid wolf killing a person."

Asked if wolf howling was ever intended to frighten people, Mr. Mech said it "has nothing to do with a threat whatsoever." Wolf specialists "suspect," however, that howling may be "a threat to other wolf packs that this is their territory," he said.

Mr. Mech said that there was no accurate census of wolves in the United States, but that Montana, Idaho and Wyoming each had 10 to 20, while there were 12 to 15 in Michigan, more than 200 in Minnesota and about 5,000 in Alaska.

Don Beattie, executive director of the North American Association for the Preservation of Predatory Animals, introduced the only live wolf at the news conference, a silver-gray, 85-pound, 6-year-old named Jethro, who eats three or four pounds of raw chicken a day.

Jethro, who was born in a zoo, walked silently at the end of a leash. When a man pried open his mouth to look at his fangs, Jethro whined briefly.

"Jethro is not typical of wolves," Mr. Mech said.

Music: Soulful Glissando Swoops

(By Harold C. Schonberg)

If God created great whales, whose voices were put on phonograph records last year, He also created the gentle wolf, that sweet singer of beasts, that much-maligned carnivore whose only attitude is live and let live so long as it eats.

And just as scientists have immortalized the voices of whales on records, so they now have recorded the howl of the wolf.

The appropriately (and ineffably) named Tonsil Records, working through the American Museum of Natural History's magazine, Natural History, has made a record of wolf calls. From it the following can be easily recognized:

Wolves sing.

There are lupine vocal registers—soprano wolves, contralto wolves, tenor wolves, even a bass wolf or two.

Wolves have a characteristic call in which the interval of the major sixth (C to A) predominates.

When one wolf starts howling, like Franco Corelli in Verdi's "Di quella pira," from "Il Trovatore," the rest of the wolves join in, as in the choral sections of "Di quella pira."

Judging from the record, some wolves have much better voices than other wolves. The best of these virtuosos are capable of six- or seven-second phrases on one breath. Each phrase is a glissando swoop, up and down, like a very lonesome, sentimen*al, fire siren with a soul.

The best wolf singers start pianissimo, swell to a messa di voce to the sixth above, hold it sweetly and purely, then perhaps embellish to the upper partial before going down to a pianissimo and trailing off on an inconclusive microtonality near the tonic.

Some have a range of over an octave. Most seem content within the octave. The pitches generally are approximate but definitely pitched nevertheless. The metrical basis has a strong four-four feeling.

Some wolves have it, some don't. The ones who don't, start with a tentative tone around the 200-kilocycle range and run out of breath before the glorious climax. They try to trill, poor things, but do not really have the technique for it.

But the lupine Carusos or Nilssons can be heard from Moosehead Lake, Me., to Nipissing, Ontario, if the wind is in the right direction. They throw their heads back and use a glottal stroke that sends the tone hurtling over prairie, river, lake and mountain, sending thrills of terror to those who believe in werewolves.

The howl of the wolf, no matter how perfectly placed the wolf's voice, no matter how pure in vocal quality, no matter how splendid the technique, has never comforted the lonely hunter.

But, say the scientists, the howl is howled because the wolves want companionship, or because they are happy, or perhaps because they are lost and want to pick up answering howls to orient themselves.

In short, say the experts, the lonely hunter should merely relax and enjoy the beautiful music. The wolf only wants to sing him to sleep.

oo-oo-oo-oo-OO-OO-OHHHHHH—oo-oo-oo-oo.

[From Defenders of Wildlife News—Fall 1971]

WHO'S AFRAID OF THE BIG BAD WOLF

(By Beatrice Simpson)

WILDLIFE ENDANGERED

May 16, 1971, was a day to remember because Jethro, a timber wolf, came to visit us. We had arranged a program at a nature center with the showing of the documentary, "The Wolf Men" and Jethro was the host.

We had met John Harris and Jethro at the Symposium on World's Wild Cats at Lion Country Safari. John was there as President of the North American Association for the Preservation of Predatory Animals, and my husband and I represented American and Canadian Wolf Defenders. The opportunity of meeting a wolf at a cat symposium was a surprise and pleasure. We wanted to share this experience with others and invited John to come to southern California for a Boy Scout "Scout-a-rama" at which we would have a booth devoted to "predators." John could not attend that weekend but did come on May 16th before his three days of programs in Santa Barbara.

He arrived at 9 a.m. and we were warmly greeted by Jethro. As we stroked Jethro and he closed his eyes, I told myself that this couldn't be real: a wolf, in our yard, smiling at us! Surely he should be near some frozen lake, singing in the night. Yet here he was, Jethro, "a divine."

He is five years old and he was born in Lodi Zoo, Lodi, California. A doctor bought him but later gave him to Hayward Art and Science Center. They traded him for a bobcat to a family named Jamison in Marin, California. Finally, John and Mrs. Harris, who were doing behavior studies on wolves decided to expand their wolf population, and they acquired Jethro.

As we watched John with the wolf, we marveled at the bond which developed between them in so short a time. John told us Jethro is the most stable wolf he knows and that he enchants everyone he meets. He enjoys the long trips which are becoming more frequent, appearing on television or visiting schools.

Soon Jethro greeted Banjo, our dalmation, and Raisin, our mutt. They sniffed for a long, quiet time. Jethro was motionless—I noted the position of his tail and Ed captured the sight on film. (L. David Mech in *The Wolf* states this position is "Self Confidence in Social Intercourse" according to Schenkel's 1947 *Expression Studies of Wolves.*)

By some silent signal, Banjo started running and Raisin followed. Jethro in his wolf gait covered incredible distance effortlessly. The dogs were soon exhausted. They ran into the house for water and before John screamed "Door!" Jethro walked into the kitchen. He seemed to grow as he passed through the house into the dining room where he inhaled a sweet and sour cabbage salad in one easy whiff. John was close by and soon slid the collar on him and led him outside. John's actions were deliberate and complex. Much has been written by animal behaviorists as well as those who have lived with wolves. Each "expert" agreeing and disagreeing with the other. In such situations, John has a system, and it works. Whatever else it consists of, I know there is one ingredient many wolfmen lack. That ingredient is love. In his wisdom, John has gained and given respect and love. Even those untutored as we are perceive this as the foundation of their special bond.

The program was a great success. Jethro, after being petted and pampered, slept as John answered questions about wolves. The interest generated inspired us to plan many programs this fall in schools and clubs throughout southern California.

That evening, I watched Jethro in the fading light. Each time I remembered there was a wolf in the darkness I questioned why I remained in the house with people! I went to see him, and he stood erect and still. Then he whined and strained to move closer. I was humbled and tears came as I touched him. I thought of John's words when I asked if he regretted that Jethro was not a wild, free wolf. He told me that since wolves are endangered, he felt every effort should

be extended to reach people—to make them *care*. He said, "When kids see Jethro and pet him, they'll never believe fairy tales about the 'big bad wolf.' They listen to my remarks and they carry them home. As for Jethro as an individual, he loves all this. He loves people, and playing the role of king."

Somewhere there are wolves living the uncompromising life of nature. I thought of them in the darkness when I caressed Jethro. Their lives relentless and challenging are not all the sentimental freedom we assign. That we deny Jethro these pains and pleasures may be forgiven if through him nature's other children are seen as our brothers.

When one looks into his steady lemon eyes and sees the eons there, he cannot walk away untouched. His resolve, as ours, will be that this wonder must continue however elusive and silent, distant and unseen. For Jethro is all of us, and we are part of him.

FACT SHEET ON WOLVES

(By Steve Seater)

The gray wolf (Canis lupus), not to be confused with the red wolf (Canis rufus), is the largest member of the dog family (Canidae). It possesses a luxuriant pelage which varies in color from nearly white to pure black. Adult males average 95 to 100 pounds and adult females 80 to 85 pounds. The heaviest wolves come from the far north with the record specimen being a 175-pound giant from east-central Alaska.

The wolf is a highly intelligent animal resembling the dog in many ways. Most scientists now believe that "man's best friend" was probably domesticated about twelve thousand years ago in the Near East from a small variety of wolf, possibly the living Canis lupus pallipes.

Wolf litters average 7 pups and a pair of wolves has from 8 to 14 litters in a lifetime. The pair rears its young in a den with the male providing for the female while she is preoccupied with the young. After the weaning period (6–8 weeks) both parents provide for the young. Pups begin to accompany their parents on outings when about 3 months old.

The gray wolf is a social animal living in packs. Order in the pack results from a social system based on a pecking type of order similar to what is seen in chickens. According to Rudolf Schenkel (1947) there are two separate dominance orders within each pack, a male and a female order. The highest ranking male is the "alpha male" and the highest ranking female is the "alpha female". Submission is a basic part of wolf social behavior and each member of the pack except the alpha male and female frequently exhibit it. It has often been theorized that this submission is responsible for man being able to successfully domesticate the wolf. Theoretically, a dog's master takes the place of the alpha male.

The wolf's ecological niche is that of the northern predator upon large mammals, principally ungulates (deer, elk, moose). It is by far the most important predator involved in the ecological balance of the north country.

Wolves cull out the sick and biologically inferior individuals thereby insuring the health of ungulate populations. Additionally, from a theoretical standpoint, wolf predation is an important factor in evolution.

Gray wolf populations in the U.S. are estimated as follows: 2,000–5,000 in Alaska, 200 or more in Minnesota, 20–30 on Isle Royale, Michigan, perhaps one or two dozen in the northern peninsula of Michigan and an undetermined number in Yellowstone National Park, Idaho, Montana, and Wyoming.

THE FUND FOR ANIMALS, INC.,
New York, N.Y., May 11, 1972.

MR. DANIEL DOBSON,
Special Assistant for Congressional Matters,
Defense Supply Agency, Alexandria, Va.

DEAR MR. DOBSON: We were shocked to learn that the Defense Department has placed an order for 250,000 parkas trimmed with wolf skins. It is our understanding that it would require some 25,000 dead wolves to fill such an order.

Wolves are extremely valuable animals and play a vital role in maintaining nature's balance. Unfortunately, they are disappearing rapidly; many wolf species are already threatened with extinction. In the continental United States, outside of Minnesota and Alaska, the wolf is already practically extinct, with probably less than 60 remaining in the wild. The remnant populations in Canada and Alaska are slowly but surely being eliminated. By providing a market for wolf pelts and an economic incentive for their continued slaughter, your Agency is playing a significant role in this tragedy.

We urge you to immediately cancel your already-suspended order for the wolf-trimmed parkas. In the meantime, we plan to do everything we can to bring this situation to the attention of the public. Last year we succeeded in having a wolf hunt in Quebec cancelled; and there are many wolf lovers in this country who will be most anxious to help us on this current problem.

I think you will agree that the Defense Department has enough public relations problems without taking on the conservation community and an outraged public.

If you would advise us of your planned action on this matter at your earliest convenience, I would greatly appreciate it.

Thank you for considering our views.

Sincerely yours,

LEWIS REGENSTEIN,
National Director.

[From the Amarillo Daily News, Mar. 21, 1972]

DOG PACKS, HUNTERS NEW COYOTE KILLERS

(By Jim Ryan)

Packs of killer dogs and airborne hunters are expected to replace poisons as a means of exterminating sheep-killing coyotes, Congress was told Monday.

A pack of speedy greyhounds put on a fresh track can run down and kill a coyote within minutes, said Nathaniel Reed, assistant secretary of Interior.

Aerial gunners find it very easy to kill coyotes, he added, because the coyotes "simply look up" when a plane swoops down low and are "very easy to hit."

Reed spoke before the House fish and wildlife conservation subcommittee considering predator-control legislation.

President Nixon earlier this year banned the use of poisons on federal lands to kill predators.

Reed said "poisons are too hazardous and potentially damaging to the environment to use in controlling predators.

"No longer can we indiscriminately kill predators just because their way of life compels them to eat other animals.

"No longer can we use control methods that are nonselective and place in jeopardy non-offending animals, predators and nonpredators alike."

The advantage of aerial gunning and dog packs, he said, is that they target on killing the few coyotes that become sheep killers.

Strong state programs designed to respond quickly to reports of damage are the best means of protecting livestock, he said.

Aerial gunning, chasing coyotes on snowmobiles and trapping provide additional means of eliminating the specific predators, he added.

He urged passage of the administration's bill to provide assistance to states to develop their own predator-control programs. The measure would provide funds for three years on a matching basis, with no state to receive more than $300,000 a year in the first year.

"If the government does not meet this responsibility with adequate control measures," he said, "the ranching community will deal, incorrectly, with the problem itself."

[From the Amarillo Daily News, May 11, 1972]

THREE MEN CHARGED WITH KILLING EAGLES

(By Jim Ryan)

The Justice Department Wednesday charged three men with illegally killing 62 golden eagles in Colorado by shooting them from helicopters.

Acting Attorney General Richard G. Kleindienst said the charges were the result of an investigation by game management agents of the U.S. Bureau of Sports Fisheries and Wildlife and the Denver office of U.S. Attorney James L. Treece.

The charges, filed in U.S. District court in Denver, name Doyle R. Vaughn, 38, Buffalo, Wyo., operator of the Buffalo Flying Service; Joe Evans, about 44, Baggs, Wyo., a Carbon County deputy sheriff and state stock brand inspector; and Dean Visintiner, about 40, Craig, Colo. Also charged was Buffalo Flying Service Inc.

All were charged on 62 counts—one count per eagle. If convicted, they could be sentenced to six months in prison and fined $500 on each count.

It is illegal to kill any eagle from an aircraft and because the golden eagle has been declared a protected species, they may be killed under predator control programs only with permits from the Interior Department. No such permits have been issued in three years.

Charges of wholesale slaying of golden eagles were made two years ago in congressional testimony, during which witnesses said they were shot and poisoned in some parts of Colorado and Wyoming by ranchers seeking to eliminate predator-killing of livestock, especially lambs.

[From The New York Times, Aug. 8, 1971]

BOUNTIES: AIRBORNE SLAUGHTER OF THE EAGLES

(By Wade Greene)

Mr. Greene is a New York freelance who often writes about the environment.

As all television gazers know by now, the West was won against not only unfriendly natives but also against millions of marauding carnivores: wolves, coyotes, bobcats, bears and mountain lions, all stalking the outskirts of village and ranch, and eagles and vultures preying hungrily from the sky. But the problem of predatory animals, so far as a lot of farmers and cattle- and sheep-raisers are concerned, is by no means confined to the dramatized past. Nor, it appears, is another, seamier element of Old West legendary.

A macabre parody on frontier vigilantism, in which armed defiers of the law took to the air over parts of Wyoming and Colorado and methodically shot down 770 eagles during a recent half-year period, was described last week before a Senate appropriations subcommittee. But their main prey were golden eagles, which Federal law allows to be shot only on special permit from the Department of the Interior, although no such permits have been issued in two years. He also estimated that the hunters killed about five bald eagles, the national bird, which is nearly extinct and cannot be legally killed at all.

The witness, James O. Vogan, a helicopter pilot from Murray, Utah, testified under immunity from prosecution that he took aloft as many as four or five hunting flights a day, and that the flying service he worked for contracted for the eagle shootings at $25 bird. One leading Wyoming rancher, Mr. Vogan testified, paid $15,000 for the service. Some of the shooters, he said, took part in the airborne hunt just "for the sport of it."

As Mr. Vogan was testifying, officials from the Department of the Interior's Bureau of Sports, Fisheries and Wildlife literally unearthed evidence to support his charges. Armed with search warrants, they descended on a Wyoming ranch he had cited and unearthed a pile of eagle bones under some six feet of other animal remains.

The alleged massacre of eagles was denounced by Nathaniel P. Reed, Assistant Secretary of the Interior, as "cold, calculated, deliberate defiance of Federal and state laws," and Secretary of the Interior Rogers C. B. Morton, vowing to halt the killings, promptly dispatched 10 fish and wildlife agents to investigate the charges further.

Conservationists were dismayed by the testimony—the golden eagle numbers only about 10,000 nationally, and the bald eagle, which is on the Government's endangered species list, a bare 2,000. But they tended to look on the alleged illegal slayings as a logical, if grotesque, extension of a mentality that is, under other circumstances and involving other animals, openly supported by law.

Said Ed Chancey, information director of the National Wildlife Federation, "The primary motivation behind this is ignorance of the implications, just as it is behind many of our legal predator-control programs. I have to assume that these clowns really believe that they are protecting livestock, but that doesn't justify it."

Sheep ranchers in Wyoming and elsewhere do, in fact, claim that eagles take a sizable toll of their flocks. The Department of Agriculture lists some 200 sheep and 8,400 lambs killed by eagles in Wyoming alone last year. But wildlife experts and conservationists tend to discount these figures; they say they are inflated to boost Government predator-control budgets.

As it is, about $20-million annually is spent, by one authoritative estimate, on both private and public efforts to keep down the population of what are regarded as particularly destructive predatory animals; much of the money is in public programs that have shown a hardier resistance to extinction than many of their targets. The longest lived of these is the bounty system, a free-enterprise variation of which has evidently been used in the eagle shootings.

As of last year, prices still existed on the heads of certain animals in 29 states, according to Charles Laun, an assistant professor of biology at Stephens College in Columbia, Mo., and the publisher of a newsletter on bounties. Most bounties—about 95 per cent—are for coyotes and foxes, but the bounties vary considerably from state to state and animal to animal. For instance, hunters and trappers can pick up $5 for a fox pelt in Ohio or $2 for one in South Dakota. A female coyote brings $20 in Michigan, a male $15. A dead bobcat is worth $15 in Maine. The wolf carries the highest price on his head of all: $50 in Alaska.

Outdistancing bounties as predator-control methods in recent years have been Federally subsidized poisoning and trapping programs, mainly in the West. According to a recent estimate by Secretary Morton, the Interior Department alone put up $3.6-million for such programs in the last fiscal year.

As in a number of other areas, the conservationists are tending to have their position listened to a good deal more attentively than in the past. They have taken particular aim at the poison programs under which carcasses laced with highly potent and long-lasting toxins are laid out, mostly to do in coyotes. The lethal bait often attracts other animals as well, they say, such as eagles.

In fact, the Senate subcommittee hearings on the eagle shootings originally started off looking into reports that dozens of eagles had died of poisoning. But the strongest arguments against most existing predator-control programs are made on the hard-nosed ground that they are unjustifiably costly for a dubious net effect. As Secretary Morton himself recently commented: "It often may cost the department $20 to protect a $10 animal."

There is an ecological argument as well. The coyote may be the most scorned of predators, but some areas where large-scale coyote-poisoning programs have been instituted have subsequently been over-run by rodents.

Indications are that predator-control programs themselves are beginning to fall prey to such arguments. The bounty system reached a peak in the nineteen-sixties, and has been declining in recent years. Missouri, which has been recording the highest outlays for bounties in the country, is paying nothing this year; the state simply refused to put up funds for bounty programs.

The Federal programs may die harder. There is powerful political support for them in Western sheep and cattle states, but the Council on Environmental Quality and the Interior Department have taken what conservationists regard as an important first step in at least modifying the Federal controls. In June, they joined in setting up a blue-ribbon panel to examine the whole predator-control situation in the United States.

Heading the group is Stanley A. Cain, a former Assistant Secretary of the Interior, who is currently director of the Institute for Environmental Quality at the University of Michigan. Mr. Cain is well aware of the varied opinions on predators that exist between stockmen and conservationists, and suggests that he favors a middle ground of sorts.

"Some predators as individuals will have to be got rid of, but there is no justification for exterminating a whole species," Mr. Cain says. As for illegal private extermination efforts, he says he suspects there is a "good deal" of such activity going on, and that Federal laws "need more muscle" to cope with it. One of the most destructive predators in need of control, Mr. Cain and others suggest, is a two-footed carnivor called man.

[From the Grit News Section, Dec. 28, 1969]

Hunting Fox From the Air—Daredevil Fliers Swoop Close to Ground to Get Their Quarry

(By Jack Merwin)

Jim Davis was half in and half out of the cockpit as we flew perilously close to the ground north of Watertown, S. Dak. His long frame extended into the bitterly cold slipstream.

In his hands, a single-barreled 12-gage shotgun was busily tracking a twisting, turning red fox which may have thought he was about to be devoured by a giant eagle.

The loud explosion of Jim's shotgun and the simultaneous grab of the airplane for more sky forced me back into the seat.

"Hey, Jack!" Davis called back to me. "That one rolled him good! We'll swing around and pick him up now."

Unbelievable as it may seem, Davis had been flying the plane and hanging out of the cockpit at the same time. This unnerving experience was my initiation into the daredevil world of the aerial fox hunters.

The winter was especially good for fox hunters. In fact, the price of fox fur has been up considerably from the last several years, and the heavy snow cover made game easy to spot from the air. Most flying fox hunters had been working every day they could, and reports of their success had come to our attention.

A meeting was arranged with Jim Davis, of Castlewood, S. Dak.; Aurie and Gary Lowinske, of Watertown, S. Dak., and Ken Wiseman, of Bryant, S. Dak. Each of these men had been flying for fox and they agreed to take us along.

"You won't believe how many foxes there are," Gary Lowinske said.

A sale of 364 foxes had just been completed, and among the 4 of them more than 1,500 foxes had been bagged since a few days before Christmas. Davis shot 45 foxes in one day.

Aurie Lowinske put things into perspective:

"It may seem like a pilot could get rich shooting foxes, but stop to consider it's impossible to get insurance on the airplane for this type of flying. It isn't the safest flying in the world, and you can rack up your machine pretty quick.

"The Super Cub we're flying cost $6,000 and you could lose it all. Fuel and maintenance costs are more than $8 an hour. The season is a very short one, and it's one year in 10 that all conditions are prime for a profit," he concluded.

Davis heartily agreed. "I lost two props in one week, and they cost $285 each. I accidentally shot off the tip of one, and the other caught in a fence."

On the day we flew, the ground—just 150 feet below us—was covered with snow and looked as desolate as the face of the moon. Sloughs and willow thickets were buried deep, and it didn't appear anything could survive in the snow.

Then, just a few miles west of Lake Kampeska, a fox caught our eye as it raced across the crusted snow.

Aurie brought his airplane around in a sharp turn, and Jim and I winged in above him. Suddenly, Aurie dropped one wing and cut loose with his shotgun. The fox seemed to anticipate his every move and changed directions three times in two jumps.

Both airplanes banked around again. This time, Aurie had the fox running in a straight line and came up on him before he could dig in for a turn. Again the wing dropped, and we could see the fox roll as Aurie's gun found its mark.

By this time, we had worked our way to the southwest of Webster, S. Dak., and decided to head back south for Watertown. On the way back, Davis spotted two foxes running together and proceeded to give a demonstration of low-level flying we aren't likely to forget soon. Twisting and turning the airplane over rolling hills, never more than 80 feet off the ground, David shot, flew, and reloaded until both foxes were down less than 300 feet apart.

When all 4 hunters returned to the airport, 26 foxes had been taken.

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