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HEARING

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

AND THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

THE NOMINATION OF LYNN A. GREENWALT TO BE DIRECTOR
OF THE U.S. FISH AND WILDLIFE SERVICE

SEPTEMBER 20, 1974



Printed for the use of the
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WASHINGTON : 1975

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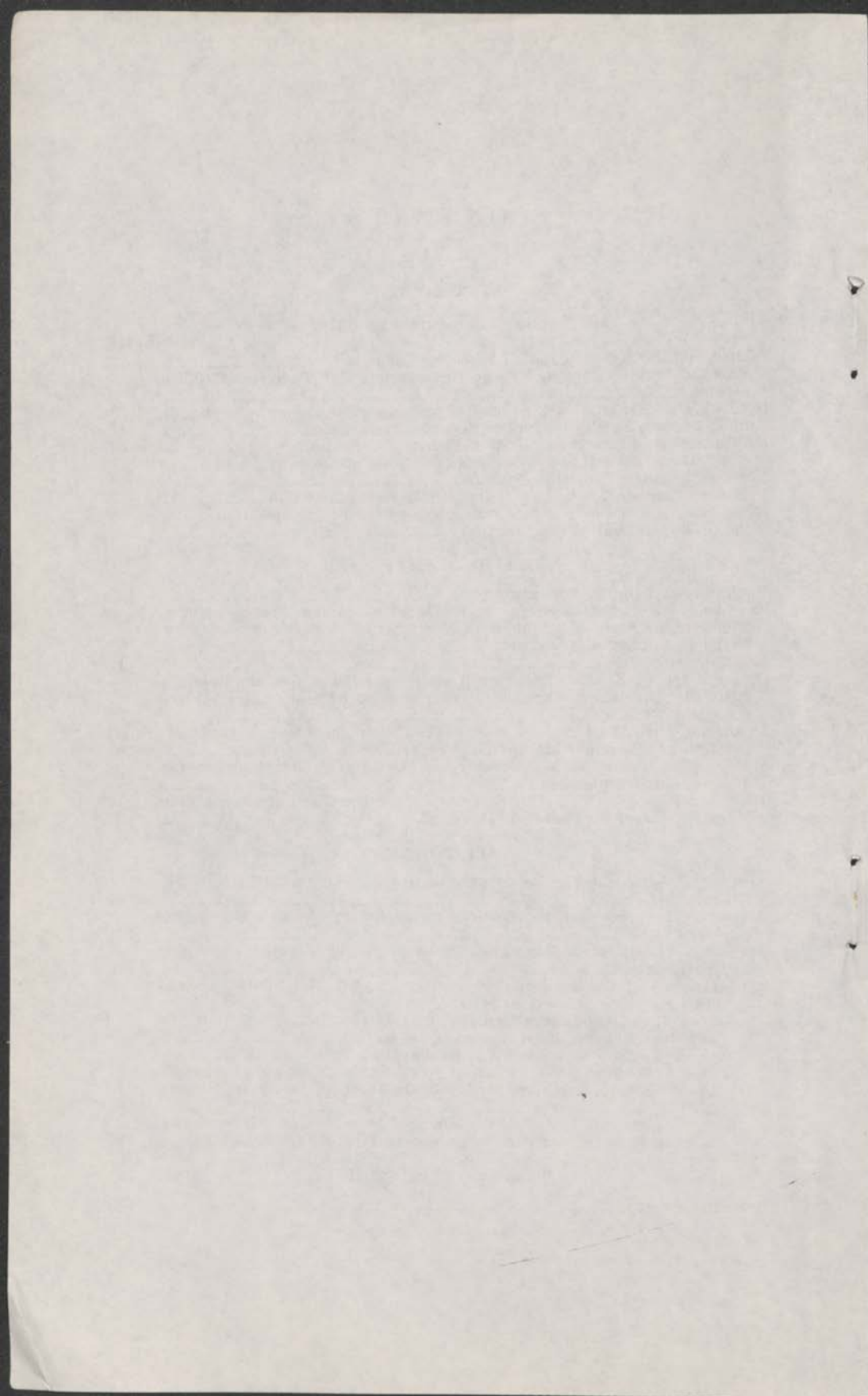
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NOMINATION OF LYNN A. GREENWALT TO BE DIRECTOR OF THE U.S. FISH AND WILDLIFE SERVICE

FRIDAY, SEPTEMBER 20, 1974

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
AND COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Office Building, Hon. Lee Metcalf, presiding.

Present: Senators Metcalf, Abourezk, Fannin, Hansen, and McClure.

Also present: Jerry T. Verkler, staff director, Russell Brown, professional staff member, Committee on Interior and Insular Affairs; Harrison Loesch, minority counsel; and Michael Brownlee, professional staff member, Committee on Commerce.

OPENING STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator METCALF. The committee will be in order.

This is an open public hearing before the Senate Committee on Interior and Insular Affairs and the Senate Commerce Committee to consider the President's nomination of Mr. Lynn A. Greenwalt to be the Director of the U.S. Fish and Wildlife Service.

Mr. Secretary, the committees are delighted that you are here this morning to introduce Mr. Greenwalt. We have a biographical sketch of Mr. Greenwalt, and without objection, it will be placed in the record now.

[The biographical sketch of Lynn A. Greenwalt follows:]

BIOGRAPHY OF LYNN A. GREENWALT

Lynn A. Greenwalt, 43, is a career employee of the U.S. Fish and Wildlife Service whose late father, Ernest J., was a wildlife refuge manager for that agency for 34 years.

Greenwalt was an assistant director of the wildlife agency prior to being named by Secretary Morton to head the Bureau of Sport Fisheries and Wildlife in September 1973. The Bureau of Sport Fisheries and Wildlife was redesignated as the U.S. Fish and Wildlife Service by Act of Congress effective July 1, 1974. Before his assignment as assistant director in May 1973, Greenwalt had been Chief, Division of Wildlife Refuges responsible for the National Wildlife Refuge System's 30 million acres on 350 refuges in 49 States.

From November 1970 to October 1971, Greenwalt was supervisor of the Bureau's conservation law enforcement agents in the Pacific region, headquartered at Portland, Oregon.

Greenwalt began his Federal career with summer jobs on Wichita Mountains National Wildlife Refuge in Oklahoma from 1946 to 1952. He attended grade and high school at Cache, Oklahoma.

Other Federal employment included work at the Arizona Cooperative Wildlife Research Unit, Tucson; Bear River Refuge, Brigham City, Utah; National Elk Refuge, Jackson, Wyoming; Salt Plains Refuge, Jet, Oklahoma; Bosque del Apache Refuge, San Antonio, New Mexico; Fish Springs Refuge, Dugway, Utah; Regional Division of Wildlife Refuges, Albuquerque, New Mexico. He became associate regional supervisor of the Division of Wildlife Refuges in Minneapolis before joining the Bureau's law enforcement arm.

Greenwalt attended Reedley, California, Junior College and received his B.S. degree in zoology at the University of Oklahoma in 1953, adding an M.S. in wildlife management from the University of Arizona in 1955.

He is married to the former Judith A. Cunningham. Her father, Frederick A., was a refuge manager for 20 years before retiring in 1963.

The Greenwalts have three boys: Mark, 16; Scott, 14; and Grant, 10. The family resides in Rockville, Maryland.

Senator METCALF. I want the the record to show my personal pleasure at having Secretary Reed and Mr. Greenwalt here. For many years I have been a member of the Migratory Bird Conservation Commission and, instead of meeting in this office, we have met in the Secretary's Office downtown.

We have spent the Duck Stamp money wisely and well and distributed it in refuges all over America. It has been a rewarding experience working with these two men. I am delighted to have you up here in our committee room testifying. And, of course, I am delighted at the nomination of Mr. Greenwalt for the Fish and Wildlife Service.

Mr. Secretary. Do you have a prepared statement?

Mr. REED. I have, Senator.

Senator METCALF. Senator Hansen, as an honorary member of the Senate Commerce Committee, do you have a statement?

Senator HANSEN. Since I have not been briefed recently, Mr. Chairman, I think I had better let others speak for themselves. I might add that on behalf of the Senate Commerce Committee, I can say I am very pleased, indeed, to have you here this morning. And, Mr. Secretary, I am interested in what you have to say.

Mr. REED. Thank you.

Senator METCALF. Senator Magnuson, who is chairman of the Senate Commerce Committee, would be here, but he is, I think, doing the Lord's work over on the appropriation for HEW. Senator Jackson, chairman of the Interior Committee, is also busy in another committee.

STATEMENT OF HON. NATHANIEL P. REED, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. REED. Mr. Chairman and members of the committees, it is my privilege to appear before you today to endorse the nomination of Lynn A. Greenwalt to be Director of the U.S. Fish and Wildlife Service. Secretary Morton has asked me to express his apology for being unable to be with you today. He has also asked me to read a letter from him with regard to Lynn Greenwalt.

Mr. Chairman, the letter is right before you and with your permission I would like to have it incorporated into the record.

Senator METCALF. It will be inserted in the record at this point.

[The letter from Secretary Morton follows:]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 18, 1974.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I deeply regret not being able to join your Committee on the occasion of confirmation hearings for Lynn A. Greenwalt, who has been nominated by the President to serve as Director of the United States Fish and Wildlife Service.

It is rare that I can commend to your favorable consideration a nominee with outstanding professional qualifications and a fine record of experience in the job for which he has been nominated. Lynn Greenwalt is a career employee who began his association with the Fish and Wildlife Service in 1946. Following his accession to a series of increasingly responsible positions, it was my pleasure to appoint Lynn as Director of the Bureau of Sport Fisheries and Wildlife in 1973.

As you are no doubt aware, Public Law 93-271 requires that Mr. Greenwalt be re-appointed and confirmed, as Director of the re-named United States Fish and Wildlife Service. I have every confidence that, when confirmed, Lynn Greenwalt will continue to serve with distinction as chief steward of the Nation's invaluable fish and wildlife resource.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

Mr. REED. With regard to Public Law 93-271, approved April 22, 1974, it formally redesignated the Bureau of Sport Fisheries and Wildlife as the U.S. Fish and Wildlife Service effective July 1, 1974, and provided that its Director be appointed by the President, by and with the advice and consent of the Senate. It furthermore specified that the Director be, by reason of scientific education and experience, knowledgeable in the principles of fisheries and wildlife management.

Lynn Greenwalt is well qualified both by education and long experience for the position for which he has been nominated by the President.

Last fall, Spencer Smith stepped down as the Bureau Director. That action, as you may recall, resulted from health problems which required a move to a different climate. Incidentally, I am happy to report that Spencer is doing very well in his new location in Denver. During his brief tenure as Director, Spencer did an extraordinary job of revitalizing the Bureau—moving ahead with innovative and productive management reforms, reordering priorities and rethinking program objectives. As a result of his leadership, the Bureau's competency, credibility and effectiveness grew immensely.

The greatest pleasure of my 31½ years in Washington has been working with Spencer and his staff which included Lynn Greenwalt. Without doubt, Spencer was an outstanding Director and we are all indebted to him for his total dedication and effective service in the interests of our natural living resources.

When Spencer left, we were determined to replace him with the best qualified person we could find. Secretary Morton and I were very proud that we found him in the Department and equally pleased that with Lynn's appointment we were able to continue to fill the Director's position with a professional wildlife manager from within the ranks of the Bureau's career employees.

We have known and worked with Lynn for a number of years and we recognize in him a creative imagination combined with intelligence and commonsense, the capability for making balanced judgments, and excellent leadership qualities that the U.S. Fish and Wildlife Service both needs and deserves in its Director.

He had an outstanding reputation among his peers and especially the State conservation agencies. I know he is held in the highest personal and professional esteem by his colleagues and members of the national conservation community here in Washington.

He is absolutely committed to the best interest of our living natural resources and I know that with your consent he will lead the Service so that our stewardship of these resources will be carried out with vigor and wisely.

Secretary Morton and I have charged the Service to become the Government's biological arm for wildlife resources and the preservation of essential habitat. In that regard the Service is embarking on a major new phase of providing biological services to support natural resource development decisions. In the face of mounting demands to exploit energy sources, such as oil shale, off-shore oil reserves, and nuclear plants, this is of critical importance. It includes the determination of key environmental indicators, assessment of alternative methods of tapping energy and water resources, and monitoring of environmental impacts on a national scale.

The U.S. Fish and Wildlife Service will continue to discharge long-standing responsibilities to perpetuate the use and enjoyment by the people of the sportfish and wildlife resources of the Nation, including, for example, Federal conservation law enforcement, the management of migratory birds, and the management of the National Wildlife Refuge System. These are responsibilities that are fundamental to the Federal role in fish and wildlife conservation and represent the continuation of efforts very much in the national interest.

In this regard, we recognize the factor of utilization of the marine fishery resource represented by the mission of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration of the Department of Commerce.

Incidentally, Senator Magnuson, in his capacity as chairman of the Senate Commerce Committee, wrote to the Secretary recently with regard to the areas of jurisdictional overlaps in fish and wildlife programs between the Fish and Wildlife Service and the National Marine Fisheries Service. The response indicates that we have reconciled many of the problems occasioned by the establishment of the National Marine Fisheries Service in the Department of Commerce. It seems unlikely that we could ever be in total agreement, particularly in those areas that involve commercial exploitation.

Senator HANSEN. Mr. Secretary, may I interrupt?

Senator METCALF. Yes, sir.

Senator HANSEN. I have copies of a rather lengthy letter that Senator Magnuson wrote to the Secretary and an even longer letter that Secretary Morton sent back. Inasmuch as it is the letter to which you referred, I will ask unanimous consent that it be inserted in the record immediately after your presentation.

Mr. REED. Thank you, sir, that would be fine.

Indeed, this lack of total agreement represents the fundamental dynamic in almost all controversies involving natural resources. We welcome this dynamic just as we welcome the continuing opportunity to resolve disagreements with our friends in the National Marine Fisheries Service. We may have to await a reorganization on the order of the proposed Department of Energy and Natural Resources before we could hope to achieve a greater meeting of the minds.

Lynn has often expressed his recognition of the fact that the complex business of good fish and wildlife resource management cannot be done properly by the Federal Government alone or by State governments alone. It is a challenge that can only be met by full and complete cooperation between the Federal and State agencies. I know Lynn's commitment to this idea and we expect him to pursue it to the fullest.

Lynn began his Federal career with summer jobs at the Wichita Mountains Wildlife Refuge in Oklahoma from 1946 to 1952, while earning his bachelor's degree in zoology from the University of Oklahoma in 1953. He later earned a master's degree in wildlife management from the University of Arizona in 1955.

He was an assistant director of the Bureau of Sport Fisheries and Wildlife prior to his appointment as its director in 1973.

Before his assignment as assistant director, he has been chief, Division of Wildlife Refuges responsible for the National Wildlife Refuge System's 30 million acres on 350 refuges in 49 States.

From November 1970 to October 1971 he was supervisor of the Bureau's conservation law enforcement agents in the Pacific region, headquartered at Portland, Oreg.

His other Federal employment included work at the Arizona Cooperative Wildlife Research Unit, Tucson, Ariz.; Bear River Refuge, Brigham City, Utah; National Elk Refuge, Jackson, Wyo.; Salt Plains Refuge, Jet, Okla.; Bosque del Apache Refuge, San Antonio, N. Mex.; Fish Springs Refuge, Dugway, Utah; and the Regional Division of Wildlife Refuges, Albuquerque, N. Mex. He became associate regional supervisor of the Division of Wildlife Refuges in Minneapolis, Minn., before joining the Bureau's law enforcement arm.

We are confident that Mr. Greenwalt will do an outstanding job as Director of the U.S. Fish and Wildlife Service and we are pleased that he has been nominated for this important role in the Department.

Thank you, Mr. Chairman.

Senator METCALF. Thank you, Mr. Secretary.

[The September 11, 1974 letter to Secretary Morton from Senator Magnuson and the September 19, 1974 letter from Acting Secretary of the Interior John P. Whitaker to Senator Magnuson in reply, read as follows:]

SEPTEMBER 11, 1974.

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

DEAR MR. SECRETARY: Reorganization Plan #4 of 1970, which created the National Oceanic and Atmospheric Administration, among other things, transferred certain functions formerly under your jurisdiction to the Secretary of Commerce. The major thrust was to vest in the Secretary of Commerce responsibility for the conservation, preservation and protection of living marine

resources, as well as certain international marine fisheries. However, it was also recognized by the draftsmen, as well as the Congress, that the Plan had to be drafted in general terms due to the difficulty of specifically addressing a number of programs in which the Departments of Commerce and the Interior each had some responsibility, although varying in degree. It was expected that subsequent to the effective date of Reorganization Plan #4, both Departments would execute and implement appropriate Memoranda of Understanding setting forth the manner in which the Departments would carry out these responsibilities efficiently and expeditiously.

To this end, you and the Secretary of Commerce, Mr. Stans, created a Fisheries Review Board which met several times. However, I understand that this Board was not successful in carrying out its mandate to reach agreement on delineation of appropriate duties and assignments. Consequently, there are many areas of vital importance to our nation's fisheries resources in which the two Departments are not coordinating and cooperating as closely as is necessary and expected. The needs of the resources are suffering as a result.

I am not in a position to place blame or fault, nor do I particularly want to do so. However, I do want to express my deep concern that this situation has been permitted to exist and continue to the extent it has. It seems appropriate, therefore, that this matter be addressed in conjunction with the forthcoming hearing on the confirmation of Mr. Lynn Greenwalt as Director of the U.S. Fish and Wildlife Service. This letter is to alert you to our desire to receive a full and official statement from you and from Mr. Greenwalt, in writing, as to your plans for coordination regarding such matters, as: activities under the Fish and Wildlife Coordination Act, responsibilities under the Lacey Act, and reevaluation of the operational and managerial aspects of the Federally supported portion of the Columbia River fish cultural effort. Please be certain that this statement is presented to my office well in advance of the confirmation hearing on September 20.

I am aware that Mr. Greenwalt, while Director of BSF&W, and Mr. Schoning, as Director of NMFS, signed several Memoranda of Understanding relating to joint administration of the Anadromous Fish Conservation Act of 1965 and certain aspects of administration of the Endangered Species Act of 1973. This is an excellent start, but we need more than just a start. Further, such cooperation and coordination evidently must be strongly endorsed as the Secretarial level to really make it work.

It is clear that Reorganization Plan #4 reduced some of the fisheries responsibilities of the Department of the Interior and increased those of the Department of Commerce. Passage of the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973 further modified the responsibilities of the two Departments. These all combined to form the law of the land. They must be more efficiently carried out and I am confident that you are as anxious as the committee to see that this is done promptly and expeditiously.

We intend to make these views known to the Secretary of Commerce as well as to hasten the full implementation of this vital intragovernmental partnership.

Sincerely,

WARREN G. MAGNUSON, *Chairman.*

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 19, 1974.

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

DEAR MR. CHAIRMAN: I appreciate this opportunity to provide you with details on cooperation and coordination between the National Marine Fisheries Service in the Department of Commerce and the U.S. Fish and Wildlife Service in the Department of the Interior.

As you are aware, Reorganization Plan No. 4 transferred to the Secretary of Commerce almost all functions formerly vested by law in the Bureau of Commercial Fisheries or in the Secretary of the Interior and administered through that Bureau. Certain enumerated functions were not transferred in this reorganization including Great Lakes fishery research, Missouri River Reservoir research

and Trans-Alaska pipeline investigations. These activities remained in the Department of the Interior and are administered by the Fish and Wildlife Service, formerly the Bureau of Sport Fisheries and Wildlife. In addition, Reorganization Plan No. 4 transferred migratory marine game fish programs of the Bureau to the National Oceanic and Atmospheric Administration (NOAA).

While this reorganization did reduce some of the fisheries responsibilities of the Department of the Interior by the removal of the Bureau of Commercial Fisheries from this agency, it did not reduce any functions of the Bureau of Sport Fisheries and Wildlife. Loss of the marine sport fishery program was offset by addition of the Great Lakes fishery research program, Missouri River Reservoir research and Trans-Alaska pipeline investigations.

Reorganization Plan No. 4 did not address many activities which had been carried out cooperatively by the Bureau of Commercial Fisheries and the Bureau of Sport Fisheries and Wildlife. As a result there are areas of overlap with regard to activities and species involved. There are also areas where one agency has more expertise than the other agency, regardless of the commercial or recreational value of the species involved. Formal and informal cooperative agreements have been negotiated in these areas. For instance, the recently enacted Endangered Species Act of 1973 does not delineate agency responsibility for species of fish, wildlife and plants. Therefore, a formal agreement has been signed by both agencies with regard to management and protection of endangered and threatened species under the act. An agreement is presently being negotiated with the Department of Commerce to increase efficiency in enforcement and other related management aspects for the marine mammals under each agency's jurisdiction as delineated in the Marine Mammal Protection Act of 1972. An informal cooperative agreement is presently in effect. In addition, a formal Memorandum of Understanding is presently being developed with the Department of Commerce to delineate areas of interest and procedures to be followed when new regulations are promulgated to control the importation of injurious fish and wildlife under authority of the Lacey Act.

The relationship between the Bureau of Sport Fisheries and Wildlife and the National Marine Fisheries Service was of primary concern to Lynn Greenwalt when he was named to head the Bureau of Sport Fisheries and Wildlife in September 1973. To reaffirm the need for the two agencies to work in close cooperation and assist each other in carrying out responsibilities for protection, conservation, development and management of fish and wildlife resources, a Declaration of Policy was jointly negotiated and signed on March 5, 1974, by the Director of the National Marine Fisheries Service and the Director of the Bureau of Sport Fisheries and Wildlife. A copy of the agreement is enclosed.

The formal agreement on management responsibilities under the Endangered Species Act of 1973 was signed on August 28, 1974, by the two Directors. It indicates the two agencies' commitment to fulfilling the mandate in the Declaration of Policy. The previously mentioned agreement being negotiated on marine mammals and injurious wildlife is further evidence of this commitment.

In your letter of September 11, 1974, specific mention is made of a Fisheries Review Board created to reach agreement on delineation of duties and responsibilities under Reorganization Plan No. 4. The implication that the Board was unsuccessful is not totally accurate. While there has been no formal meeting of the Board in recent years, there have been numerous other meetings serving the same or similar purposes. In 1971 and 1972, when the Board was most active, it was mainly concerned with interim (temporary) resolution of mutual problems pending establishment of a Department of Natural Resources. Activities of mutual concern were delineated and conflicts or problems, if not resolved, were at least aired.

We are firmly committed to cooperation with all Federal agencies in accomplishing whatever may be necessary to protect and perpetuate the Nation's living natural resources. Activities of the Fisheries Review Board have been supplanted by various working groups, task force groups, Ad Hoc committees and meetings of representatives from all levels of the two agencies as well as other Federal, State and local agencies and interest groups. As previously noted, formal and informal agreements have been reached in many areas of mutual concern and are being negotiated in other such areas.

With regard to the specific areas you mention in your letter, we have already described two—endangered species and marine mammals. As far as activities under the Fish and Wildlife Coordination Act are concerned, that act delegates

to the Secretary of the Interior certain responsibilities for planning water developments carried out by the Federal Government or under a Federal permit. Reorganization Plan No. 4 is silent on which agency should carry out Coordination Act responsibilities. As we view it, Fish and Wildlife Service responsibilities under the law are undiminished by Reorganization Plan No. 4. We recognize the interest that the National Marine Fisheries Service (NMFS) has in marine resources. We are most willing to coordinate our activities so that the concerns of NMFS are recognized and do so on a routine basis. While no formal procedures have been adopted, close communication and coordination is maintained at the appropriate levels in both agencies. The method of coordination varies depending on such things as the type of development project proposed, the geographic location of the proposed project, and availability of manpower and funds. For example, proposed development projects on the Columbia River are reviewed by both agencies, and both agencies usually prepare independent reports on such projects to the Federal construction or authorizing agency. While this type of arrangement may not appear to be the most efficient, we have not found it to be an untenable method of operation. We and the Department of Commerce have supported legislation (presently pending before Congress) to amend the Coordination Act. Among other things, this legislation would clearly provide for participation by both agencies in review of proposed water resource development projects.

The Lacey Act provides general regulatory and enforcement authority over importation, shipping and marking of fish and wildlife. We are not aware of any specific delegation of authority under the Lacey Act to the Department of Commerce as a result of Reorganization Plan No. 4. We certainly would not oppose use of the enforcement authority of the Lacey Act, if appropriate, by any agency seeking to carry out its responsibilities. Many organizations, such as Customs and Coast Guard, assist us by enforcing our regulations under the Lacey Act as well as other statutes. We have coordinated and cooperated with the Department of Commerce in the enforcement of regulations issued under the Lacey Act or any other laws. We will continue to do so.

Many Federal and State agencies are involved in fish cultural activities on the Columbia River. However, the Fish and Wildlife Service is the only Federal agency that operates hatcheries on the river. Six of these hatcheries are supported with funds transferred from NOAA to the Fish and Wildlife Service under contract. Similar arrangements exist with the Corps of Engineers for other hatcheries on the Columbia River, and we supervise the operation of such hatcheries which are federally financed. The only current re-evaluation of the fishery program on the Columbia River we are aware of is one which will be initiated this year by the State game and fish departments with funds from the Northwest Regional Commission.

We hope this information will be useful.

Sincerely yours,

JOHN C. WHITTAKER,
Acting Secretary of the Interior.

Senator METCALF. I would like to insert in the record a statement from Senator Hollings.

STATEMENT OF HON. ERNEST F. HOLLINGS, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Our committee played the major role in the establishment of NOAA and of the National Marine Fisheries Service, and as such takes deep interest in the functions it was assigned and its success in carrying them out. This Committee does not approve of Federal agencies disagreeing among themselves over what they consider to be their jurisdiction, and I believe that Reorganization Plan No. 4 and the legislation passed by Congress since that Plan make clear that there should be not only a division of authority, but clear understanding of that division and that the Department of the Interior and the Department of Commerce work closely in the future.

This Committee would like to put you on notice, Mr. Greenwalt, that we will not view lightly any continuation of lack of cooperation and coordination, and we expect you to fulfill your promise to end it.

Senator HANSEN. I have some questions, but I understand, Mr. Chairman, that you have some questions for the witness, too.

Secretary Reed, can you be here during the entire hearing?

Mr. REED. Yes, sir.

Senator METCALF. Mr. Greenwalt also has a statement. I think we would proceed in better order if we heard the statement of Mr. Greenwalt and then I will yield to you.

Senator HANSEN. Yes, sir.

Senator METCALF. Mr. Greenwalt.

**STATEMENT OF LYNN A. GREENWALT, NOMINEE TO BE THE
DIRECTOR, U.S. FISH AND WILDLIFE SERVICE**

Mr. GREENWALT. Mr. Chairman and Senator Hansen.

It is an honor to appear before you to provide you with background information on my qualifications to be Director of the U.S. Fish and Wildlife Service as well as my goals for the future administration of the Service.

Interest in fish and wildlife management and protection began for me in early childhood. As a matter of fact, I grew up on national wildlife refuges under the tutelage and inspiration of my refuge manager father, who was an employee of the Fish and Wildlife Service for 34 years. As Secretary Reed mentioned, I actually began my Federal career with summer jobs at Wichita Mountains Wildlife Refuge in Oklahoma from 1946 to 1952. During this period I earned a bachelor's degree in zoology from the University of Oklahoma, and later a master's degree in wildlife management from the University of Arizona.

I have worked at wildlife refuges throughout the west; supervised enforcement agents in the Service's Pacific region headquartered at Portland, Oreg. I held the position of Chief of the Division of Wildlife Refuges, responsible for the National Wildlife Refuge System's 30 plus million acres on 350 refuges in 49 states from October 1971 to April 1973. I was an assistant director for wildlife prior to being named by Secretary Morton to head the Bureau of Sport Fisheries and Wildlife in September 1973.

With enactment of Public Law 93-271 the Bureau of Sport Fisheries and Wildlife was redesignated the U.S. Fish and Wildlife Service, effective July 1, 1974. As has been pointed out the act provided that a Director of the Service be appointed by the President, by and with the advice and consent of the Senate, and it is in this capacity that I appear before you today.

If confirmed in this position, I hope to vigorously carry forward a new image for the Service. Much progress has already been made to implement Secretary Morton's charge that the Service become the Government's biological arm for fish and wildlife resources and the management and preservation of essential habitat. Much more has yet to be accomplished.

The essential role of the Service, and I might add, State conservation agencies, is to serve as both advocate and steward of all living natural resources. With or without adequate, timely biological data, decisions must be made on development and use of our physical natural resources. Permanent and irreparable damage can and has ensued when such decisions are made without the benefit of such

biological data. This is not to say that these resources should not be developed to meet social and economic needs. Unquestionably, they should be and must be developed. The question is—how do we undertake that development in a manner which minimizes the impact on the environment?

Secretary Morton believes the answer lies in examination of our total biological systems and development of scientific expertise and data in such a way that will improve decisionmaking.

As Director of the Service, I intend to implement new programs which will avoid decisions which result in short term benefits at the expense of irretrievable losses to renewable resources. Various ecosystem-related programs are being established in the Service to analyze, assess, and evaluate environmental impacts on a National scale. The specific approach to accomplish this goal involves a six-step process:

(1) Identifying ecosystems subject to rapid degradation from gradual encroachment, such as dredge and fill or stream channelization, or from massive development, such as surface coal mining or oil shale recovery.

(2) Determining key ecosystem interrelationships and key environmental indicators.

(3) Establishing biological information base lines for initial impact assessment.

(4) Monitoring feedback of development impacts.

(5) Advising on development technology and powerplant siting modifications, and finally

(6) Expediting effective environmental assessments, environmental impact reviews and EIS preparation by the Service's operational components.

It is the output of this effort that I am deeply concerned with and challenged by. I intend to see that this biological effort results in data which can be used to ameliorate the damage to wildlife and its related resources caused by development.

This effort is just beginning, and I intend to carry it forward as vigorously as I can within the constraints of manpower and funds.

We will be recruiting highly qualified people to carry out the responsibilities of this new program. We will be working closely with other Federal agencies, State, and local conservation agencies, and public and private organizations to develop and make available accurate, timely biological data so that resource development agencies will have the biological data necessary on which to base their decisions.

To some extent, this new program is an expansion of the traditional Service activities. It is my firm conviction we must broaden our approach to encompass a concern for the environmental problems on an ecosystem basis and as a positive, continuing part of the planning and decisionmaking process.

In addition, the Service must continue to operate its traditional and more familiar programs for which there is a continuing Federal responsibility. I hope to initiate or accelerate operations and habitat management on one of the Nation's most valuable resources, the National Wildlife Refuge System.

We also must continue to meet our responsibilities for conservation and management of marine mammals under the Marine Mammal Pro-

tection Act of 1972. The new congressional mandate for conservation of endangered and threatened species of fish, wildlife, and plants under the recently enacted Endangered Species Act of 1973 must be fully implemented in the coming year. Both of these acts provided for a Federal-State approach to management. Coordination and cooperation to more effectively mesh the Federal and State agencies' capabilities to the extent possible in all fish and wildlife program areas will continue, and hopefully accelerate.

Evaluation and review of our programs on a continuing basis will contribute toward upgrading our administration of all these programs. In addition, we must do everything we can to harmonize or bridge the growing schism between the extremes of the wildlife protectionist and the consumers of wildlife.

Let me conclude by expressing appreciation for the support you and members of these committees have given the Service and the Department. It has been a real personal pleasure and honor to work with you as Director of the Bureau of Sport Fisheries and Wildlife. As Director of the reconstituted U.S. Fish and Wildlife Service, you have my firm commitment that I and all the people who are the Service will do our best to respond to your examinations and guidance with dispatch, thoroughness, and candor.

Thank you, gentlemen. I will be glad to answer any questions you might have.

Senator METCALF. Yes, sir. Thank you very much, Mr. Greenwalt, for a very splendid and forthright statement.

Senator HANSEN. First, Mr. Chairman, let me join with you in expressing my personal pleasure in having before us this morning as the nominee of the President to become the Director of the Fish and Wildlife Service, my friend, and acquaintance over a number of years, Lynn Greenwalt.

As he pointed out in his statement he has worked in Jackson, Wyo. managing the refuge there. I have known him since then and certainly I reflect the sentiment of many people when I say that he has many friends in Jackson Hole.

I do have some questions that are prompted because of a growing concern over what may be the direction and the role of the Fish and Wildlife Service in coming to grips in a more meaningful fashion with the problems of predatory control. I think it might be helpful, because these questions do deal with substances that you might find are—or that you might appreciate the opportunity to respond in writing to. I think what I would like to do, Mr. Chairman, would be to submit a letter to you, trying to outline the concerns that have been related to my office from the State Department of Agriculture in Wyoming and from people in the sheep business.

I might add, too, Mr. Greenwalt, some cattlemen are finding now that coyotes can kill calves. There are those who have known that for some time. I can say right in Jackson Hole, having the National Elk Refuge on one side and forest lands on another, and the park on yet another, some of my neighbors have experienced some calf losses. These generally are the sorts of questions I would like to direct in the letter to you trying, as I will attempt to do, to outline the concerns and to seek your response as to the direction that you think we might.

Mr. GREENWALT. We will be happy to respond.

Senator HANSEN. I think I can do that in a little better fashion, Mr. Chairman, by directing a letter.

Senator METCALF. If we can get a more immediate response from the witness—

Senator HANSEN. I thought it would afford him an opportunity to check with his people. Obviously, despite Mr. Greenwalt's wide experience, he would find it helpful to refer some of these questions to the various experts, both in Washington and in the field to make the sort of response I know he would intend to make.

Senator METCALF. I want to say for your benefit and for the benefit of our two very good friends that are appearing here, that it will be impossible for this committee to meet and determine the confirmation this morning because one, we don't even have a quorum of the Interior Committee; and two, I am not sure about the procedure with the Commerce Committee. A few years ago I was on the space committee. The first ad hoc space committee. We had a conference on the House and the Senate bill and Senator Johnson of Nevada disposed of one of the questions by saying, "Well, we can't determine that. The Speaker and the Majority Leader, Speaker Rayburn and Lyndon Johnson, will determine it on the Texas level."

[Laughter.]

Senator METCALF. And so I think, today, with Senator Jackson and Senator Magnuson, chairmen of the appropriate committees, we are going to determine it on the State of Washington level.

Senator Abourezk.

Senator ABOUREZK. Thank you.

I would like to welcome you to the committee this morning, Mr. Greenwalt. I want to, as I have before with the Fish and Wildlife Service, urge upon you a continued expanded research in what is known as "nonlethal predator control" because we have a serious problem of coyotes eating livestock, sheep, and calves. While we want to preserve species such as the coyote, we want to preserve the American lamb as well and that can be done providing the Fish and Wildlife Service does its job of researching and developing nonlethal predator control and repellant types of substances that would assist livestock growers and environmentalists in achieving both of their goals.

Mr. GREENWALT. Let me say, Senator, that I agree with you completely. As I am sure you know, the Fish and Wildlife Service has already embarked on major research of this kind. We believe this is a practical way to approach this very difficult problem. It is one of the dimensions we must pursue in order to arrive at the right kinds of answers.

Senator ABOUREZK. Good. I thank you.

I have another concern and that is with what is happening right now on the west coast, in Oregon and Washington, in regard to Indian fishing rights.

Now, I am sure that you are aware of the impact of the Boldt decision on Indian fishing rights. There has been an appropriation by the U.S. Congress of \$690,000 which was appropriated specifically for the purpose of providing technical and biological services to the Indian tribes in the Northwest to implement that decision.

Are you aware of that?

Mr. GREENWALT. Yes, I am.

Senator ABOUREZK. Now, I would like to ask you with regard to this issue, do you know if \$690,000 is adequate to meet the management and biological assistance needs of the Indian tribes in Oregon and Washington?

Mr. GREENWALT. It's our estimate that this sum is adequate, at least for the current fiscal year. We are concerned fundamentally about the proper management of the resource. As I am sure you know, Senator, the parties involved in this issue, the Northwest Indian Fisheries Commission, the State game commission and the State fishery commission in Washington, as well as our Fish and Wildlife Service regional director in that region, are to meet Monday to begin to assess what must be done in order to carry out the mandate.

Senator ABOUREZK. I am sorry, I didn't hear you. Carry on what?

Mr. GREENWALT. The mandate of the Boldt decision.

Our intention is to work cooperatively to identify what must be done to carry out the mandate of the court, and subsequently how this will be accomplished, and utilize the funds in that fashion.

Senator ABOUREZK. Who makes the decisions on how the \$690,000 will be programed or how it will be used?

Mr. GREENWALT. I will.

Senator ABOUREZK. Do you have the sole decision?

Mr. GREENWALT. Yes, sir.

Senator ABOUREZK. Now, I am given to understand that the Washington State Fisheries and Game Departments have made requests for funds from your agency to carry on their fish programs. In addition to those amounts the Federal agencies identified as being needed by the Indian tribes in your Northwest fisheries program survey, is it true that your Department plans to divert funds which have been appropriated for the Indian portion appropriated by this Congress to satisfy the money demands from the State of Washington?

Mr. GREENWALT. I might say this, first of all: there are two funds involved. One is an addition to the Anadromous Fish Conservation Act program under which funds are available to the State on a matching basis to carry out the programs they feel are necessary.

Senator ABOUREZK. That's separate?

Mr. GREENWALT. That's separate and apart from the \$690,000.

In terms of the utilization of the \$690,000, it is the Service's intention to use these funds in a mix to derive the basic information necessary for the Fish and Wildlife Service to make the interpretation required by the Court to assist the Indians and, more importantly, to properly manage and conserve the resource.

Senator ABOUREZK. Now, you say "use in a mix." What do you mean?

Mr. GREENWALT. In some instances we feel that it may be desirable to get basic information through contracts to universities, perhaps even to the State, itself, in order to get certain types of basic information.

Senator ABOUREZK. Now, will the Indians have anything to say at all about how their funds are to be used now that they have appropriated them?

Mr. GREENWALT. Yes. The purpose of the meetings commencing Monday are to do just that: to work out an approach that is acceptable to all parties, including the Indians.

Mr. REED. Mr. Chairman, could I interject in here?

Senator Abourezk was at the White House meeting on Wednesday when Director Greenwalt was away in Hawaii at the meeting of the International Association of Game, Fish and Conservation Commissioners. I realize that there are other people in this room who were at the White House meeting. It was a very large meeting with representatives of the Indian tribes in the Pacific Northwest and representatives from a variety of Federal agencies including the State Department, Interior, and BIA.

In Senate Report No. 93-1069 on the fiscal year 1975 appropriation, with regard funding the \$690,000, I quote, "—the funding provides for the collection of fishery information necessary to implement a recent Court order determining certain Indian fishing rights in western Washington." Practically identical language was included in the report of the conferees, House Report No. 93-1293.

The key is: if the Fish and Wildlife Service is able to contract with the State or with a University to gain needed biological information at a cost that would be less than obtaining it by adding Federal employees, I think it is to our advantage to do so.

The question that I asked of the Indian representatives at the Wednesday White House meeting was because I recognized their mistrust of interpretation of data by the State of Washington, and I wanted to know specifically whether they mistrusted the basic biological data provided to us by competent biologists. I am hesitant to say that I got a straight answer on that. The purpose of the meeting on Monday in the Northwest is to arrive at, with the individuals who will all be given an opportunity to speak, how that money should best be spent to accomplish the intent of Congress.

I think to say that the Federal Government will spend all of the money on adding manpower to arrive at new information on biology, ties our hands unnecessarily at this time.

Senator ABOUREZK. Isn't the Court decision still pending? Hasn't the judge kept the trial open?

Mr. REED. Yes, sir.

Senator ABOUREZK. Essentially, then, what you are doing is using money appropriated to the Indians to provide money to their adversary?

Mr. REED. No, sir, the money was appropriated to the Fish and Wildlife Service to provide for the collection of fisheries information necessary to implement a recent Court order determining certain fishing rights in western Washington. Our duty is to provide the Indians and the Court with the basic biological information necessary to fulfill the obligations as Judge Boldt sees them.

Senator ABOUREZK. Well, now, Mr. Greenwalt said that he intends to give the Indians their voice, whatever their voice might be, in deciding how the money is to be used. Will the Indians have a power of veto over contracts that the Fish and Wildlife Service might see fit to award?

Mr. REED. No, sir. I would not anticipate the Indians having veto power. On the other hand, I can't imagine our issuing contracts without the input advice, and recommendations of the Indians. The Secretary has asked to be personally advised as to the outcome of the meeting in Washington on Monday. I hope the Indian tribes will go

to that meeting with an open mind, and not with the position that any money contracted to any other source besides the Federal Government would be money misspent. I still feel that way.

Senator ABOUREZK. But you say that you can't imagine anything being done without the Indians having any input. There has been an awful lot done, if I have to remind you, throughout the last several decades without the Indians having any kind of an input. So, it's possible for that to happen.

Mr. REED. Their input is desirable, Senator. We want their input.

Senator ABOUREZK. Well, I hope you take it. That's the only thing I am trying to stress here.

Mr. REED. Obviously, I cannot assure you of that until I know what their input is. There certainly was a difference of opinion between representatives of the Indian tribes at the meeting on Wednesday at the White House. I asked them at that time to come to a meeting on Monday, and to come to it with a clear-cut recommendation as to how they think those funds would best be spent. When we get that recommendation, we will take it under serious consideration.

Senator ABOUREZK. Will the Interior Department have the same open mind as you expect of the Indians when it comes to deciding on how the money is going to be spent?

Mr. REED. Yes, sir.

Senator ABOUREZK. Now, when you say that the moneys were appropriated to the Fish and Wildlife Service, they were done so on behalf of the Indians, not on behalf of the Fish and Wildlife Service; is that an accurate statement?

In other words, you don't own the money, the Indians own the money, don't they?

Mr. REED. No, sir.

Senator ABOUREZK. They don't?

Mr. REED. No. I read the appropriations act report to say that the Fish and Wildlife Service has been given this additional money in their budget for the purpose of collection of fisheries information necessary to implement a recent court order determining certain Indian fishing rights in western Washington. I have trouble interpreting the report language in any other way than that the Fish and Wildlife Service is charged by the U.S. Congress to obtain information necessary to assist the Indians and the State of Washington in implementing Judge Boldt's decision.

Senator ABOUREZK. But didn't the State of Washington come in for any additional money, separate money, aside from the \$690,000 appropriated for in behalf of the Indian people out there?

Mr. REED. It did, sir.

Senator ABOUREZK. So you could very accurately say that \$300,000 was for the State of Washington, \$690,000 was for the Indian tribes, and that each side then has its own funds appropriated to it.

You see, what I am trying to get at is this: There is an indication from the Interior Department that the Interior Department and the Fish and Wildlife Service intends to take a great part of that money appropriated for the benefit of the Indians and hand it over to the State of Washington. I would like to prevent that before it happens.

Mr. REED. Senator Abourezk, that was the point of the Indians' charges at the White House on Wednesday. I have responded that we

have made absolutely no commitment as to what any part of that \$690,000 can go to. The fish and wildlife regional director in Portland has been advised that any decision will be made with overview from Washington. I just don't think that that rumor or charge is accurate. We are in a terribly difficult situation on the management of fisheries in a State which has always exercised control over their fisheries.

I read the Congress' intent as being for us not to take sides, but to acquire and give basic data to the court and to the tribes and to the State of Washington on which decisions can be made. This is a little bit different from taking a side. I don't think this committee wants us to be the representatives of the Indian tribes. I think the charge from the Congress is that we are to identify the quantity of the resource, and a division of that resource will be the responsibility of the court, the State of Washington, and the Indian tribes.

Senator ABOUREZK. I would like to remind you that I don't know what the entire committee wants, but I can just say that I read the law being; that is, the Interior Department is the trustee for the Indian tribes of this country. I would assume that includes the services of the Fish and Wildlife Service. If you read it any differently, I would appreciate knowing it, exactly, why you read it differently than I do.

Mr. REED. Senator, I do read it differently. It would be wrong for me to leave this committee with the impression that I read it that way, because I don't. I think the Fish and Wildlife Service is responsible to the resource. The Fish and Wildlife Service is not the trustee of the Indians. The Secretary certainly has that responsibility. The Fish and Wildlife Service's responsibility is to give the correct biological information on a natural resource. How that resource is divided is up to original treaties, up to acts of Congress, and up to the Secretary pursuant to his trust responsibilities. The Service's responsibility is to the accuracy of biological information.

Senator McCURE. Would the Senator yield?

Senator ABOUREZK. Yes.

Senator McCURE. I think the reason the Senator from South Dakota asked that question was that in your previous response you said "we" are not responsible to the Indians and I take your answer to say that the Fish and Wildlife Service is not and you are wearing more than one hat?

Mr. REED. I am wearing more than one hat. "We" as the Secretary, are definitely responsible. The Fish and Wildlife Service, I think, sir, is charged with responsibility to the resource. I thank you for the clarification, Senator. I apologize if I blurred those two.

Senator ABOUREZK. Let me ask you this: Did the State agencies involved submit requests to you for money out of the \$690,000?

Mr. REED. I have not received any, sir.

Senator ABOUREZK. Has anybody in your Department?

Mr. REED. The Fish and Wildlife Service Regional Director in Portland may have, but I cannot answer that question. They are coming on Monday.

Senator ABOUREZK. They are coming?

Mr. REED. Yes, sir. State people will be represented at the Monday meeting. There likely will be a variety of requests for this and more money. I would like to add that prior to the President's request for an amendment to the appropriations act, the State of Washington did

request funds to meet certain requirements of Judge Boldt's decision. Since enactment of the appropriations act, we have not received any official request from the State for any of the \$690,000 appropriation.

Senator ABOUREZK. Can you provide this committee with the requests submitted by the States in the dollar amounts?

Mr. REED. Yes, sir; if and when we receive any, we would be delighted.

Senator ABOUREZK. In addition, would you submit what actual plans they have submitted along with the requests as to what they want to use the money for?

Mr. REED. Definitely, sir. The point of the meeting on Monday is to expose all these ideas. The polarization of this issue in the Pacific Northwest is incredible. We hope that we can all sit down and resolve some of the issues. Following the meeting on Wednesday at the White House, I am beginning to wonder whether people are going to be able to sit down and do that. Yet, from the resource standpoint, it is absolutely necessary that the State and the Indian tribes begin to have a much closer dialogue.

Senator ABOUREZK. Now, the meeting Monday is what? About the \$690,000 or to try to get the two sides together?

Mr. REED. No. The purpose is to arrange for everybody to present their ideas on how the \$690,000 could best be spent to obtain the information necessary to implement the Boldt decision.

Senator ABOUREZK. Has the BIA taken a position on the use of this money?

Mr. REED. No, sir.

Senator ABOUREZK. Have you asked for their view?

Mr. REED. Have I asked them? No, I don't think so. I think they will be represented at the meeting on Monday. They were invited.

Senator ABOUREZK. Do you intend to ask for their view on Monday as to how the money ought to be spent?

Mr. REED. Yes, sir.

Senator ABOUREZK. Now, has the Coleville Tribe made a request for any part of these funds?

Mr. GREENWALT. The only request of which I am aware is that the Coleville Tribe asked for the assignment of an employee to their vicinity to assist them with fisheries matters. Quite frankly, I am not sure that they have ever asked for funds. Certainly, not to me, for the assignment of any of these dollars.

Senator ABOUREZK. Can you find out if anybody in your Department has been asked by the Coleville Tribe for assignment of any part of these funds?

Mr. GREENWALT. Easily. The Coleville Tribe requested detail of a Fish and Wildlife Service employee to assist them in fisheries matters. That request was approved and a biologist from the Service is presently on assignment to the tribe. We have received no request for funds from the tribe.

Senator ABOUREZK. And did you grant them, by the way, the request for the employee to help them with their fisheries problems?

Mr. GREENWALT. We indicated that it is our intention to provide such an employee. He may be available now.

Senator ABOUREZK. Thank you very much. Thank you, Mr. Greenwalt.

[Subsequent to the hearing the following information was received:]

DEPARTMENT OF GAME,
Olympia, Wash., March 26, 1974.

Mr. R. KAHLER MARTINSON,
Director Pacific Region, Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior, Portland, Oreg.

DEAR KAHLER: We have now received Judge Boldt's final restraining order and interim order concerning the Indian fisheries case brought by the United States government against the State of Washington. I am enclosing copies for your information.

As we discussed at our March 8th meeting, we have prepared a budget indicating the added expenses that will accrue to the Department of Game from a biological, enforcement and hatchery program for steelhead. They are as follows:

	Amount
Cost of steelhead smolts-----	\$200,000
Manpower needs (includes travel expenses):	
21 wildlife agents (6 months equal 10.5 man-years)-----	179,000
10 biologists (10 man-years)-----	156,000
1 Indian affairs coordinator-----	22,000
Helicopter and fixed-wing aircraft (rentals)-----	20,000
Total -----	577,000
20 percent additional operation and administration costs-----	115,000
Total -----	692,000

These costs do not include any additional hatchery production at this time, but are designed to pay for the steelhead presently being raised in state hatcheries that may be taken commercially by Indian fishermen under Judge Boldt's ruling. The additional Wildlife Agents' time will be needed both for obtaining data on the Indian fisheries and for carrying out additional enforcement needs placed upon us by the Court during the Indian fishing season.

The biologists will be used on a year-round basis to determine sports take, spawning escapement, measure capabilities of the river to produce wild stocks, marking of hatchery fish and conducting other biological research that will be required.

One Indian Affairs Coordinator will be needed full time to meet with the various Tribes and to coordinate the overall program. The aircraft will be needed for spawning ground surveys and creel census work during the fishing season.

The above budget includes the original \$250,000 we had requested under the United States Supreme Court decision of November, 1973.

As we discussed in our meeting, I strongly feel that the Washington State Game Department must continue its role in direct management of the steelhead resource. If it is to be properly managed, responsibility should not be split between the various Indian Tribes and the Department of Game as it pertains to the production and planting of steelhead.

The present biological information of this Department indicates strongly that with artificial production of steelhead in a river there are definite limitations as to the number that can be planted to produce the most significant return. Additional plants add few fish to the fishery. The key to maximum survival is, of course, dependent upon the size and condition of the smolts, timing of the plant and conditions of the water when planted.

If more than one agency is attempting to carry out a hatchery program for steelhead on any river system, it could easily result in a serious drop of both hatchery and wild fish returning to the river. I know of no competent fish biologist who would disagree with this concept.

We have taken eggs for our 1975 steelhead program and will be proceeding with hatchery production for that year. If funds are available from the federal government for us to maintain this level of productivity we will continue our program. However, it will be necessary to have these funds available for expenditure by not later than July 1, 1974 if the full program is to be continued.

Very truly yours,

CARL N. CROUSE,
Director.

Senator METCALF. Senator McClure.

Senator McCLURE. Thank you, Mr. Chairman.

Mr. Greenwalt, there are a number of matters, of course, that are of intense interest to the Nation in the management of our fish and wildlife and the habitat on the public lands that relates to the fish and wildlife.

At the same time, of course, there are also other conflicting demands from other units of Government and other interests as well.

I want to ask just a couple of questions that deal with general policy approaches. First of all, I understand from the colloquy that has just taken place that it is the intention to utilize the services of the Fish and Wildlife Service, not to make the basic decision, but to provide the basic facts; is that correct?

Mr. GREENWALT. That is correct.

Senator McCLURE. And flowing from that, would I understand that would be your understanding of the charge and the mission of the Fish and Wildlife Service?

Mr. GREENWALT. In large part, yes, sir. But one cannot discount the responsibilities that are ancillary, law enforcement, the management of lands within the National Wildlife Refuge System, and the production of fish. These kinds of things are operational in nature but still part of the Fish and Wildlife Service's responsibility.

Senator McCLURE. The reason I asked the question in the particular way that I did is that it seems to me that some of the difficulties we have had in the past have arisen from personnel who have sought to interpret the facts to achieve a result which they thought was desirable. I think you are aware of some of the problems that attended some of the predator control reports in which that charge was made and whether or not the charge was true is not the question this morning as far as I am concerned, but whether or not it is your approach that the facts speak more loudly than the opinions of the personnel who develop the facts.

Mr. GREENWALT. If I might, I would like to respond to that in a philosophical way. This is a matter about which I feel very strongly, personally. In order for the Service to discharge its responsibilities it must deal in a commodity, the truth.

The truth, in the sense that biological truths are not absolute, but can be arrived at in the best possible fashion. These truths, to use your words, speak louder than the adverse opinions that may be held by people that develop the biological truths.

One of my precepts, as my acquaintances and my staff know very well, is that in order to function properly, the Fish and Wildlife Service must be a professional organization in terms of scientific professionalism. It is absolutely mandatory that objectivity be the keynote of the scientists' efforts. Any scientist is entitled to his own biases and his own opinions, but the mark of the professional is that individual who can separate the scientific truths from what he holds to be his own biases.

It is my intention to foster and advocate in the Service the idea that this is the way we should perform as a group of professionals in the public interest.

Senator McCLURE. I appreciate that because I realize that many of the people who do work in the area of your Service are people who

have very strong feelings as well as very competent professionalism. It's difficult to separate the two. Sometimes they don't seem to make the effort as much as we would like.

Mr. GREENWALT. Sometimes that's true. I, frankly, would be disappointed if people in the Service were not involved in an advocacy sort of way. This is a sense of commitment which is common to Fish and Wildlife Service people. I have found, over the years, this is a common thread among those who deal with resources. They tend to have a commitment one way or the other.

In addition to that commitment, I will insist that Service employees have an equally strong commitment to objectivity without which we cannot succeed.

Senator McCURE. Well, I certainly share that feeling and I commend you for this statement. I hope you are able to spread the word and enforce the edict.

Mr. GREENWALT. I can try and that's all I can guarantee at this juncture.

Senator HANSEN. Would the Senator yield at this point?

Senator McCURE. Happy to.

Senator HANSEN. Mr. Chairman, if I may, because I think what Mr. Greenwalt has said certainly is a most significant statement with which I agree wholeheartedly. I would just like to observe that in some of the hearings we have had in the West with respect to predator control, I recall very keenly a statement made by the President of the Game and Fish Commission.

He recalled as a young man having been raised in the West, that's Charlie Cole of whom I speak, that in driving through Casper over to Lander, and that part of the State of Wyoming, whenever his father would observe any game, antelope is one animal that he spoke about, he would stop the car and they would get out to take a look at them because they were, indeed, an unusual object to be seen, and he wanted his youngsters to be able to look at them.

Now, some many years later, he says "Antelope are almost ubiquitous throughout the State of Wyoming." He spoke about the other forms of wildlife that are on the big game hunting licenses in Wyoming. He spoke about the upland bird populations and I can add, parenthetically, the same thing is true of red fox. I know, as a youngster raised in Wyoming, the red fox were something I had heard about but hardly ever saw. Now, it is not uncommon at all in driving from Casper over Toggely Pass, as Mr. Greenwalt knows, I suspect that once out of every three trips I make out of there, I see a red fox running across the road ahead of the car. I had never seen one until, I think, I must have been maybe 20 years old.

The thrust of Charlie Cole's testimony was that he felt two things had occurred—I mean, talking with him personally. One, the number of stock water reservoirs that have been established throughout the State of Wyoming made it possible for a far wider dispersal of game, antelope, deer, to mention two species.

Antelope and deer, I suspect, specifically, were able to be in parts of the State that, prior to the establishment of these reservoirs, had not made it so easy for them.

Secondly, he felt and he came down hard on this point; that he thought there could be no challenge in his statement that the predator

control program had, indeed, made possible the proliferation of wildlife which he feels now is at an all-time high.

Now, he was not trying to make a comparison between the buffalo in Wyoming in prerailroad days and the way they are now, there is no question about that part of it; but it was with respect to the other wildlife we have in the State, he felt that certainly they, too, had been beneficiaries of predator control programs.

Then he spoke also about the upland birds. I mentioned that because I like what you said underscoring your belief that the Fish and Wildlife Service must be a professional organization and that in its inquiry for truth, scientific truth, always ought to overshadow. These are not his precise words, but I get the thrust of your convictions to mean that scientific truth must always overshadow and dominate any personal beliefs or biases.

I am encouraged to think this is a very professional approach and one with which I subscribe wholeheartedly. I just would conclude, Mr. Chairman, by saying as we look, and I think we need to take a better look, at the problem of predator control than we have. I am certain that some of the newspaper comment that has occurred in recent years has tended to inflame a lot of people with some bias that needs to be reexamined.

I saw an ad in the New York Times saying, "This is the most dangerous animal in America." It wasn't a cougar or a mountain lion or a wolverine, it was a sheep. The thrust was that the sheepmen of the west would destroy many endangered species of wildlife in their enthusiasm or in their concern to protect their own flocks.

I have said what I have about Charlie Cole because I thought he did quite a bit to help bring into truer perspective what the facts are than what many people believe the facts are to be.

Thank you, my colleague, for yielding and you, Mr. Chairman, for the opportunity to make those observations.

Senator METCALF. I just want to say we have as many antelope and as many of these other species in Montana as they have down in Wyoming.

Senator McCCLURE. Mr. Chairman, there are so many subjects I would like to cover that I am sure time will not permit me and I will not burden the committee with all of them. I might go back on the question of predator control, although I am very much concerned with it, but I suspect that the questions that are submitted by the Senator from Wyoming will be at least as inclusive as any that I might ask.

Senator HANSEN. May I say, if you would yield, Senator McClure, that I would like your collaboration because what I am going to be doing, among other things, is to transmit to Mr. Greenwalt questions that have been raised by my sheepmen and my cattlemen and by the Department of Agriculture in Wyoming. Very likely we could get together on the letter.

Senator METCALF. I would hope you would work with our staff so that we would have a complete series of questions that would cover the whole diverse matter of predator control.

Senator McCCLURE. I will do so, of course, and I welcome the opportunity. I won't burden the hearing any further with that this morning, except to observe, as I cannot fail to observe, as you were speaking of antelope, that at least one antelope that appeared in Idaho has

been almost completely destroyed by coyotes. 11 of 13 young were killed within the first weeks of their life by coyotes. So, predator control does not just affect the cattlemen and the sheepmen it also affects those who enjoy the wildlife resources with which you and your Service are most directly involved.

The Izaak Walton League has adopted some resolutions, one of which is that the Western States water laws should be revised to grant future water rights only on a fee basis so as to fully recognize social values of instream flows.

Is it your feeling that the decisions with respect to the water uses should be made by the Federal Government or by State law?

Mr. GREENWALT. I feel that the State courts should determine water rights within their boundaries. I should also say that it is my conviction that water laws of this kind should be reviewed periodically, particularly in terms of changing social emphasis, and the recognition of values not always recognized as the water laws were developed originally.

I feel very strongly that this ought to be done by the States and not by the Federal Government.

Senator McCURE. This would be consistent with your earlier statement that you would supply the basic facts that can be used in the arguments, but the arguments, then, would be resolved pursuant to State law.

Mr. GREENWALT. Precisely, in the forum of the State courts.

Senator McCURE. Those of us who were born and reared in the West have a view of our public lands that isn't always shared by the people in the Eastern United States. I think, perhaps it's a lack of basic attitudes, understanding of basic attitudes on both sides that leads us to some of our impasses.

What is your view in regard to free and unrestricted access to public lands for hunting, fishing, and recreation?

Mr. GREENWALT. Public lands, which are basically open to public fishing, hunting, and recreation must be made available to the public. Access must be provided. The utilization of lands in the West has for a long, long time been accepted pretty much because of the nature and size and location of these lands. Public lands belong to the public, and in my judgment should be made available to the public for those uses fundamentally authorized on those lands.

Senator McCURE. I want to get into about four areas of specific questions, one of which will deal with a kind of a general policy statement as it relates to a specific question.

We have just concluded a bitter national debate about the use of DDT to control tussock moths. After a most agonizing review by all Federal and State agencies, as well as private groups that were involved on both sides of that controversy, a limited use of DDT to meet that infestation was granted. I know that the Fish and Wildlife Service was involved in that evaluation, and I know that similarly, you will be called upon to give the final data for Federal agencies in similar controversies in the future.

What is your feeling about the conflicting decisions that must be made on the use of DDT in such an infestation of tussock moths?

Mr. GREENWALT. I think perhaps the answer to that is best characterized by my basic philosophy as regards these kinds of conflicts, generally, DDT being one example. As I have indicated in my statement,

I believe that society must and will continue to demand actions that are perhaps fundamentally in conflict with fish and wildlife enhancement. The role of the Fish and Wildlife Service is and should be to make available to the decisionmakers an expression of the probable biological consequences of a series of actions that any decisionmaker might take. The object being to display to the decisionmakers the whole range of costs in terms of environmental consequences of any of the decisions he might make.

I must say that the particular concern I would have is that the decisionmaker have the best information available. He must be able to comprehend both the short-term and the long-term consequences of a decision based on biological facts. DDT for dam building or stream channelization may very well be in the national interest but in so authorizing, the activity should be undertaken in such a way as to have a minimum impact on the natural environment which is also of national interest.

So, my own philosophy is that one certainly, in my position, should never take the stand that things should not be done, but that things should be done where it is necessary, recognizing the probable impacts of those actions on the natural environment. This, quite simply stated, is a sort of pragmatic, middle-of-the-road philosophy, recognizing the real world view. The responsibility of the Fish and Wildlife Service is that of expressing, in as clear and precise terms as possible, the probable consequences of any of these actions for the decisionmaker.

Senator McCURE. In your statement you identify the specific approach to accomplish the goals in a six-step process. I would take your answer to mean that you don't in any of those steps, say, "No, you shall not do this because of that but you should consider that if you do this, that will be the result."

Mr. GREENWALT. That's correct, sir.

Senator McCURE. What, in a general sense, how does that relate to this scientists' use of report language that says "This might" "This could" "It possibly might do" as we have seen in many so-called scientific reports.

Mr. GREENWALT. Well, the qualified scientific report—qualified in the sense that there are a great many ifs and maybes, qualifiers of that kind, is born of uncertainty about the real facts.

It is the intention of the Fish and Wildlife Service to sweep away as many of these uncertainties as possible. For example, by fundamental research, so that the scientist who makes his observations available to the decisionmaker does so as specifically as possible. Those qualifiers that may have to be employed because biological science is imprecise will then be a reflection of an honest lack of information.

Senator McCURE. Well, let me give an example of the kind of thing that disturbs me. We have, in Idaho, what is known as the Idaho Batholith which is an area of granitic extrusion in the earth's surface that is characterized by very unstable soils. One of the areas within that area was the south fork of the Salmon River. At about the same time that some timber operation occurred there was also a very unusual climatic condition that led to a great deal of abnormal runoff.

There were those who said that the siltation which occurred in the stream was A, totally a fault of the timber operation and B, that the fishery resource had been destroyed for all time and C, that if

the Forest Service had \$12 million to go in and repair the damage, the fishery resource could be rescued.

The scientific evidence that backed that up would indicate that the worst damage occurred in the areas where no timber operations had occurred. But the stream has since flushed itself out and in spite of the \$12 million that was given to the Forest Service, they were unable to spend very much of it because the stream had corrected itself before they could spend the money.

Now, that decisionmaking process was based upon so-called scientific evidence and it is that kind of "may" "might" "could" "possibly" that runs through so much of our biological reporting process that disturbs me because I think that it all stemmed from a very good motivation to prevent siltation in the stream.

It was all predicated on a concern for the fishery resource in that stream and it was about 90 percent false. That kind of basic information, if it continues, does not aid us in making the very difficult choices that have to be made.

I assume that is what you are directing yourself to?

Mr. GREENWALT. I agree, and that was what I was directing myself to. There are those areas of scientific knowledge that are false because of what we don't know, and this is a perfectly legitimate kind of thing, that is to say, one cannot know what one does not know. One should not, however, rest on that, but should strive to find out what the answers are to those questions that he does not have answers to initially.

Now, more importantly, the thing that I am specifically concerned about, and about which I have expressed myself many times is that inaccuracies or manipulation of data is unprofessional, and are in a word, intolerable, as far as I am concerned. Not to know a thing is one matter; to know something and to distort it is quite another matter.

Senator McCURE. I appreciate that statement, and again I wish you luck in disseminating that information to all of your people and the implementation of that policy.

Mr. GREENWALT. I should tell you in all candor, because I intend to be candid with all of you at all times, I have the strong conviction, I have no illusions about making it work in, say, a week from Wednesday. But I have such a commitment that I intend to reiterate and repeat and reinforce this idea to the point where we will at least be doing our job in the context of what it is the Director really feels about these matters. Therein, of course, lies our greatest opportunity for success.

Senator McCURE. Mr. Chairman, just a few more, one rather briefly and one rather fully.

First of all, Wild Horse and Burros Act. There are those who indicated and Congress has indicated its desire to maintain some remnants of wild horses and burros, perhaps feral horses is a better determination of the term "wild horse." They have indicated that some people who have lesser understanding of the problem have indicated that we should do nothing at all, ever, to interfere with the wild majesty of the stallion running on the range with his harem of mares without recognizing that that must be managed, somehow.

I have suggested that there is only one way that you—or two or three options, that you have. One is to do nothing and allow them to overpopulate the range and spread out in destruction of other re-

sources, both within that range and as they spread onto other ranges or the second, to do what we do in other wildlife management, which is control that by hunting pressures which, I think, is totally unacceptable in the wild horse and burro situation.

The third is a periodic roundup and sale of the excess animals in a given management unit. But there are those who don't want that kind of an interference with what they call a "natural condition." What would be your attitude?

Mr. GREENWALT. I can speak to that issue in terms of the general function of wildlife populations. First of all, without control any animal population will soon effect its own control through starvation or the admission of disease. While this is a perfectly natural phenomenon it cannot be counted upon to happen before damages accrue to other elements of the resource. There is fundamentally no difference between the management of a herd of feral horses or burros and the management, say, of an antelope herd.

In the real world situation where man and his wild fellow creatures must coexist, the opportunity to do it on nature's terms alone was abrogated a great many years ago simply because man is here and his works are here and he will prevail in these matters.

It follows, then, that some control, some management of these kinds of herds, just as for antelope or deer or wild turkeys, is imperative. The "how" it is done, of course, is another kind of decision, but the fact that animal numbers in these circumstances must be controlled is incontrovertible.

Senator McCURE. Related to the earlier question about access to the public lands for hunting, fishing, and recreation, is an ancillary question of what is the appropriate State-Federal relationships so far as the use of those lands is concerned?

While there may be a debate about the basic law—the basic power of the Federal Government versus the State government in this field—I think we have reached an accommodation that has been practiced by the Federal managers of the Federal lands and the State managers, the Fish and Game people, that the habitat upon those public lands is the responsibility and the prerogative of the Federal Government, but that the resident fish and game species, the nonmigratory fish and game species, are the prerogative of the State for the management and control. Is that a view which you hold?

Mr. GREENWALT. That's correct, with the exceptions maintained in the Endangered Species Act and other areas where a national increase has been established or an international commitment made.

Senator McCURE. I mentioned that because there is now pending legislation which has been passed by the House and the Senate in differing forms which was modified on the floor with an amendment of mine, have gone to conference and the House has now agreed to the conferees' result, but the report has not yet been filed in the Senate. That is a bill which would establish a management program on public lands to be financed by a special hunting and fishing stamp, an issue which has, in my judgment, raised some very serious questions about that Federal-State relationship. I know that in May of this year you appeared and testified in opposition to that legislation. I had submitted some proposed language to the conferees which I would hope would meet the objections that you voiced and that the Federal

agencies voiced, and meet the objections voiced by the State managers of fish and game and still accomplish the objective of enhancing the habitat management on the public lands.

Have you had any occasion to change your position since your testimony of May 11?

Mr. GREENWALT. No, I have not examined carefully the proposed amendments or the language that would amend the bill in question. I personally would be opposed to legislation that imposes a Federal license for anything that is the responsibility of the State.

I might also say that I agree completely with the idea that the management, in the sense of regulatory control, and the decisions related thereto, should remain with the States and that the management of the habitat, the land-based resource, must be and should be the prerogative of the Federal land management agency.

Senator McCURE. At the same time, and in the same hearing, appearing with you, is Mr. Wheeler, who, in response to a question by Senator Stevens, commented in this fashion on that pending legislation. He said,

You are moving toward the concept that Federal lands for hunting and fishing purposes are separate and apart from the lands in the rest of the State. The States have felt very strongly that this ought not to be the case.

The resident species, wherever they occur, are solely the prerogative of the State fish and game agencies with the exception of such things as the Endangered Species Act or the special program on wild horses and burros.

Do you agree with that statement that was made by Mr. Wheeler?

Mr. GREENWALT. Yes, sir.

Senator McCURE. I will undoubtedly be soliciting your assistance in trying to get the conferees to moderate the position that they have taken, which I think is a serious encroachment upon the State's prerogatives. It raises some very serious issues of trust and understanding between the Federal Government and the State governments, which ought not to be raised and can be resolved short of that, still recognizing that we have not done enough to manage the habitat on the public lands.

Mr. GREENWALT. I agree, sir.

Senator McCURE. One final subject and this is a little less agreeable than the others so far as the Federal Government's position is concerned. That is the lead shot issue. It seems to me that what has been done here flies in the face of everything you have said up until now. It seems to me that it is not based upon scientific fact. It is a subjective picking and choosing of those facts which will support a decision which had already been entered into. It has not been a broad evaluation of the conflicting evidence.

Let me, if I may, just read for a moment this draft statement is just a draft, but from the very inception, the current involvement in the entire issue by the Federal Government there has been a singular attitude marked by arrogance and a willingness to bend science for emotionalism. If you want me to cite it chapter and verse, I am prepared to do that.

I will show, for example, that in early February of this year, Mr. Secretary, you were quoted in the New York press luncheon as saying, "The choice had been made. Hunters will either have ducks or steel shot."

Mr. REED. And I would hope, Senator, that you realize that the accuracy of that statement cannot be attested to. With 14 people there, only 1 person could quote that remark and I bitterly resented it at the time because I have letters from all others at that meeting who denied that I ever said it. I would be delighted to share my file with you.

Senator McCURE. I would appreciate that.

Mr. REED. I also informed the writer of the NRA who published the statement, that it was totally inventive, and furnished for the NRA the 14 letters from the other sources that were there, none of which could remember any such statement from me.

Senator METCALF. Now, just a moment.

Senator McCURE, would you yield to me for a moment?

Senator McCURE. Sure.

Senator METCALF. I welcome this opportunity to have the Secretary clear up the record. I would be delighted if he would share his correspondence. I think that it would be unduly lengthy if we put all those letters in, but I wonder if you would give us a list of people who were there and the people who wrote, so that we can incorporate it, if the Secretary doesn't mind, we will incorporate the names of those people who wrote to back up the Secretary's statement.

[The list of names referred to follows:]

Mr. Gene Hill,
Executive Editor,
Sports Afield,
250 W. 55th Street,
New York, New York 10019.
Mr. Jack Sampson,
Field and Stream,
383 Madison Avenue,
New York, New York 10017.
Mr. Bill Vogt,
Conservation Editor,
Outdoor Life,
380 Madison Avenue,
New York, New York 10017.
Bob Boyle,
Senior Editor,
Sports Illustrated,
Rockefeller Center,
New York, New York 10020.
Mr. Barret,
Outdoor Editor,
True

1515 Broadway,
New York, New York 10036.
Les Line, Editor,
Jim Rodd, Asst. to General Stahr,
Audubon,
950 Third Avenue,
New York, New York 10022.
Nelson Bryant,
Outdoor Editor,
New York Times,
229 West 43rd Street,
New York, New York 10035.
Mr. Dave Knickerbocker,
Newsday,
550 Stewart Avenue,
Garden City, Long Island, New York
11530.
Neil Cunningham,
Producer,
American Sportsman,
60 W. 55th Street,
New York, New York 10022.

Senator McCURE. I appreciate the opportunity to get that corrected for the record. In a press release or rather, something called a "Future Material Release," issued in January of this year, the original announcement was made that it intended to apply a total and nationwide ban on the use of lead shot for waterfowl hunting for the 1974-75 season. It was repeated and a claim made that the real issue, that waterfowl were being poisoned through ingestion of lead pellets in their diet was, in the words of the press agent, and I quote,

* * * being obscured by arguments over the most efficient way to kill waterfowl . . . the theoretical crippling of ducks and geese damaged by shotgun barrels . . . and claims that no problems exist * * *

This errant press agency, the writer sums up all the valid questions that sportsmen, ballistic experts, and manufacturers, and a majority of

State fish and game biologists raise over such a massive action as a nation-wide mandated replacement of lead shot. He simply likens the legitimate arguments to, and I again quote,

* * * the situation where the house is burning and the firemen are debating the relative merits of incendiary grenades over flame-throwers.

I ask you again, is that an honest scientific approach to the problem? That month before that release was issued the Department of the Interior was involved in a media campaign to get across the idea that nobody had any choice; that steel shot was coming, like it or lump it. In a series of interviews in Outdoor Magazine, you, Mr. Secretary, made that point clear. Field and Stream's shooting editor Bob Brister, in October 1973, wrote, and I quote, "Steel shot is no longer an argument. It is a fact. It is here. It is going to be required by law, no matter who has been right or wrong in the previous controversy concerning it."

I have direct quotes in this story from the Assistant of the Interior, Nat Reed, stating that "Steel shot will be required on the Atlantic Fly-Away next fall and the following year it will be the law of the land."

Is that an honest scientific approach or, perhaps, is he in error in that attribution?

Mr. REED. Are you asking me, Senator McClure?

Senator McCLURE. Yes.

Mr. REED. The proposal is not for 1975, but on the Atlantic in 1976. There is another major inaccuracy in the story that I have made up my mind. I have not. The draft statement is exactly following the principles of the National Environmental Policy Act which dictates we are to put a proposal forward showing all alternatives.

We have done so. We have received broad-scale compliments from across the country on the in-depth study of the serious problems of lead ingestion and poisoning. We have received thousands of comments. Winchester, alone—a long summary of questions was dropped on my desk yesterday that they want answered before a final step is taken. This may help assure all sides of this issue that nothing precipitous will take place. The draft was to educate hundreds of thousands of hunters as to the very real problem which lead poisoning is and has been in this country for a number of years. It's nothing new.

The Illinois die-off in 1949 spurred at that time a major research effort by Winchester and we have been studying it ever since then. The Fish and Wildlife Service does have a responsibility of putting the facts forward. That is partly the purpose of the draft.

Senator McCLURE. Well, I could go on with other examples. I can ask, for instance, why pamphlets were printed at Government expense and distributed to hunters by the Bureau saying that there was really no choice, no argument. I can ask if that represents an honest, scientific approach, that this attitude which has surfaced as the official stand for be all and end all of the Bureau's policy has prevailed for nearly a year and a half and absolutely carries through in the Environmental impact statement.

The draft in that statement begins by asserting that what the Bureau claims to be the need for its ban by saying "It is believed * * *" that

lead shot causes a sufficient problem to warrant such a nationwide action.

However, it fails to offer sufficient scientific evidence to justify the drastic Federal action proposed. It says only "It is believed * * *." The simple fact is, the Bureau has not proved its case. This Impact statement cannot say "It is known." Instead, the draft statement is rife with words and phrases such as "appears," "estimate," "one interpretation," "inferred," "if we are correct in assuming," and so on.

But, worst of all, if the Bureau is indeed incorrect in assuming, if their interpretations are wrong, if their inferences are wrong, if what they believe is out of line with fact and science, then this proposed decision will have decided nothing, and quite possibly will have done irreparable damage to waterfowl hunting, and worst of all, to the reputation of the Federal agency, itself.

Mr. REED. I think there is another side to that, however, Senator. If the Fish and Wildlife Service did not, following 24 years of scientific experimentation into leadshot poisoning, come forward with a proposal, they would be more than derelict in their responsibility. Certainly the interpretation of the EIS is open to anybody's judgment. We have received hundreds of letters already. It's interesting to note that a great many States have already answered that they felt the report was comprehensive, concise, and that they support the recommendations. This is not going to be an easy decision because of the fact this is a very complicated subject and we are looking forward to a great deal of work that is going on now by Mr. Belrose and others, and having the results of that work and others on the subject before making any final commitment.

Senator McCLURE. Without attempting, at this time, to debate all of the issues that are involved in the lead shot controversy, let me simply state that it appears to me that the Federal Government made up its mind some time ago what it wished to accomplish and it has marshalled these facts which support its position and it has suppressed those facts which do not.

Now, I am certain that I am not alone in this opinion. Some time ago I wrote all the State Fish and Game Commissions concerning the issue and was told by 33 Directors that their States either had no lead shot problem or, if such a problem existed, the States were equipped to handle it. I was told that, contrary to the Federal Government's one and only solution to what is a serious problem in some areas of the country, there is a wide offering to alleviate lead poisoning ranging from marsh drainage, marsh bottom plowing, moving firing lines, limiting hunting in specifically recognized problem areas. In the impact statement, not one of these alternatives is offered.

The alternatives put forth in the impact statement include a ban on hunting which the Federal Government claims would "have a beneficial social impact on that segment of the population opposed to hunting."

Is that a scientific or honest alternative?

Mr. REED. Senator, under the National Environmental Policy Act, we are directed to look at every alternative, no matter how screwy some of them seem to be. That is one alternative that has to be examined in any complete environmental impact statement.

Senator McCCLURE. And that is a benefit which the Government is willing to recognize as a "benefit"?

Mr. REED. As an alternative.

Senator McCCLURE. Let me end this at this time by reading some comments from Ray Arnett, California's Director of Fish and Game, comments which the Bureau will hear repeated by most of those who have an opportunity to review this proposed impact study and decision. I quote:

The Environmental Impact Statement alleges that a full and comprehensive study of the problem of lead poisoning is in migratory waterfowl has been made. Actually, research accomplished was minimal. The literature on the problem has not been adequately researched. As a result, to further the proposition that lead shot should be banned, the authors have taken a host of isolated facts and data which would be suitable for a preliminary overview of the subject and by a masterpiece of biased writing formulated a recommendation to ban lead shot.

These are not my words. These are the words of a man who is recognized as being a capable, competent, professional in the field who is offended by the action which has been taken. To further buttress just one additional fact: My colleague in the House, Congressman Orville Hansen, at one point requested some information concerning the results of the Canadian study of this problem. He was advised that officials in the Department had advised him that they have been unable to obtain information on the Canadian substitute shot program that might lead to a policy decision on other lead substitutes. That letter I quoted from is dated March 12, 1974.

He requested information from the Canadian wildlife service to verify whether or not that was, indeed, a fact as was represented by our government. This is the response he got in a letter dated March 27, 1974 and I quote:

I cannot accept statements that officials of the Bureau have made, not only to you, but also to other people that they have been unable to obtain information on the Canadian substitute shot program. They have been kept fully informed and have been well briefed on all aspects of our program.

Now, I go into that only in connection with this particular hearing because we have heard Mr. Greenwalt say, and I believe he means it, that these problems ought to be decided on the basis of a full exposition of scientific facts and that the Government's obligation in the instance is to lay all of the facts on the table, not a subjective selection of a few of the facts that support their subjective decisions.

I would hope that somewhere along the line, instead of going forward with this ban program, that we might at least informally, if not formally, adopt the substance of the bill that I have been trying to get passed, which mandates a full hearing before this committee, prior to the imposition of the ban.

Now, I don't think it should require legislation to get a hearing because if, indeed, the scientific facts are all on the side of the ban, we have nothing to fear from the hearings.

Mr. REED. We are going to hold public hearings across the country on the EIS. Senator, nothing would give me more pleasure than to bring it before this committee for overview.

Senator McCCLURE. I would like to have the opportunity to talk about some of those basic facts that go into the overview before this statement is completed. As a matter of fact, we have, right now, not

a nationwide ban, but a selective ban which is supported by a few, opposed by most, in this country.

In addition to that, even in areas where there is, admittedly, no problem, an experimental program to determine whether or not the facts are good or bad or whether the hunters will accept them, or whether the ducks like steel shot better than lead shot, or whatever reason there might be, one of those is in my statement. The hunters don't like it very well and, as a matter of fact, when they scream, I respond, and they are screaming.

I would hope that before we go ahead, as indeed we are going ahead, we can determine the facts instead of going ahead while we are trying to determine the facts. As you have said, this problem has been around a long time. One more year is not going to make that much difference in the implementation of the program. I hope you will give that some consideration.

Senator METCALF. Senator McClure, I would like to get this thing back on track. We are not trying to confirm Mr. Secretary Reed, we did that some years ago, we are trying to confirm Mr. Greenwalt.

Others of the committee have questions and we have a limited amount of time this morning. I hope that we will give Mr. Reed and Mr. Greenwalt an opportunity to respond for the record and you will have an opportunity to examine their response.

I haven't asked any questions yet and I have a whole list of them.

Senator McCLURE. Mr. Chairman, your timing is perfect. I just completed.

Senator METCALF. I thought you had completed it and I hope that we will get back and interrogate Mr. Greenwalt, rather than try to expose fact or some other thing, reverse the confirmation of Mr. Secretary Reed.

Senator McCLURE. I am not trying to unconfirm my good friend, the Secretary. I am trying to undo one of the actions which he has taken, which I think is precipitous and wrong.

Senator ABOUREZK. Mr. Chairman.

Senator METCALF. Mr. Abourezk.

Senator ABOUREZK. I have just one question I would like to ask Mr. Reed. In regards to this meeting on Monday, in regard to the fishing controversy. I would like to assign staff to attend that meeting.

Mr. REED. It would be a pleasure to have them at that meeting.

Senator ABOUREZK. I would like to designate Sherwin Broadhead.

Mr. REED. It's in Portland. We will call the specifics in to your office, sir. Your representative will be most welcome.

Senator ABOUREZK. Thank you very much.

Senator METCALF. Maybe some other staff member around or maybe some of the committee would like to attend the meeting. If so, we will let you know.

Mr. REED. Thank you, Senator.

Senator METCALF. Senator Hansen.

Senator HANSEN. Senator Fannin, who was here earlier, and had to leave, had several questions which he wanted me to ask because others have asked them. I think only one is necessary.

Mr. Greenwalt, what should be the criteria in transferring of lands from the BLM to Fish and Wildlife Service supervision in your opinion?

Mr. GREENWALT. Fundamentally, the one basic criterion should be, in my judgment, the purpose for which the area was established. That is to say, whether it was established for the preservation and enhancement of wildlife or the management of cattle or other resources.

Now, I am sure Senator Fannin is referring to one of the four big game ranges which were originally established in order to protect and enhance wildlife populations for which this habitat was most suitable. In my considered judgment, the fundamental criterion is, what is the purpose, what is the fundamental purpose for use of that piece of land?

Senator HANSEN. Thank you very much.

I have no other questions.

Senator METCALF. Thank you very much.

I have some questions and I have an additional comment by Senator Hollings which would be appropriate at this time. He says that—

There should be a clear understanding that the Department of Interior and the Department of Commerce work closely in the future in spite of any jurisdictional questions up here on the Hill. I certainly concur in that, that we do have some conflict of jurisdiction that we will resolve in our committee, but we expect you and Mr. Greenwalt and others to come and respond to the Department of Commerce, or the Department of Interior or the State Department, if necessary, to help us in consideration of our legislation.

All of which brings up the usual question we have been admonished to ask any person being confirmed and that is to ask you if you are willing and you are ready and you will come up and appear before the appropriate committees of the Senate and the House of Representatives and respond to the questions that are promulgated to you?

Mr. GREENWALT. Definitely.

Senator METCALF. We had to ask that because there have been members who claim "Executive Privilege" and say that they won't answer questions. I am sure you will but that is a matter for the record.

Mr. Greenwalt, we have had, since you were nominated, some expressions of concern, especially from the State of Montana about your completed policy on grizzly bear. I believe that, except for Alaska, the State of Montana has a bigger grizzly bear population than any other State. We have some in Idaho, as a result of our grizzly bear population in the Yellowstone National Park, and some in Wyoming.

But in the Marshall Wilderness and in Glacier Park and in our expanding wilderness in the Scapegoat-Lincoln area we have a large number of grizzly bears. In Montana, the Fish and Game Commission is very critical of the recent report, and that it is premature in classifying grizzly bears as an endangered species. Would you comment on that for us?

Mr. GREENWALT. Certainly.

First of all, our basic report and a proposed position statement derived from that report, is based on our assessment of the evidence that yields the determination that we think that the grizzly bear ought to be designated as threatened in the three ecosystems of the lower 48 States, excluding Alaska.

During my attendance at the International Association of Game, Fish and Conservation Commissioners meeting in Hawaii just past I had an opportunity to speak at great length with Wes Woodgerd and

others from the Department in Montana, as well as representatives of Wyoming and the other States. There is, clearly, a difference of opinion as to how the grizzly bear should be categorized under the provisions of the Endangered Species Act. There is also an element of misunderstanding about what designation as threatened really means. The determination as to what it takes to be threatened is, in a way, a subjective value judgment. There is no clear guideline in the act that indicates just where the threatened category begins and another one leaves off.

However, the act very wisely indicates that if a species is designated as "threatened" any of the activities prohibited for species listed as endangered can be allowed. The species can be harvested or otherwise managed; whereas a species designated as "endangered" can be taken only with the provision of a permit from the Secretary and then in only very limited circumstances.

Our proposal recognized that the grizzly bear enjoys a different state of grace in each of the three ecosystems in question. We had proposed some regulations that would recognize the differences in the status of grizzly bear and it was with the intent of determining what the states' feeling were, among other reasons, I went to Hawaii to meet with state representatives. We had a number of discussions on the subject and I agreed to bring back to Mr. Reed and others in the Department the expression of the States' concern.

Based on this, then, we would attempt to reach some kind of management decision that would work in the best interests of the grizzly bear, which is basically what is at issue. What can we do that is basically in the best interests of the grizzly bear? In my judgment, that is what we all must strive for, and my good friends in the States agree with this.

We are not in complete agreement at this juncture as to just how to get there. I think the important thing to note is that no hard and fast decision has been reached. We are still interested in the opinion that those in the States have, and they have promised to make those reactions to me in writing. I have not as yet received them.

Senator METCALF. Now, in Idaho there is no open season on hunting of grizzly bear. In Montana, there is not. I am told the Montana Fish and Game Commission will close the system.

Mr. REED. In the Yellowstone Ecosystem, sir, they have issued a great many permits for this coming season.

Senator METCALF. I was on the phone talking to Mr. Woodgerd after your meeting in Hawaii, and he said the application for permits had gone out early in the spring. It's impossible to recall them.

Mr. GREENWALT. In any event, the process would not have interposed—

Senator METCALF. Making it an endangered species doesn't recall—

Mr. GREENWALT. Regardless of classification, such a decision could not have gone into effect before the forthcoming season.

Senator METCALF. May we meet with you again and have Mr. Woodgerd or somebody representative of the Montana Fish and Game Commission before you have a final decision on major policy?

Mr. GREENWALT. It's our intention to make sure that we all are in accord with how we should go about preserving the grizzly bear.

Senator METCALF. We are all getting a lot of mail, Mr. Greenwalt, from pet fanciers and people employed by the pet industry, about your proposed regulations on importation of these. I have a series of questions prepared. I do share the concern of many of these people that the regulations are going to be so strict.

Mr. GREENWALT. If I may, Mr. Chairman, I think I can pretty well anticipate the kinds of questions that are there. If I can encapsulate what it is all about for just a few moments, I think I can resolve many of these questions.

First of all, the object of the injurious species regulations under the Lacey Act, is to minimize the possibility of the introduction of a species of wildlife that would have a deleterious effect on human health, the environment, agriculture and other similar interests, in the United States. The things we have not done well in the past are well known to all of you such as starlings and English sparrows.

Senator METCALF. But the tropical fish people, for example. You are not going to release a whole lot of tropical fish. They are just going to have them in their own aquariums.

Mr. GREENWALT. Here is the point I was about to make with that objective in mind. It is our intention to formulate final regulations which recognize that there are creatures that represent a high risk of damage to the environment, and creatures that represent a low risk. We are now contemplating the addition of a middle ground, one of uncertain risk. But in any event, the Service has been working very closely with representatives of the pet industry, with representatives of the zoo associations, representatives of medical research organizations, as well as private and public interests, to help develop a set of regulations that have a minimum requirement in terms of permits, and have a minimum impact upon the pet industry, particularly with respect to tropical fish.

I was told this morning by one of my staff people that the regulations, as they are now emerging, working with the pet industry, will allow the industry to retain about 97 percent of the importation in tropical fish that has been enjoyed prior to the proposed institution of regulations.

Senator METCALF. Now, who will be responsible in your new position, Mr. Greenwalt, for formulating and promulgating these regulations? Will it be your responsibility?

Mr. GREENWALT. It will be my responsibility to approve the regulations.

Senator METCALF. Well, can we have your assurance that you will carefully seek the advice and have an input—and from these people who are concerned that maybe their whole business will be wiped out by that 3 percent that you are talking about.

Mr. GREENWALT. I understand this fully. You have my commitment. As a matter of fact, we have just completed a series of public hearings. We have, I am told, over 7,500 comments on the draft environmental impact statement. I certainly will not make any determinations without satisfying myself that the interests of all the parties involved have been properly attended to.

Senator METCALF. I have been asked to talk to you about falconry. You may be amazed, when we have been working together to preserve the duck habitat, that I feel that we should do something about the

peregrine and falcon and duck hawk, which is a magnificent bird, and, in my opinion, does very little damage to the duck population and should be preserved.

Are we going to have regulations that would prevent private breeding programs of falcons?

Mr. GREENWALT. No, sir.

Senator METCALF. So that people who are interested and concerned about this traditional and historic sport will be allowed to continue?

Mr. GREENWALT. Sir, the only probable restrictions would be in connection with the traffic in the endangered species and related matters. The objective of these regulations, is to bring some order and control into a situation which has been, in the past, replete with illegal traffic in birds and a lack of control over their utilization.

Senator METCALF. How are we doing in our attempts to protect the whales?

Mr. GREENWALT. I must say, in all candor, that it is my great pleasure to report that the whales are in the jurisdiction of the National Marine Fisheries, sir. [Laughter.]

Mr. GREENWALT. It's the kind of recognition of jurisdiction I am only too happy to make to this committee and to my good friend the Director of that Agency, because he has a real problem there. Unhappily, I think whales are not doing extremely well.

Mr. REED. There were major concessions made by the Soviets at the end of the last International Whaling Conference. We have not heard whether they are going to live up to the proposal made at the conference. The treaty is so weighted that one or two countries do not have to follow the agreed-upon position of the others, so we are still waiting to find out whether the Soviets and Japanese will obey the regulations of the others.

Senator METCALF. Well, Senator Hansen suggested we recall Jonah, who not only was able to live inside the whale, but he guided him around.

Senator HANSEN. He did have an inside look.

Senator METCALF. He did have that input, didn't he? [Laughter.]

Senator METCALF. Mr. Greenwalt and Secretary Reed, as you know, I have been working with you on the National Waterfowl and Wildlife Ranges. I am concerned, as many of us are on this committee, with the controversies that have arisen. Who shall handle some of the public lands, especially the ones that I am especially concerned about is the Charles Russell Wildlife Range in Missouri and Montana, but there are others in Arizona and the Shelton Desert in Nevada, and so forth. Again, this is a jurisdictional question, but I would like to have some assurance, because I have a bill in on the Russell National Wildlife Range that crosses the jurisdiction of several of your Federal agencies and I hope you, in the Fish and Wildlife Service, will work for at least administration of your special interests in such areas as Missouri River Ranges and the Charlie Russell Wildlife Range and others that are concerned.

I don't know—I suppose we should get Secretary Morton up here and have the Senator from Idaho examine him on these questions but we have you here and you are going to be responsible for the Fish and Wildlife Service there and I hope that you will insist on your jurisdiction and help us in carrying out the program that you have outlined.

Mr. GREENWALT. Let me say that my fundamental concern, obviously, is the welfare of the fish and wildlife values residing on these lands. It is my earnest intent and desire to see to it that whatever may happen in the final outcome, these values and their longevity and their perpetuation is assured.

This is a strong commitment I have. My late father would not forgive me if I had any other commitment. I am sure the Assistant Secretary would not smile on me either, if I had any other commitment.

Senator METCALF. Will you continue to have supervision over the acquisition of wildlife, waterfowl, wetlands, or the refuges?

Mr. GREENWALT. Yes, sir.

Senator METCALF. Well, as you know, many of us have been concerned about the rapidly accelerating costs of those lands. We obtained a loan and some of the money was released and we used that money for funding purchases of migratory wild fowl and so forth. We have to start paying that back in 1977. Do you see any prospect of income from the duck stamp funds being available to start to repay that loan in 1977?

Mr. GREENWALT. Well, as you stated the question, certainly there is some prospect for repaying the loan, because the purchase of the migratory waterfowl stamp will still be mandatory. I think the concern I have and I know you have, is: How are we going to continue to purchase those lands we must have without the availability of enough money to do it soon enough to avoid an incredibly escalating land cost?

I have asked the staff of the Fish and Wildlife Service to develop a plan, with alternatives, as to how best to deal with the problem of the expiration of the loan fund and the need to increase duck stamp sales in order to gain additional revenue for this purpose. During the next few months we will develop some recommendations and perhaps legislative recommendations to remedy the situation in order that we can move ahead to preserve the habitats necessary for this resource.

Just how we are going to do it, I am not prepared to say at this moment, but do it we must. There is no question about that.

Senator METCALF. Some of our members, Mr. Greenwalt, have 12 appointments and so forth. I am going to continue and then I am going to hear from you, but on behalf of the committee, we are pretty well represented here this morning. I want to say that we welcome your family here. We are delighted that they showed up for this hearing. I think that they realize today that perhaps the job that you are stepping into is not completely noncontroversial.

Mr. GREENWALT. I should say that my family and I are very communicative. Since my wife is also, by nature and birth, involved in wildlife matters, her father was also a refuge manager. She understands something of the nature of the controversy and is sympathetic.

Senator METCALF. I hope Mrs. Greenwalt will be persuasive on the side of the Senate. [Laughter.]

Senator HANSEN. Mr. Chairman, if it would be helpful, I have an early appointment that I had to postpone until 12, but I could be back in 20 minutes if my presence here would in any way relieve you.

Senator METCALF. What about Mr. Adams? He is going to talk. Mr. Adams? Is he here?

Senator HANSEN. I have to leave.

Senator METCALF. All right.

I am not calling on you, Mr. Adams, I am going to finish with Mr. Greenwalt, but I think we will run this hearing right on through.

Senator McCLURE. Mr. Chairman, if I may, may I apologize first, for the length of my questioning, but I thought it was perhaps useful to illustrate the kind of controversy we get involved in and certainly I recognize that these are matters of controversy. My visits with Mr. Greenwalt, both personally, and his testimony here, convince me both of his qualifications and of the appropriate attitude in approaching what are very difficult factual questions.

I wish him well. It is certainly my intention to vote for your confirmation.

Mr. GREENWALT. Thank you very much, sir. I appreciate it.

Senator METCALF. Thank you, Senator McClure. I have some other questions. I am going to submit them to you in writing, if I may, Mr. Greenwalt. I have some questions that have been given to me on behalf of Senator Jackson, some questions that have been propounded by the members of the Commerce Committee and inasmuch as we cannot vote on this matter at the present time, I think that we will send them down and we will make the record in writing and then at some future date promptly, I hope, pass on your confirmation.

It's a practice of this committee to pass on the financial matters in executive session. At such time as we can get a quorum together, your report as to the financial matters will be passed around and we will inform you of that time, so that you may appear and answer such questions as will be propounded in that session.

There will be, of course, as I suggested, additional questions from the Commerce Committee from the Interior Committee and special questions from Senator Jackson about some of the matters with which he is especially concerned. Unless there is something else to come before us at this time, I am going to thank Secretary Reed and thank you, Mr. Greenwalt, and again express my appreciation for a long and worthwhile service with you on the Migratory Bird Conservation Commission. I am delighted that a person as knowledgeable and as dedicated to that service as you, and Secretary Reed, are going to be continued to be in charge of that program.

Mr. GREENWALT. Thank you very much, sir.

Senator METCALF. Thank you both.

Mr. REED. Thank you very much, Mr. Chairman.

Senator METCALF. Now, we will hear from Mr. Hank Adams. In spite of the fact that we are running a little late, you can completely make the record and take as much time as you feel is necessary.

Mr. ADAMS. Mr. Chairman, our request to submit testimony was entered, not in my behalf, but in behalf of the Northwest Indian Fisheries Commission and three of the commissioners are here. I am the commissioner coordinator, but the chairman, Mr. Forrest Kinley from the State of Washington, representing the Lummi Council is here. Mr. Guy McMinds of the Quinalt Indian Commission, representing the Quinalt Treaty Council is here and Mr. Charles Peterson of the Makah Indians, representing the Makah Treaty Council as the commissioner on the five-member Northwest Indian Fisheries Commission, is here.

Senator METCALF. I have asked one of our clerks to get the names for the benefit of the reporter and so I will allow the commission members to make their remarks relating to the nomination of Mr. Greenwalt.

Mr. ADAMS. We also have a statement that is prepared. I am not certain that we have enough copies, but I was asked to give it to the staff.

Senator METCALF. Do you want to submit this statement for the record and then you will summarize and then we will hear from the members of the commission? Is that the way you want to present your testimony?

Mr. ADAMS. Yes; then I might make some additional reemarks.

Senator METCALF. The prepared statement of the Northwest Indian Fisheries Commission will be inserted in the record at this point.

[The prepared statement from the Northwest Indian Fisheries Commission follows:]

STATEMENT OF THE NORTHWEST INDIAN FISHERIES COMMISSION BEFORE A JOINT HEARING OF THE SENATE INTERIOR AND COMMERCE COMMITTEES ON THE CONFIRMATION OF LYNN A. GREENWALT'S NOMINATION TO BECOME DIRECTOR OF THE U.S. FISH & WILDLIFE SERVICE

Mr. Chairman and members of the Senate committees, the Northwest Indian Fisheries Commission respectfully requests permission of the Committees and its Chairman to offer for the record a background statement and working paper of the Fisheries Commission, which we have used this week to express some of the concerns and interests of Indian people in the Pacific Northwest. Its content directly concerns the responsibilities and obligations of the Fish & Wildlife Service's Director.

We do not oppose the confirmation of Mr. Greenwalt as Director.

We do question the direction of certain policies which seem to have gained force in the Interior Department regarding the Fish & Wildlife Service and its programs, which, if implemented, threaten the governmental rights and fish resources of our member Tribes with serious injury and harm.

In our judgement, it would be appropriate for the Senate Committees to question Mr. Greenwalt about these matters and his plans as Director before he is confirmed. It is appropriate for the Congress to inquire into the issues we shall spell out here, both because of its constitutional pre-eminence in the field of Indian Affairs; and because the conduct of its oversight responsibilities in evaluating the operations and effectiveness of the executive agencies require it.

The Indian Tribes we represent are parties to treaties with the United States. When the treaties were made and ratified by the Congress in the 1850s, our tribes lived predominantly as fishing societies, possessed of vast fish resources, particularly salmon and steelhead among others. A justified qualification might be stated for the Makah Indians, who were recognized as being among the world's greatest sea hunters and travelers—expert whalers up to the time of the Second World War.

Our fishing rights and resources were retained by our tribes in the treaty contracts. Immediately after their making, however, a growing non-Indian population sought to supplant us, to extinguish our rights, and to convert the various fish resources to the near exclusive benefit and economic gain of non-Indians. They enjoyed substantial success in such efforts.

In the history of the state of Washington, the fishing industries have regularly remained among the foremost of all its income-producing industries.

The same history has been marked by a constant conflict between Indian people and the States of Washington and Oregon, growing from their persistent, perennial endeavors to prohibit fishing by Indian people in the customary grounds, and to stop us from being a fishing people who might share in the benefit of bountiful resources.

In the latter part of the Johnson Administration, the United States undertook its most decisive action to bring about enforcement of the treaty rights and to effect the protections that the Nation guaranteed Indian people under the

treaties. The U.S. sued both Washington and Oregon to aid Columbia River fishing Tribes in securing a 'fair share' of the harvestable fish supplies. Although Washington was dismissed as a party, another suit was brought in September 1970 against it in behalf of the United States and Indian Tribes under the Medicine Creek, Quinault, Point No Point, Makah, and Point Elliott treaties in western Washington state.

The United States and the Tribes won both cases, relying upon perhaps the most voluminous and exhaustive record ever developed in an Indian rights and resources management lawsuit.

The landmark Boldt Decision was issued in February of this year, after more than three years of preparation and trial proceedings. Its result and rulings afforded the Indian community with its best modern opportunity to resume control of our treaty-retained resources—and for casting of an impoverished condition which had progressively worsened under the prior patterns of deprivation and deliberate denial of treaty Indian rights.

In filing the case of *United States v. Washington*, the Nixon Administration had, if not courageously, conscientiously resisted political efforts on behalf of Oregon and Washington to dismiss both federal cases, make an out-of-court settlement between national and state governments, and contrive a political definition of the affected treaty rights in such manner as to substantially preserve the status quo for continuing deprivations. In discussing the strategy and effort, Oregon expressed its determination that more fish be allocated for Indian harvests as a guard against realizing its fear that the court decisions against the states might extend the tribes' management role and responsibilities beyond the Indian reservations' confines. Washington was requested to join that common strategy.

The Boldt Decision did reaffirm that management role, and declared that the treaties had secured an equal share—or half—of all harvestable fish resources for the Indian people in customary fishing waters. U.S. Judge George H. Boldt also ruled that all the tribes possessed potential capacity to fulfill their management functions and to engage in self-regulation of their fish resources and fishery, without State interferences—if certain qualifications and obligations were met by Indian communities.

The central obligations focused upon the availability to the Tribes of biological expertise and technical services for assuming the increased management responsibilities, either under tribal employment or from other sources or agencies. The Bureau of Indian Affairs (BIA) had contracted with the U.S. Fish & Wildlife Service for the development of the F&WS Northwest Fisheries Program to work on the federal case against the States' policies and practices, and to provide technical services to the Tribes. Its development of evidence, analytical information, and testimony had decisive effects in the lawsuit.

As crucial to its outcome, however, was the willingness of the Administration—through both Justice and Interior Departments—to make a post-trial commitment in federal services to the Tribes for meeting any requirements of a favorable decision, even prior to trial. Essentially, this merely required formulation of an inventory of existing management and personnel needs related to the extensive Indian fish resources, while avoiding duplication of service activities.

The federal departments and agencies, together with the Tribes, uniformly agreed that the Northwest Fisheries Program of the U.S.F&WS was the most appropriate service agency to accommodate the tribal needs, if adequate increased staffing was provided for—until such time as the Indian community might be able to develop and support its own professional and technical staffs and management systems.

Immediately after the Boldt Decision was rendered, funding requests were made to the Congress by the Administration to fund tribal programs and the Northwest Fisheries Program in order to activate the post-trial commitment to help implement the decision.

For these purposes, the Office of Management & Budget (OMB) cleared a presidential budget request for \$1.5 million for BIA and tribal programs, and \$690,000 for the increased and needed technical services of the F&WS Northwest Fisheries Program, including assistances to Columbia River Indian Tribes. Independently, the Washington Departments of Game and Fisheries entered comparable requests for federal funds with Members of Congress and Interior officials, who responded with offers of support.

This brings us to our concern with the actions which will be taken by the U.S. Fish & Wildlife Service under the directorship of Mr. Greenwalt.

We have reasons to believe that the Interior Department at the secretarial, and several other, levels have reneged on the promised federal commitments to Indian fish management programs and its own agencies' assistance services. Documents and discussions with Interior officials indicate an attitude that has transformed from positive support into active hostility in the most critical decision-making positions.

The Congress, for its part, did appropriate the \$690,000 requested for technical assistance to the Tribes, and additionally provided more than a million dollars for State hatchery and propagation programs. (Although the requested BIA and tribal funds were effectually cut in half, the Congress also funded for the local level programming of separate Tribes in implementing the Boldt Decision.)

The Secretary of the Interior and the Fish & Wildlife Service, for its part, seems intent upon (1) diverting the \$690,000 away from direct continuing services for Tribes through its Northwest Fisheries Program in favor of (2) granting funds to the State fish and game agencies; (3) subverting the development of independent tribal or inter-tribal fish management and development programs; and (4) preventing the implementation of the Boldt Decision in order that it shall ultimately be overturned or defeated, and the gains or restored rights of Indian people be lost or not preserved for our benefit.

In the past week, Judge Boldt has found it necessary to take extraordinary actions against State courts and administrative agencies to prevent the total defeat of his decision—and to try to assure Indian people even some small fraction of the entitlement to fish which he found to be an Indian right. Last year, Indian fishermen had harvested approximately 3% of the total commercial salmon catch—and under the State and International regulations adopted this year after the Boldt Decision, the Indian catch was being reduced almost a full percentage with an even smaller total catch.

However, if we look to a Memorandum Report sent to Mr. Greenwalt, relating the substance of a meeting between Secretary Morton and Washington State officials in Olympia on June 24, 1974, we find evidence that the Interior Secretary has joined forces with the Indians' opposition—at least in viewpoint and in condemnation of the Boldt Decision.

In the meeting's statements attributed to the Interior Secretary, we are introduced to Mr. Lynn Greenwalt and of Secretary Morton's "great confidence in his ability". The Secretary qualifies his statement to express regret that "his staff has not been able thus far to give him (Mr. Greenwalt) proper direction on where the Department should be going in each of the states."

If the proper direction is set forth in the Secretary's policy statements in the course of the meeting, we find that point by point the Interior Secretary accedes to the positions and objections of the State officials. When the State Game Director objects to the assumption of management functions and responsibilities by the tribes or supporting federal service agencies, and to the construction of any additional federal Indian fish hatcheries, the top Interior official expresses his agreement. The Secretary's questioning of the "fairness" of the Boldt Decision corresponds to the public statements made by the State Fisheries Director, which became the basis for non-compliance with the federal court decision—and which the U.S. Judge regarded as "bordering on contempt" in encouraging defiance of his decisions and orders.

Secretary Morton's positions, as attributed to him in that meeting and as backed up by a follow-up letter to the State Game Director, are doubtlessly in direct opposition to the known Indian positions and plans, and are contrary to the results of the Boldt Decision. Immediately after the June 24 meeting and other secretarial statements, the efforts to divert the \$690,000 to the programming and plans of the State were accelerated. A July 2 Memorandum from Mr. Greenwalt discussing the requested funds, remarks that their agency is dealing with a "hot issue that will be closely watched". By whom is not stated.

The Northwest Indian Fisheries Commission and the member Tribes can only view the proposed misallocation of the appropriated \$690,000 to the primary benefit and program objectives of the State as being as unlawful and unjustified as any of the "impoundment of funds" actions which were challenged and found unlawful in certain actions of the Nixon Administration.

Both the State Fisheries Department and the Game Department did enter requests with the Interior Department for program funds totalling about \$1.2

million. So far as we have been able to determine, neither the Administration (OMB) nor the congressional appropriations committees cleared those funds, while providing other matching funds and hatchery support monies.

The Tribes and this Commission have repeatedly been asked to prepare funding request justifications for both our various needs and for programming efforts we consider necessary to be conducted by Interior agencies, including BIA and F&WS units. In the matter of the State agencies' request, the amounts were accepted and supported as stated—without any requirement for demonstrating need or justification. The fund requests have not undergone any federal agency analysis that we are aware of.

In our meetings and discussions with the Regional Director of the Fish & Wildlife Service, Mr. R. Kahler Martinson, we gained clear impression that final decisions to divert these Boldt Implementation Funds to the State agencies has already been made, with only the final division of amounts to be decided. Mr. Martinson has told us that he anticipates no additional professional staff increases in the Northwest Fisheries Program offices for the required services to the Tribes.

In a proposed South Puget Sound federal Indian hatchery program, which the Fish & Wildlife Service had studied and worked on for almost two years, the information developed from the Indian program and tribal levels were excluded from a final study report issued in July which gave its strongest emphasis to the statements of opposition and objection entered by Washington Fisheries and Game. It was a clear waste of the F&WS work on the project over an extended period—although it demonstrated that the Regional Director has accepted Secretary Morton's remarks at the State meeting as absolute direction and policy.

We have grave concern that the fish resources shall suffer tremendously by the maneuvering and manipulations we now see occurring within Interior Department circles and State bases of political power. We have secured other records showing the statements made in another meeting with the Director of Fisheries for the State, which cause us to question whether a blanket commitment for federal funding without scrutiny is justified.

In an August 30, 1971, meeting with complaining non-Indian fishermen and Governor Daniel J. Evans, Director Thor Tollefson relates that a plan to overfish Puyallup River chinook resources was being undertaken in order that Puyallup Indian fishermen could be blamed for damaging the resources. The effect would be to bolster the State's case with the public, the press, and in the Courts'. When the non-Indians' lawyer objected that some other way besides damaging the resources should be tried, the Fisheries Director answered that his Department had no problem with the plan, claiming that they could restore the resource by flying in salmon eggs from another hatchery and stream.

These are politics and misuses of governmental authority which the Northwest Indian Fisheries Commission strenuously objects to. In another area of abuse by the State Game Department, which the Fish & Wildlife Service seeks to fund without requirement of demonstrating need or detailing justification, considerable funds were spent in the past to investigate the private lives and business transactions of several entire Indian communities. What are the motives that now operate to grant them new sources of funds, without questioning the motives behind the demand for the monies. Given the documented statements and positions of the Interior Secretary, and the actions of the Regional Director in his relations with the State and Tribes, can we not wonder if any of the Boldt Implementation Funds appropriated by the Congress are going to be used to implement the seriously threatened Boldt Decision?

We believe that this Committee should properly ask Mr. Greenwalt what his directions from the Interior Secretary are, and what are the plans he intends to carry out. We also think he should be required to explain the degree of authority or autonomy granted to the Regional Director (TA) in directing the use of funds for purposes other than for which they were sought by the Administration, or other than for which Congress appropriated them.

Inasmuch as we are aware that Mr. Greenwalt is setting up a new high-level program office for Native Americans and Eskimos, to address Native concerns, problems and issues in resource protection, utilization and management, we cannot understand the present machinations going on in the Department at its highest level, as well as in the Portland Regional Office.

In the past few years, the Interior Solicitor's Office, units of the BIA, the Northwest Fisheries Program, and Justice Department attorneys have performed some of the best services for Indian people in the history of this Nation. In the case of *U.S. v. Washington*, they and the Court have served the Indian people of the Pacific Northwest in such manner. We know that most of these

federal employees want to continue that service and to build upon that record of aiding our tribes in gaining a full measure of opportunity, community control and self-determination in gaining the benefit of our rights and resources for the Indian community's advancement.

Our Fisheries Commission and the member Tribes have not spurned any moves for cooperation and coordination with other people having interest in the fish resources with which we are concerned. But we can not accept a renewal of the total disregard of our own authorities, interests and established rights. Our rights and our assistance needs were not created by the Boldt Decision. That decision does provide some long sought answers and opportunities for everyone.

We recall another statement to a joint Congressional hearing in 1961, when former Governor Rosellini and Fisheries Director George Starlund informed the Congress:

"An immediate action plan to control the Indian fisheries in the State of Washington is imperative. That control is necessary is indisputable. The question to be answered involves how the Indian fisheries are to be controlled and by whom. Federal treaties with the various Indian tribes of the State of Washington protect their members against any attempt at control by State government. Consequently, the federal government must assume full responsibility for such control, or * * * by the Indians themselves * * *."

The Boldt Decision decided this question in a practical manner. The Indian people have the right to control this responsibility, and should stand as co-managers of the fish resources with the State. Now that the question has been definitively answered by the courts in processing the complaint of the United States, we are distressed that the Interior Secretary would personally determine that there should be some other answer.

We sincerely appreciate the chance to raise these matters with you and to participate in this confirmation hearing. It is an important position in the federal government with major responsibilities. We hope that it will not be filled perfunctorily by the Senate action, but that the Congress will look toward the question of how these responsibilities shall be carried out.

Thank you.

Mr. ADAMS. I think that we will just go to the Commission members and then I will sum up with a summary of the statement.

Mr. Kinley.

STATEMENT OF FORREST KINLEY, NORTHWEST INDIAN FISHERIES COMMISSION

Mr. KINLEY. I am Forrest Kinley. I have been elected as the chairman of the Northwest Indian Fisheries Commission.

I would like, first, to clarify the statement that Nat Reed, from the Interior, made, that we were not in agreement. We are totally in agreement in what we feel the way that the funds that we are talking about should be spent.

I think that throughout the history of Indian country, or Indian tribes, that there has never been sufficient funds or money made available to any tribe or through the Interior to protect the fishing resources of the Indian people. We felt that through this appropriation of \$690,000, that this was a step into where the *Judge Boldt* decision could be initiated, was some of the charges that he made to the Indian tribes that participated in this long court session which did last 3 years.

One of his recommendations was that in order for a tribe to be able to regulate the natural resources which was that we have the expertise to manage and to predict various size funds and in order to do this without—the only agent which we did have some control, or some input to, was the Department of the Interior which Fish and Wildlife is a part of this vast organization.

So we have agreed that we want to initiate the thinking of the State but we feel that in the past history of the State of Washington that in no way can we condone the action, so therefore we feel that through Fish and Wildlife that we would have a better control and be able to meet the obligations which the court has put us under.

As far as the process of initiating Judge Boldt's case at this time, that it has been no advantage to the Indian people in Washington State, that up to this point that we have taken less fish this year than we did last year. We feel that it is necessary that this money and the policy of the Fish and Wildlife or the policy of the Federal Government toward Indians was change. To us it seems as though the U.S. Government and the State of Washington has classified us as a threat to the national resources.

By them not giving control of the funding to us it further justifies us in thinking this way. In no way are we trying to oppose Mr. Greenwalt's appointment, but we are opposed to some of the policy matters and some of the decisions that are trying to be handed down about our input. Now, we have been into this. All my life I have been concerned with fishing and so we strongly want to impress upon the committee and the people present, that we are in total agreement of how this fund should be spent.

I want to thank you.

Senator METCALF. Thank you very much, Mr. Kinley.

I think that the members of this committee are in accord with some of the questions that were asked by Senator Abourezk about the use of this \$690,000 and the fact that at least the money was supposed to be there for a fair and impartial research and development. I think that we are going to insist upon it.

Mr. KINLEY. We feel that this money was given for—to help us. We were the winners of this case. It seems like we are still being put on the defensive. We have a friend with the Fish and Wildlife and we don't want to destroy that.

Senator METCALF. Let's go off the record for a moment.

[Discussion off the record.]

Senator METCALF. We will go back on the record now.

Who is next?

STATEMENT OF GUY R. McMINDS, NORTHWEST INDIAN FISHERIES COMMISSION

Mr. McMINDS. The commission has asked me to make a statement in behalf of the group I represent in Washington. It's the Quinault Treaty area. My name is Guy McMinds. I am a professional fisheries biologist, educated at the University of Washington. I am a professional resource manager on the Quinault Reservation handling timber, water, fish, and land.

I have two major areas of questions for Mr. Greenwalt and Mr. Reed. Yesterday, or the day before yesterday, in a meeting in the Executive Office Building, Mr. Reed made a statement to the group of people. He stated that the Department of the Interior will not accept primacy over the State management of the resources except when the edicts of the *Boldt* decision are not followed.

In our State, Senator, the edicts of the *Boldt* decision have not been followed. This is documented. In 1973, as Mr. Kinley suggested, our

people caught 3.5 percent of the fish run. Yet, in 1974, after the *Boldt* decision, they only harvested 2.4 percent of that run.

Our percentage take is down this year because of what we call management manipulation. And manipulation of data, manipulation of data that Mr. Greenwalt mentioned in referring here to the other issues involved that was intolerable.

We do think that the manipulation of data is intolerable and we cannot put up with it or stand it in the State of Washington. We would like to live fairly with our neighbors. Under the edicts of the court decision which entitles us to 50 percent of the harvestable portion of the fish runs in the State of Washington and we hope that this court decision will be implemented.

There are many administrative and statistical maneuvers going on right now to insure that the *Judge Boldt* decision does not get implemented.

Senator METCALF. Would you give us, for the record, what percentage of the fish run the *Boldt* decision did give to the Indians?

Mr. McMINDS. For the record, the *Judge Boldt* decision gave 50 percent of the harvestable portion of the fish run in the Case area to the Indian people. Now, the Case area is the Puget Sound area west of the Cascade Mountains around the Olympic Peninsula to Grays Harbor, southwest Washington, and eastern Washington, the Columbia River and Wallowa are excluded from this case.

Senator METCALF. And what percentage did you get last year?

Mr. McMINDS. The percentage we got last year was 2.4 percent to the date of the 6th of September.

Senator METCALF. Of this year?

Mr. McMINDS. Of this year.

Senator METCALF. 1974?

Mr. McMINDS. Right.

Senator METCALF. And it is your position, primarily, that it is the responsibility of the Secretary of the Interior and his other people that work for him, including the Fish and Wildlife Service, to enforce the decisions of the *Boldt* decision?

Mr. McMINDS. The management agencies in the State of Washington were likewise enjoined to do this.

Senator METCALF. Unfortunately, or fortunately, I don't know, it's a division of power. The thing that we are concerned with here as far as the Congress of the United States has jurisdiction is the enforcement of the decision by the Secretary of the Interior and his various agencies; isn't that correct?

Mr. McMINDS. Yes, that's correct. That's what I am interested in and the policy that will come from Mr. Greenwalt's office is important. I think that his enunciations here today about the manipulations of data are intolerable. I would like to see that turned into, instead of a statement of policy of that agency, as regards to their handling of funds regarding the implementation of the *Boldt* decision.

Senator METCALF. Mr. Adams, did you want to get into this?

Mr. ADAMS. Yes; I think it would be well to submit here, for the record, a statement put out by Judge Boldt just last week in trying to bring some enforcement to his decision, he does cite the percentage breakdowns that Mr. McMINDS has just given us. But, when you look at what he has written, going beyond the percentage to the actual num-

bers of fish, then you see that when you are talking about the harvest of non-Indians, last year, you are talking about 3,404,710 salmon last year.

This year you are talking about 3,628,513 salmon to non-Indians. But, what you are talking about, numbers of fish to approximately 20 tribes, that have to share up this 2.4 percent, you are only talking about 89,402 salmon.

In this order which was signed to enjoin State courts from defeating his decision, Judge Boldt said "These figures illustrate in the most startling manner the gross inequities between Indian and non-Indian harvests and the complete failure and inability of defendants to comply with this court's orders."

Now, when it speaks of the defendants, it is talking about the State of Washington—Carl Krause, director of the State of Washington Game Commission and named as the plaintiffs in this case as the United States of America plus 14 separate tribes, so when you are talking—when Judge Boldt is talking about the complete failure and inability of defendant's to comply with this court's order, he is talking about the agencies who the Fish and Wildlife Service are planning to give the Indian funds to. I think this should be entered into the record.

Senator METCALF. I am not going to object to that, now. In order that we get the timetable right for the record, if you know, do you remember the date that Judge Boldt handed down that decision?

Mr. ADAMS. On February 12, 1974, was his first decision.

Senator METCALF. And he issued an order?

Mr. ADAMS. On March 22, an implementing order on March 22 that indicated how his decision, No. 1, would be carried out under his continuing jurisdiction.

Senator METCALF. And then it has become necessary for him to again rule on the case and issue the order that you are presenting for the record at the present time, as of what date?

Mr. ADAMS. As of September 12, 1974.

Senator METCALF. Thank you.

And that will be entered. Do you want it entered at this point in the record?

Mr. ADAMS. Yes, since there has been substantial discussion.

Senator METCALF. It will be entered in the record.

[The above-referred document follows:]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs

CIVIL NO. 9213

QUINULT TRIBE OF INDIANS on its
own behalf and on behalf of the
QUEETS BAND OF INDIANS; MAKAH
INDIAN TRIBE; LUMMI INDIAN TRIBE;
HOH TRIBE OF INDIANS; MUCKLESHOOT
INDIAN TRIBE; SQUAXIN ISLAND TRIBE
OF INDIANS; SAUK-SUIATTLE INDIAN
TRIBE; SKOKOMISH INDIAN TRIBE;
CONFEDERATED TRIBES AND BANDS OF
THE YAKIMA INDIAN NATION; UPPER
SKAGIT RIVER TRIBE; STILLAGUAMISH
TRIBE OF INDIANS; and QUILEUTE
INDIAN TRIBE;

Intervenor-Plaintiffs,

vs

STATE OF WASHINGTON,

Defendant,

THOR C. TOLLEFSON, Director, Wash-
ington State Department of Fisheries;
CARL CROUSE, Director, Washington
Department of Game; and WASHINGTON
STATE GAME COMMISSION; and
WASHINGTON REEF NET OWNERS
ASSOCIATION,

Intervenor-Defendants

MEMORANDUM DECISION ON
PLAINTIFFS' REQUEST FOR
DETERMINATION AND
INJUNCTION

SEP 12 11 48 AM '74
CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT
OF WASHINGTON
BY
DEPUTY CLERK

In United States of America, et al. v. State of
Washington, et al. this court, at the instance and with
approval of counsel for all parties, assumed jurisdiction over
all matters adjudicated in Final Decision #I relating to
Indian treaty fishing rights in the case area and other
related matters. Following a lengthy and extensive trial,
during which there was recorded in evidence voluminous and
detailed information concerning many aspects of Indian treaty
fishing, this court rendered what is designated as Final
Decision #I. That decision included specific Findings of Fact

1 and Conclusions of Law regarding the historical and biological
 2 facets of Indian treaty fishing rights; it also specifically
 3 defined the extent of those Indian treaty rights as well as
 4 the privileges and obligations of non-Indian fishing and the
 5 control thereof by the State. Recognizing that the appellate
 6 procedures in this case will certainly take up to two years
 7 or longer, the court and all counsel agreed that procedures
 8 were required to deal with the many important questions concern-
 9 ing fish runs and seasons that would take place before a Circuit
 10 or Supreme Court decision would finally determine all issues
 11 adjudicated in Final Decision #I. For these reasons, the
 12 court retained continuing jurisdiction over all such matters,
 13 including development of an interim program for implementing
 14 some of the essential provisions of Final Decision #I, subject
 15 to certain limitations accepted and approved by counsel for
 16 all parties.

17 Paragraph 5 of the Interim Plan and Stay Order entered by
 18 this court on March 22, 1974 obligates defendants State of
 19 Washington, Washington Department of Game, and its Director,
 20 Carl Crouse, Washington Department of Fisheries, and its
 21 Director Thor Tollefson (hereinafter "defendants") to make
 22 significant reductions in the non-Indian fishery as deemed
 23 necessary to achieve the objectives of the court's definition
 24 of Indian treaty fishing rights. In carrying out this order
 25 the court anticipated that defendants would promulgate and
 26 enforce regulations reducing the non-Indian fishery.
 27 Defendants have promulgated certain regulations establishing
 28 reductions in the non-Indian fishery, but have been unable to
 29 enforce them by reason of certain directives and orders of
 30 the Thurston County Superior Court in Washington State
 31 Commercial Passenger Fishing Vessel Association v. Tollefson,
 32 No. 50370, Washington Kelpers Association v. Tollefson, No.

1 50552, and Puget Sound Gill Netters Association v. Tollefson,
2 No. 50757.

3 At the hearing^{9/2/74} on Plaintiffs' Request for Determination
4 and Injunction, the court directed defendants to advise the
5 court not later than September 6, 1974 of any alternative
6 means or methods of regulation which the defendants could
7 propose to effect the required "significant reductions" in non-
8 Indian fishing. By response received by this court on
9 September 6,

10 "... defendant Department of Fisheries has con-
11 cluded that the regulatory enactments promulgated
12 by it in response to and in good faith compliance
13 with this Court's Final Decision No. 1, of February
14 12, 1974, and the Interim Plan and Stay Order of
15 March 22, 1974, were correct and appropriate
16 actions to take."

17 No additional or alternative regulations were or have been
18 proposed by defendants. Therefore, it now appears that in
19 order to effectuate the prior orders of this court, and to
20 preserve its jurisdiction over the subject matter, further
21 orders of this court are necessary to clarify the scope of
22 jurisdiction assumed by it and the duties imposed upon
23 defendants under Final Decision #I.

24 The principal questions presented by plaintiffs' request
25 are whether this court is empowered to protect its earlier
26 rulings from incursions such as have taken place in the three
27 state court proceedings referred to above and, if such
28 jurisdiction exists, whether this court in its discretion
29 should exercise said authority, and if so, in what form. This
30 court fully adopts the legal arguments recited on pages 5
31 through 16 of "Plaintiffs' Request for Determination Regarding
32 Relaxation of Restrictions on Non-Indian Fishing" as if set
Exhibit "A"
forth fully herein (copy attached hereto), and refers particu-
larly to the following cases: Atlantic Coast Line; Thomason;
Shelton; Donelon; Leiter Minerals; U. S. v. Wood; Alonzo v. U.S.

1 Based upon the legal arguments and decisions referred to
2 immediately above, this court is not only satisfied that it
3 has jurisdiction to enjoin the state court proceedings
4 referred to, within the express exceptions to the anti-
5 injunction statute, 28 USCA § 2283, but also believes it has
6 an urgent duty to take such action to the extent shown
7 necessary in order to effectuate its judgment and protect the
8 federal treaty rights declared therein.

9 It is clear beyond reasonable question that the three
10 state court injunctions referred to above have to some extent
11 prevented defendants from complying with this court's order
12 to make "significant reductions" in the non-Indian fishery in
13 order to make available to treaty right fishermen a sufficient
14 portion of the harvestable resource to guarantee an opportunity
15 for them to harvest 50% of said resource. Interference with
16 the exercise of Indian treaty fishing rights indisputably is
17 within the jurisdiction of this federal court, and state court
18 proceedings instituted by non-parties to this law suit cannot
19 be allowed to frustrate either final determinations based on
20 exhaustive research and evidence or the jurisdiction of this
21 federal court.

22 Data submitted by the United States Fish and Wildlife
23 Exhibit "B"
24 Service (copy attached hereto), which includes Department of
25 Fisheries statistics, indicate that through August, 1974,
26 with the exception of the Nisqually River chum harvest in
27 January which for management purposes would be considered part
28 of the 1973 run, Indian fishermen in the case area in 1974
29 have caught less salmon of each species than they caught in
30 1973, both in terms of total numbers of fish caught and in
31 terms of the percentages of Indian harvest as contrasted with
32 total non-Indian commercial harvest. Estimates indicate that
through August, 1973, Indians had taken 123,370 salmon, or

1 3.5% of the total as compared with 3,404,710 salmon harvested
2 by non-Indian commercial interests; through August of this
3 year, Indians have harvested 89,402 salmon, or 2.4% of the
4 total as compared with 3,628,513 salmon harvested by non-
5 Indian commercial fishermen; when the sport catch through
6 August of 1974 of 837,099 salmon is included, the Indian share
7 of the total harvest is 2.0%.

8 These figures illustrate in the most startling manner
9 the gross inequities between Indian and non-Indian harvest,
10 and the complete failure and inability of defendants to comply
11 with this court's orders to make significant reductions in
12 non-Indian fishing and to afford to Indians an opportunity to
13 catch approximately 50% of the harvestable resource at their
14 usual and accustomed grounds and stations. Because by their
15 nature substantial fish resources will be lost for this year
16 to plaintiff tribes if not harvested during the currently
17 ongoing seasons, the immediate threat of substantial economic
18 harm and serious hardship to many treaty right fishermen
19 convinces this court that prompt action is required to protect
20 federal treaty rights that this court has found are
21 constitutionally guaranteed as the law of the land and to
22 assure the viability of this court's Final Decision #I, unless
23 and until it be modified or reversed.

24 In all court litigation in which the United States has
25 an interest, including cases involving the interpretation and
26 application of treaties duly enacted as required by federal
27 law and the national Constitution, the Attorney General of
28 the United States, acting through the Justice Department and
29 United States Attorneys, is the official authorized to speak
30 and act for the people of the nation in such matters. In this
31 instance, the United States Attorney, presumptively in the
32 national interest, has requested that this court enjoin

1 enforcement of the injunctions issued in all three of the above
2 referred to state court proceedings. Plaintiff tribes, as
3 descendants of signatories to treaties with the United States,
4 have joined in that request.

5 Rather than consider the state court proceedings in toto,
6 upon the record now presented this court finds it necessary
7 to consider the injunctions separately and therefore will
8 discuss each of them in the order of issuance. It must be
9 recognized, however, that each of the three state court
10 proceedings was instituted by litigants none of whom was a
11 party to this federal court action. Additionally, none of
12 those state court proceedings joined the United States or the
13 plaintiff tribes, the real parties in interest who could be,
14 if not irreparably, at a minimum grievously, injured by
15 state court injunctions preventing enforcement of the Depart-
16 ment of Fisheries regulations promulgated for the express
17 purpose of making more fish available to treaty right fisher-
18 men. Finally, at none of the state court hearings were
19 witnesses interrogated nor was any of the hearings a full
20 scale evidentiary hearing; only affidavits of the litigants
21 were presented, not subject to cross examination, and the
22 state court judges could only act upon the materials presented
23 to them.

24 Beyond question, the state court judges who issued the
25 restraining orders involved herein performed their judicial
26 functions in accordance with established law and practice in
27 the state courts, and in an able and responsible manner
28 beyond criticism in any particular whatever. However, it is
29 clear from the cited authorities that the circumstances above
30 recited can and should be considered by this court together
31 with the full record before it, significant portions of which
32 were not available to the state courts, in determining what

1 action if any to take with regard to these state court
2 proceedings.

3 (1) In the Commercial Passenger Fishing Vessel case,
4 plaintiffs therein obtained a ^{temporary} /injunction preventing enforce-
5 ment of a Department of Fisheries regulation reducing the
6 personal use salmon angling daily bag limit in Washington
7 coastal waters and the Strait of Juan de Fuca from three
8 salmon to two salmon. The record herein shows that repre-
9 sentatives of some plaintiff tribes opposed enactment of this
10 regulation by the Department of Fisheries, on the ground that
11 such reduction in non-Indian fishing would not to any
12 appreciable extent achieve its stated purpose to make more
13 fish available for harvest by plaintiff tribes in the case
14 area, because the runs of fish to which that regulation applied
15 would return almost entirely to the Columbia River and its
16 tributaries for spawning. Upon the evidence before it, this
17 court finds that plaintiffs herein have not sustained their
18 burden of showing that enforcement of that regulation reducing
19 the daily salmon sport bag limit would achieve the purpose
20 of making a significant number of additional fish available for
21 harvest by treaty right fishermen. For these reasons, this
22 court finds no reason to interfere with the state court temporary
23 injunction currently in effect in cause No. 50370.

24 (2) In the Kelpers Association case, plaintiffs therein
25 succeeded in/enjoining enforcement of a Department of Fisheries
26 regulation which effectively closed commercial trolling for
27 salmon within the three mile limit under state jurisdiction.
28 Evidence in the record before this court discloses that the
29 total harvest by the Kelpers Association within the three-mile
30 limit is not substantial and that the runs of fish involved
31 would not significantly enhance the harvest opportunity of
32 treaty right fishermen because they pass through other non-

Indian commercial fisheries before reaching tribal fishing grounds. Upon the evidence before it, this court finds that plaintiffs herein have not met their burden of showing that enforcement of the regulation in question, proposing to close commercial trolling for salmon within the three-mile limit, would achieve the purpose of making a significant number of additional fish available for harvest by treaty right fishermen. For these reasons, this court finds no reason to interfere with the state court/^{temporary}injunction currently in effect in Cause No. 50552.

(3) In the Gill Netters Association case, plaintiffs therein obtained a ^{temporary}/injunction enjoining enforcement of a Department of Fisheries regulation proposing reductions in fishing time for gill netters and purse seiners in the Puget Sound marine fishery. Unlike the evidence concerning the ^{temporary}prior/injunctions, the record in this case is replete with factual data which establishes beyond reasonable question that very significant portions of the harvestable fish not taken by the non-Indian fishermen referred to would reach the usual and accustomed off-reservation fishing grounds of plaintiff tribes in substantial numbers. Plaintiffs herein have overwhelmingly met their burden of proof to show that enforcement of this proposed Department of Fisheries regulation calling for reduced fishing time for gill netters and purse seiners in Puget Sound would achieve at least partial compliance with this court's directives to make additional fish available for harvest by treaty right fishermen, and that prohibition by the state court of enforcement of that regulation presents an immediate threat of substantial economic harm and serious hardship to plaintiff tribes.

Upon the facts found as above stated and after most serious and meticulous consideration of written memoranda and

oral arguments by all parties and written submissions by parties to the state court actions and by the state court judges of Thurston County, this court finds and holds that relief injunctive / in the form set forth below must issue to enjoin enforcement of the state court injunction in Cause No. 50757 as follows:

INJUNCTIONS

(1) For the reasons hereinabove stated, unless and until this court orders otherwise, it is now hereby ORDERED AS FOLLOWS:

That the Superior Court of the State of Washington, County of Thurston, is hereby prohibited and enjoined from in any manner or to any extent enforcing the temporary injunction issued by said court on August 30, 1974 in Puget Sound Gill Netters Association v. Tollefson, No. 50757, and from issuing any other order in said cause which in effect will prevent the Department of Fisheries from fully enforcing the regulations in question adopted pursuant to Administrative Order No. 1143.

This injunction shall in no manner whatever preclude said court from expeditiously proceeding with preparation and trial of the issues presented in said cause.

(2) IT IS FURTHER ORDERED:

That defendants, State of Washington, Thor Tollefson, Carl Crouse, Departments of Fisheries and Game of the State of Washington, and their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, shall not obey, carry out, enforce or otherwise treat as having any lawful force or effect the order of the Thurston County Superior Court for the State of Washington referred to in paragraph (1) above.

1 Federal Rule of Civil Procedure 65(c), pertaining to
 2 security necessary for issuance of injunctions, provides in
 3 part: "No such security shall be required of the United
 4 States or of an officer or agency thereof." The application
 5 for injunctive/herein having been made by the United States,
 6 this court may not require security therefor from the United
 7 States, and does not require such security from any parties
 8 joining in or supporting said application.

9
 10 IMPLEMENTING ORDERS

11 For reasons not clear to this court, the Department of
 12 Fisheries takes the anomolous position of opposing entry of
 13 the injunction issued above, while asserting the correctness
 14 and appropriateness of the regulations enjoined in the state
 15 court proceedings. This court's injunction confirms the
 16 propriety of the Department of Fisheries regulations adopted
 17 pursuant to Administrative Order No. 1143. Moreover, this
 18 court has not and will not direct, limit or in any manner
 19 whatever interfere with full exercise of the prerogatives,
 20 duties and discretion vested by state law in the Directors
 21 of the Departments of Game and Fisheries, excepting to the
 22 extent necessary to enforce the judgment and decree entered
 23 pursuant to Final Decision #I and to restore or preserve the
 24 Indian treaty rights specified therein. Nothing in this
 25 Decision or in the above injunction should be construed or
 26 applied to the contrary.

27 However, due to the circumstances previously recited,
 28 and to aid in achieving an equal opportunity to both Indian
 29 and non-Indian fishermen to harvest fish in the case area and
 30 to compensate treaty right fishermen for not having been
 31 able to harvest the fish resource to the extent determined
 32 by Final Decision #I, this court finds it necessary in aid

1 of its jurisdiction and to protect and effectuate its judg-
2 ment, to provide as follows:

3 IT IS HEREBY ORDERED THAT:

4 (1) The defendants are required to make significant
5 reductions in the non-Indian fishery, as are necessary to
6 achieve the ultimate objectives of the court's Final
7 Decision #I without requiring mathematical precision, but in
8 making such reductions shall do so consistent with the
9 concept of permitting the full harvest of fish.

10 (2) Reductions in the non-Indian fishery, once adopted
11 by the defendants in accordance with the court's prior rulings
12 and this order, shall not thereafter be relaxed or rescinded
13 without prior notice to this court and all parties to this
14 action, unless consent of the affected plaintiff tribes has
15 been obtained prior thereto.

16 (3) To the extent reduction in the non-Indian fishery
17 adopted in accordance with the court's prior rulings already
18 have been relaxed or rescinded prior to the entry of this
19 order by reason of the temporary injunction of the Thurston
20 County Superior Court in Puget Sound Gill Netters Association
21 v. Tollefson, No. 50757, issued August 30, 1974, defendants
22 shall cease immediately from carrying out directives, orders
23 or policies in accordance with said temporary injunction and
24 shall resume forthwith to implement the regulatory schemes
25 and policies previously adopted to effect reduction in the non-
26 Indian commercial net fishery for salmon on Puget Sound and
27 related waters.

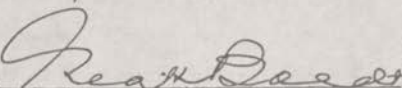
28 (4) At the earliest practicable date, and in no event
29 later than September 23, 1974, defendants shall report to the
30 court or its Master on the consequences of the relaxation of
31 its earlier reductions in the non-Indian fisheries by reason
32 of the temporary injunctions of the Thurston County Court.

1 This report shall include the best available estimated numbers
2 of fish which the plaintiff Indian fishermen were prevented
3 from taking by reason of said temporary injunctions, and
4 proposals to be implemented immediately to make available to
5 Indian fisheries on a compensatory basis numbers of fish
6 approximately equivalent to those lost by reason of said
7 temporary injunctions. Defendants shall attempt to implement
8 such proposals prior to the expiration of the time required
9 for the submission of this report to the court if such action
10 is necessary to ensure that the Indian treaty fishermen will
11 have the opportunity to take additional numbers of fish in
12 compensation for those lost by reason of the three state
13 court temporary injunctions. Nothing in this order shall
14 preclude defendants from taking any immediate action to reduce
15 the non-Indian fishery in order to enhance Indian opportunities
16 to take fish at their usual and accustomed places.

17 (5) If, at any time subsequent to the entry of this
18 order, defendants are participants in legal proceedings which,
19 in their judgment, might possibly result in an order that
20 could impair or otherwise affect adversely their ability to
21 conform to the requirements of this court's Final Decision
22 #I, or other orders in this case, defendants shall immediately
23 so inform this court and shall serve upon all parties to
24 this action copies of all papers filed in such legal
25 proceedings.

26 (6) Defendants shall take such action as may be necessary
27 to notify forthwith their officers, agents, employees, and
28 attorneys, and those persons in active concert or participa-
29 tion with them, of the content of this order and the duties
30 and obligations defined herein.
31
32

1 IT IS SO ORDERED, ADJUDGED AND DECREED, effective
2 immediately upon entry hereof this 12th day of September,
3 1974.
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SR. UNITED STATES DISTRICT JUDGE

Mr. ADAMS. At this point it might be well to introduce into the record a Library of Congress Congressional Research Service analysis of the Boldt decision as written. This is dated April 15, 1974, and analyzes both the initial decision plus the order, but it also has some express language in there that tells everyone why this \$690,000 was sought. It tells what conditions the tribes have to meet if they are going to have the standing to manage their own resources and people and finally be free from any State interferences whatsoever in the management of their resources and in this analysis, which is rather brief, for a decision that was 206 pages long itself, plus an implementing order that was half a hundred pages, in addition; but it points out the needs of the tribes to implement the decision on their part.

One is three Indian personnel trained for and competent to provide effective management enforcement of all tribal fishing regulations and for well qualified experts in fisheries, science and management who are either on the tribal staff or whose services are arranged for and readily available to the tribes.

Now, because Judge Boldt put that language in his decision that is why the BIA in March and February of this year, the U.S. Fish and Wildlife Service came in in behalf of the tribes and requested this \$690,000 to allow the tribes to meet the conditions of the decision so that they could implement it.

I would offer this into the record because it shows the basis for the Government and the tribes coming in and asking for this \$690,000 which is a sole source of funding for the tribes. The tribes have no other source of funding other than that \$690,000. When you talk about the game department, you are talking about a number of existing federally authorized sources of funding additional to their regular State level sources of funding.

Senator METCALF. Thank you.

Now, that Library of Congress compendium will go into the file to the committee as a part of the file of this committee and I would ask some of the members of the staff to examine it and if there are relevant quotations from it that are appropriate to this hearing they—unless there is an objection, and nobody is here to object—they will be incorporated in the committee hearing.

Mr. McMINDS.

Mr. McMINDS. My final comment is that the position of our treaty area is that the \$690,000 should go to implement the conditions and qualifications listed in *Judge Boldt's* decision on the Indians' behalf because we requested the funds.

Senator METCALF. Does that complete your statement?

Mr. McMINDS. That completes my statement.

[The above-referred document follows:]



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AN ANALYSIS OF UNITED STATES V. WASHINGTON --- INDIAN TREATY
FISHING RIGHTS IN THE STATE OF WASHINGTON

By

Richard C. Ehlke
Legislative Attorney
American Law Division
April 15, 1974



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Introduction and Basic Principles

This analysis includes the decision of February 12, 1974, the injunction issued March 22, 1974, and the interim plan and stay order adopted by the court on March 22. The latter order stayed portions of the February 12 decree and the March 22 injunction, but our analysis will proceed chronologically in order to avoid confusion.

This is a non-legal analysis and is confined to the essential points of the decision in order to facilitate understanding by those not trained in the law or unfamiliar with Indian law in particular.

United States v. Washington, Civ. No. 9213 (D. Wash., February 12, 1974), concerns the nature and extent of off reservation ^{1/} fishing rights enjoyed by Indians pursuant to treaties entered into with the United States Government and how these rights affect both non-Indian access to fish and the state's powers and duties regarding regulation of the fisheries resource.

The rights of Indians spring from treaties, which were usually written in English and interpreted in a language unknown to many tribal representatives and incapable of conveying the more sophisticated or implied meaning of treaty provisions. Thus, treaty language is construed in favor of the Indians and the words given a meaning which would have been generally understood by the Indians at the time. Furthermore, treaties are not considered a grant of rights ^{1/}Indians have an exclusive right to fish within the area and boundary waters of their reservations, a proposition conceded by all parties to the lawsuit.

to the Indians, but a grant of rights from them -- a reservation of those not granted. These rights of the Indians are distinguished from the privileges accorded non-Indians to fish in state waters-- privileges which may be limited or withdrawn by the state in the exercise of its police power as the interests of the state or the exercise of Indian treaty fishing rights may require. The different relationship of the Indian and non-Indian to the state as far as susceptibility to state regulation is concerned also springs from the fact that treaties, under the United States Constitution (Art. 4, Cl. 2), are considered to be the "Supreme Law of the land; and the Judges of every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

The foregoing are basic principles of Indian law and form the underpinnings for the Court's decision regarding the particular treaty rights involved in the case. The treaty language reserving fishing rights to the plaintiff tribes states (with some variation among treaties): "The right of taking fish, at all usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the territory."

The Court held that "every fishing location where members of a tribe customarily fished from time to time, at and before treaty time, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters, is a usual and accustomed ground or station at which the treaty tribe

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reserved, and its members presently have, the right to take fish." This access to off reservation fishing areas is "in common with all citizens of the territory," but, as explained above, the relationship of the Indian and non-Indian fisherman to the state differs significantly.

The Indians' rights to fish in these off reservation usual and accustomed sites are not exclusive and must be shared with non-Indians. However, the state cannot diminish the rights of the Indians nor can it regulate Indian fishing to the same degree it can non-Indian fishing. Furthermore, when non-Indian fishing interferes with the fishing rights of treaty Indians, the non-Indian fishing must be curtailed or regulated in such a manner as to preserve the superior Indian rights.

State Regulation

While Indian fishing rights are rights derived from treaties with the United States, and non-Indian fishing is a matter of privilege accorded by the state, the law presently recognizes a limited power of the state to regulate Indian fishing. The state has the power to regulate off reservation fishing "to the extent reasonable and necessary for conservation of the resource." 2/

2/ Judge Boldt questioned the legal reasoning of cases which have allowed even this much state regulation of a treaty created right, but felt compelled to follow the holdings of the Supreme Court cases which have permitted states to regulate Indian treaty fishing for conservation purposes.

Conservation means the perpetuation of the fisheries resource; "reasonable" means "that a specifically identified conservation measure is appropriate to its purpose"; and, "necessary" means "that such purpose in addition to being reasonable must be essential to conservation." In so regulating for the purposes of conservation, the state cannot discriminate against the Indians. Furthermore, the state must find the least restrictive means of regulating Indian fishing in the interest of conservation, it must publish such regulations separately from generally applicable fishing regulations, and, it bears the burden of establishing that such regulations meet the above standards. The restrictions on state regulations apply to the type of gear the Indians may employ as well as to such things as the time during which they may fish.

The above is the framework within which state regulation of off reservation Indian treaty fishing must operate. Any regulations must be specific and they must be promulgated in accordance with the Washington Administrative Procedure Act. Above all, in promulgating and enforcing regulations, the state must "treat such treaty rights as an obligation and interest to be promoted in the state's regulatory, management and propagation programs." The Court reiterated the nature and scope of these treaty rights in its Conclusions of Law:

The right secured by the treaties to the Plaintiff tribes is a reserved right, which is linked to the marine and freshwater areas where the Indians fished during treaty times, and which exists in part to provide a volume of fish which is sufficient to

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the fair needs of the tribes. The right is to be exercised in common with non-Indians, who may take a share which is fair by comparison with the share taken by the tribes. Neither the Indians nor the non-Indians may fish in a manner so as to destroy the resource or to preempt it totally.

The right secured by the treaties to the Plaintiff tribes is not limited as to species of fish, the origin of fish, the purpose or use, or the time or manner of taking, except to the extent necessary to achieve preservation of the resource and to allow non-Indians an opportunity to fish in common with treaty right fishermen outside the reservation boundaries.

The Court declared current state laws and regulations regarding off reservation fishing by Indians unlawful because, 1) they have not been established to be necessary to preserve and maintain the resource; 2) they discriminate against the tribes; and 3) they have been adopted and enforced in violation of appropriate standards and in derogation of the meaning and purposes of the treaty provisions. State laws and regulations pertaining to game fish "which reserve the entire harvestable portion of a species of fish for a special interest and purpose discriminate illegally against the treaty Indians." Furthermore, Department of Fisheries regulations providing for special seasons and limitations on takes of fish by the members of certain treaty tribes were held to not fully protect the treaty fishing rights of the Indians.

Fish Allocation Formula

The Court outlined considerations which must enter into state schemes of allocation of the fisheries resource among Indian

treaty fishermen and non-Indian fishermen at off reservation sites.

In order to better visualize the Court's ruling regarding the respective allocation of fish between Indian and non-Indian, fishing sites in the state can be divided into three categories: On reservation waters; off reservation areas which are and have been usual and accustomed places from which Indians take fish (rights to which flow from treaties, but which are enjoyed "in common with" other citizens of the state); and, all other off reservation areas not part of the usual and accustomed Indian fishing sites. The fishing rights of treaty Indians on the reservation are exclusive and not subject to regulation by the state. Therefore, any fish taken on the reservation are not to be included in the allocation of fish between treaty and non-treaty fishermen at the off reservation usual and accustomed places.

The treaties expressly reserved certain fishing rights at off reservation usual and accustomed places and these rights at least include the right to enough fish for personal subsistence and religious ceremonies. ^{3/} To preserve these treaty rights, the Court found that "the taking of fish for ceremonial and subsistence purposes has a special treaty significance distinct from and superior to the taking of fish for commercial purposes and therefore fish taken to

^{3/} The Court viewed the evidence as showing "beyond doubt that at treaty time the opportunity to take fish for personal subsistence and religious ceremonies was the single matter of utmost concern to all treaty tribes and their members."

serve ceremonial and subsistence needs shall not be counted in the share of fish that treaty right fishermen have the opportunity to take." Thus, rights to both fish taken on the reservation and fish taken off the reservation at usual and accustomed places for personal subsistence and religious ceremonies are reserved exclusively to the treaty Indians and are not included in the allocation the state makes pursuant to the "in common with other citizens" clauses of the treaties. The state may regulate fishing for subsistence and ceremonial purposes at off reservation sites, however, but such regulations must be established to be reasonable and necessary for conservation (e.g., preserving sufficient spawning escapement).

The fish which are left after the on reservation catch and the off reservation catch for subsistence and ceremonial purposes are deducted, must be shared equally by Indian and non-Indian fishermen at the off reservation sites. However, the Court recognized the difficulty of precise allocation and particularly noted the fact that substantial numbers of fish, many of which might otherwise reach the usual and accustomed fishing sites of the treaty tribes, are caught in adjacent areas primarily by non-treaty right fishermen. The Court stated that these catches "reduce to a significant but not specifically determinable extent the number of fish available for harvest by treaty right fishermen." It thus enlarged the scope of the fish resource which must be allocated in order that Indian and non-Indian share equally the fish from off reservation sites. Not only must Indian and non-Indian share the harvestable fish (those fish left

after the Indians' subsistence and ceremonial needs and the required spawning escapement necessary for conservation are met) at usual and accustomed off reservation places, but "an additional equitable adjustment" must be made "to compensate treaty tribes for the substantially disproportionate numbers of fish, many of which might otherwise be available to treaty right fishermen for harvest, caught by non-treaty fishermen in marine areas closely adjacent to but beyond the territorial waters of the state, or outside the jurisdiction of the state, although within Washington waters."

In summary, the access rights of treaty Indian and non-treaty fishermen to fishing sites in the state can be broken down as follows:

Treaty Indian: 1) exclusive right to fish on the reservation without any state regulation; 2) right to take fish from all usual and accustomed off-reservation sites necessary for personal subsistence and ceremonial purposes, subject only to state regulation deemed necessary for conservation; 3) right to 50% of the rest of the fish from all usual and accustomed off reservation sites; and 4) right to an equitable adjustment in number of fish allowed to be taken at usual and accustomed off reservation sites because of disproportionate amount which is taken by non-Indian fishermen at adjacent areas which prevents fish from entering off reservation sites of the treaty Indians. As far as off reservation waters which are not usual and accustomed places for Indian fishing are concerned,

Indian citizens are accorded the same privileges -- and subject to the same regulations -- as non-Indian fishermen.

Non-Treaty Fishermen: 1) no right to fish on Indian reservations; 2) "right" to 50% of harvestable fish from all usual and accustomed off reservation sites. As with the Indians, this is subject to state regulation for purposes of conservation, but equal sharing with the treaty Indians must be maintained. Further, non-Indian access cannot be considered a right since it does not flow from a treaty or agreement with the government; it is a privilege accorded fishermen by the state; 3) access to all other fishing sites, subject to regulation by state and equitable adjustment spoken of in 4), above.

The Indian rights outlined by the Court do not distinguish between species of fish, i.e., food fish, game fish. However, the Court did note that, in line with a recent United States Supreme Court case involving game fish (steelhead), the state may make a distinction between native and propagated game fish in allocating fish to off reservation treaty right and to non-treaty right fishermen. It left this determination initially to the state courts, however. The Court also did not treat in detail the commercial fishing rights of treaty Indians, but it found that Indians did fish for commercial purposes at and prior to the time the treaties were made and have the right to do so now and in the future. It stated, though, that "if and when any question is raised by any party pertaining to commercial fishing by Indians, it will be heard and determined by the Court."

Tribal Self-Regulation

Another important aspect of the case was the Court's recognition of and provision for self-regulation of off reservation fishing by the treaty Indians (on reservation fishing is, of course, not subject to state regulation and is already under the control of the tribes). Noting recent Congressional intent to enhance tribal self-government and the particular significance of fishing rights to Indians, the Court held that the plaintiff tribes are entitled to exercise their governmental powers by regulating the treaty right fishing of their members without any state regulation provided they meet certain qualifications and conditions.

To qualify for self-regulation, a tribe must have:

- 1) Competent and responsible leadership.
- 2) Well organized tribal government reasonably competent to promulgate and apply tribal off reservation fishing regulations that, if strictly enforced, will not adversely affect conservation.
- 3) Indian personnel trained for and competent to provide effective enforcement of all tribal fishing regulations.
- 4) Well qualified experts in fishery science and management who are either on the tribal staff or whose services are arranged for and readily available to the tribe.

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- 5) An officially approved tribal membership roll.
- 6) Provision for tribal membership certification, with individual identification by photograph, in a suitable form that shall be carried on the person of each tribal member when approaching, fishing in or leaving either on or off reservation waters.

Furthermore, as a condition to self-regulation, a tribe

must:

- 1) Provide for full and complete tribal fishing regulations which, before adoption, have been discussed in their proposed final form with Fisheries and Game, and include therein any state regulation which has been established to the satisfaction of the tribe, or upon hearing by or under direction of this Court, to be reasonable and necessary for conservation.
- 2) Permit monitoring of off reservation Indian fishing by Fisheries and Game to the extent reasonable and necessary for conservation.
- 3) Provide fish catch reports, as to both on and off reservation treaty right fishing, when requested by Fisheries or Game for the purpose of establishing escapement goals and other reasonable and necessary conservation purposes.

The qualifications and conditions for self-regulation must be established to the satisfaction of both Fisheries and Game, or the Court. As can be seen, the qualifications and conditions are designed to effectuate not only tribal self-government by the treaty Indians but also the state's interest in the regulation of the fisheries resource necessary for conservation.

Miscellaneous

The plaintiff tribes held to have treaty fishing rights as declared by the Court (either because they were signatories of treaties or have been subsequently recognized by Congress as parties to treaties) were the Hoh, Lummi, Makah, Muckleshoot, Nisqually, Puyallup, Quilente, Quinault, Sauk-Suiattle, Skokomish, Squaxin Island, Stillaquamish, Upper Skagit River, and Yakima. Of course, the principles of law established by the Court are applicable to other tribes which share the status of the plaintiff tribes.

The geographical area encompassed by the decision is "that portion of the state of Washington west of the Cascade Mountains and north of the Columbia River drainage area, and includes the American portion of the Puget Sound watershed, the watersheds of the Olympic Peninsula north of the Grays Harbor watershed, and the offshore waters adjacent to those areas." The Court's decision included lengthy and detailed factual findings regarding the treaty status of the tribes, the negotiation of the treaties, fishing practices before and after execution of the treaties, and other

anthropological and historical data on the tribes and the area. The policies and practices of the Washington Department of Fisheries and Department of Game were also examined in detail.

The Court separated the Indians' claims for relief concerning alleged destruction or impairment of treaty right fishing due to state authorization of (or failure to prevent) logging and other industrial obstruction and pollution of treaty right streams for later consideration. It also reserved continuing jurisdiction to implement the decision and provide hearings and determination of questions which may arise in the future. To facilitate solution among the parties of future problems, and aid the Court in technical fisheries matters, the Court appointed a master, Robert Cooper, and a fishery science and management expert, Richard Whitney.

The accounting for and return of Indian fishing gear seized or damaged by the state pursuant to statutes, regulations or practices held unlawful by the Court, or the value of such gear, was also ordered by the Court.

Interim Plan and Stay Order of March 22, 1974

On March 22, 1974, the Court ordered an interim plan to be placed in effect and in so doing, stayed those portions of the February 12, 1974 decision and decree, and the subsequently issued injunction enforcing that decree, which are in conflict with the interim plan. The interim plan did not alter the rights declared by the Court to belong to treaty Indians, but modified the duties of

both the Indians and the state somewhat, in order that the rights of the Indians and the responsibilities of the state may eventually be fully realized. Tribes which are determined to be self-regulating under the qualifications and conditions established by the Court and described above are not bound by the interim plan.

The interim plan calls for:

- 1) Effective June 1, 1974, all off-reservation fishing areas in the case area are closed to Indian treaty fishing except to the extent that tribes adopt and file with the Court and the defendants (state) tribal regulations for the fishing activities of their members and specifying the areas to be opened to fishing by tribal members. Indians who fish not in accordance with those tribal regulations are subject to the same provisions of state law as non-Indian fishermen.
- 2) Biologists of both the tribes and the state shall meet to formulate general principles to be utilized as guidelines to be flexibly applied in the adoption of specific fishing regulations.
- 3) The tribes shall give the state an opportunity to meet with and confer with tribal

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representatives on the subject of fishing regulations before they are filed with the Court.

- 4) The state is authorized to adopt and enforce with the tribes' approval tribal regulations as state regulations as to members of the tribe in question without the necessity of establishing that such regulations are necessary for conservation. The February 12 decision had required such a showing by the state in all instances.
- 5) The state will make significant reductions in the non-Indian fishery, as are necessary to achieve the ultimate objectives of the February 12 decision. Mathematical precision is not required, but in making reductions, the state must do so consistent with the concept of permitting the full harvest of fish.
- 6) The state will monitor the fish catch, the results and statistics from which shall be used in considering the regulatory pattern for the following year.
- 7) All parties shall exchange all available data concerning size, timing and condition of fish

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uns and the current level of harvest and
escapement in response to reasonable requests
in order to assist the parties in carrying
ut their responsibilities.

Richard C. Ehlke

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Legislative Attorney
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Senator METCALF. Mr. Adams.

Mr. ADAMS. Mr. Peterson is your next man.

Senator METCALF. Mr. Peterson, you are up.

STATEMENT OF CHARLES PETERSON, NORTHWEST INDIAN FISHERIES COMMISSION

Mr. PETERSON. My name is Charles Peterson of Makah Indians and I am a member of the Commission. I feel the same way as the rest of the Commission, of course, that the money that has been appropriated by Congress was appropriated for the purpose of expediting *Judge Boldt's decision*. I don't think I will go into too many details except that I firmly believe that it would be wrong for the Congress or the Government to give the State more money to oppose us in our efforts to try to realize something that was actually promised in the treaty.

I think it has taken us a long time to get to this particular position and we were really proud and happy to have the decision that Boldt rendered in his *Fisheries* case.

We thought that it would bring the people back up into an economic state where they would be happy but it seems like every time we turn around, the State has some definite barrier to which we have to fight.

Since we have gone from home the last couple days attending meetings, why they are posing more failures in our absence. We are constantly on the telephone trying to work things out so that we can do a little bit more fishing this year and realize a small percentage that we got under the *Boldt* decision.

We are hoping that your committee will understand this and probably convey to Mr. Greenwalt, who we don't oppose, the necessary language that the money was actually appropriated for the Indians and should be used for their benefit.

We have heard Mr. Reed this morning mention a meeting that we have set up in Seattle or in Tumwater for Monday. I think that my own personal opinion of the meeting is that it is just a token meeting. I hardly believe that they will even consider what we proposed as to how this money should be spent.

We have had the opportunity to meet with one of their regional directors and he told us in no short words that nothing that we could do would change his attitude, that as far as he was concerned, the money was to be allocated to the State.

So we immediately became quite concerned.

Senator METCALF. Let me interrupt.

If Attorney General Saxbe would permit me to wager, I would be willing to make a bet when Senator Abourezk sends a member of his staff down, it is going to be more than a token meeting.

Mr. PETERSON. Thank you very much. With that I will sign off.
Senator METCALF. Now, Mr. Adams.

STATEMENT OF HANK ADAMS, NORTHWEST INDIAN FISHERIES COMMISSION

Mr. ADAMS. Yes; in the statement that we have submitted for the record, including a background statement on makeup of the Northwest Indian Fisheries Commission and the member tribes, we do take

the position that we are not opposing Lynn Greenwalt's nomination, but that we strenuously object to plans and policies to which personnel in the Department of the Interior have committed themselves and apparently it wouldn't matter who was the director of the Fish and Wildlife Service.

I think that the Fish and Wildlife Service are failing to understand their own role in relationship to Indians and failing to understand the Indians' relationship to the resources that the tribes retained under the several treaties in the Pacific Northwest.

I have here a copy of the Department of the Interior's Department Manual, part 501, chapter 2, which spells out the relationship between the Fish and Wildlife Service and the Bureau of Indian Affairs. It says that the Fish and Wildlife Service shall be the technical assistants to the Bureau of Indian Affairs in carrying out its trust responsibilities to the Indian tribes and their resources.

It does make reference to—I mean, for instance, off-reservation treaty fishing rights. It doesn't exclude the Fish and Wildlife Service from having a direct relationship to Indians and their resources but at this point they are asserting that they are wholly independent of their trust responsibilities that the Department of the Interior and the whole of the U.S. Government has to Indian tribes.

I think that if Mr. Greenwalt is confirmed and he has been in the office for some time already, that he should review that departmental manual and more or less clear up in his own mind what his role and responsibilities for Indians and Indian resources are.

For the committee file, I would like to submit a map prepared by the Department of the Interior which does show the various treaty areas in the extensive amounts of resources that are still possessed by Indian tribes in the State of Washington and its vast water areas, its substantial land areas, and its considerable amounts and numbers of fish resources.

Senator METCALF. While you have the map up there would you point out that area that Mr. McMinds suggested was covered by the *Boldt* decision.

Mr. ADAMS. Mr. McMinds will point it out.

Mr. McMINDS. This area here. [Indicating green and yellow area.] It includes Grays Harbor. This area here. Puget Sound and Olympic Peninsula.

Senator METCALF. And the area that you traced up there, is that the Columbia River?

Mr. McMINDS. The Columbia is here. Grays Harbor is here, just south of the colors, into the center of the mountains back over following the International Boundary out to—

Senator METCALF. Along Puget Sound and along the coast down to Grays Harbor, there.

Mr. ADAMS. There is another case of the United States versus the State of Oregon involving the Columbia River and part of the \$690,000 was requested to service the Columbia River tribes, a budget amount of \$140,000 was requested to provide the management services to eastern Washington and some Oregon tribes.

So, that is affected as well because, in fact, the tribes do have considerable fish and water resources, both under their exclusive control and under their shared control.

We cannot understand how the U.S. Fish and Wildlife Service or any of the sister agencies like National Marine Fisheries Sciences Services can ignore these major resources. They have created a vacuum of responsibility when it comes to the Indian-related resources, when I don't think this Congress should tolerate that and I don't think the Government of the United States can tolerate it.

In the matter of the funds and the processes that have brought us here today, I will go through a chronology of what happened in the request for the funds and the ultimate plan to divert them away from those original purposes to the State agencies.

The initiation was the *Judge Boldt* decision and he said that the tribes had to have their own management, professional, technical services available to them, or under their own staffing, in order that they could implement it and carry out its decision free from State interferences negating the benefits of the *Boldt* decision and advancing the plans and objectives of the Indian tribes.

So the Bureau of Indian Affairs and the U.S. Fish and Wildlife Service did prepare a statement of request based upon an identification of existing needs among the tribes themselves. On March 29 there was an interdepartmental briefing here in Washington, D.C., in which these amounts, these figures, about \$1.9 million was stated by the Bureau of Indian Affairs as the amount needed to help the tribes in their development of their governmental capacity and the U.S. Fish and Wildlife Service identified this \$690,000 as the amount needed to service the technical assistance, biological needs.

Now, these funding amounts were then carried to the Office of Management and Budget and to the White House. They were pared down on the Indian BIA area to \$1.5 million and that request was sent over here to Congress. The \$690,000 was determined by the Office of Management and Budget as the amount being bare-boned already and couldn't be cut. So they submitted the request over here for \$690,000 for the technical services funds.

Senator METCALF. May I interrupt just a moment?

So the budget came up and you had the \$690,000 from the Office of Management and Budget and it went to the various appropriation committees to the House and Senate. Now, did you participate in discussions or preparation of material before those appropriation committees?

Mr. ADAMS. Yes. A number of tribes did work on the preparation and this is the key point, Senator. Mr. Nat Reed sat here this morning and told the Senators that he didn't know what the State planned to do with the money, what the basis of their requests were, and he told us at the White House Monday that they have not submitted any justifications or statements identifying the needs they were supposedly trying to meet.

The tribes, working with the Northwest Fisheries Program Office have made repeatedly detailed plans for programing funds and serving the existing needs.

And though we have made plans time and time again, and we made the basic outline for the \$690,000, now we are told that we got to come in with a plan on Monday, that that is what they are waiting for. Actually, they have made a commitment only to a meeting for Indians and, in this chronology, I can indicate where they have made real commitments for the money to the State agencies.

So, this is the only commitment Mr. Reed has made and Mr. Greenwalt's service, at this point, now that the money has been secured by the administration by the tribes through the responsiveness of the appropriations committee and the Congress. Now the only thing we are left with is a commitment to a meeting and they are left with commitments for the funds.

But I would make reference to a letter of August 23, 1974, from Frank G. Zarb, Associate Director of the Executive Office of the President, Office of Management and Budget, addressed to myself, informing me.

I must apologize for taking so long to acknowledge the telegram for the general financing of Indian fishing rights. As you probably know, we asked the Congress for an additional \$2.49 million in 1975 to implement Judge Boldt's decision. We feel that this amount is sufficient to accomplish the objectives, given the resources already available within the Department of the Interior. We expect this amount to be appropriated. Most of it was appropriated, and we did not ask for additional money for the regional solicitor in Portland because we believe that for the implementing of Judge Boldt's decision should be either within the existing totals or should be provided by priority. Sincerely, F. Zare.

So the Office of Management and Budget thought we were asking the Congress for these moneys that we were talking about when we took the request to them and had set the figures back in the chronology of what happened is the State of Washington's Game and Fish agencies did the inter-requests to the Department of Interior and probably Members of Congress, undoubtedly Members of Congress, for additional funding for themselves to do something.

One justification that I saw, it asked for 21 law enforcement protectors, enforcement officers. On another, the same justification from the Department of Game asked for one helicopter. But anyhow, they did make these requests and they found out that we were processing it, the Department of Interior, Bureau of Indian Affairs, and Fish and Wildlife Service, were processing \$690,000 as a request to the Congress to implement the Boldt Decision, so they came in with similar requests.

They asked for \$692,000 for Department of Game and \$612,000 for the Department of Fisheries and then they asked for meetings with the Department of Interior. They asked for meetings with the Secretary of Interior Rogers Morton, and Carl Krause, State Director of Game, flew to Washington, D.C., to meet with Secretary Morton, but that was deferred to a later meeting in Washington State which took place on June 24. This is where the machinations, the political motivations, come into play, in that meeting on June 24th in Olympia where the Secretary flew in without any public notice and met with the Department of Fisheries and Game and with—

Senator METCALF. When you say "Secretary," was that Secretary Morton or Secretary Reed?

Mr. ADAMS. That was Secretary of the Interior Rogers Morton.

Senator METCALF. We talk about Assistant Secretaries and Under Secretaries—that's why I asked you to make that identification.

Mr. ADAMS. No; this was Mr. Morton, himself, and the State noted its objections to the Boldt decision and said it was unfair. They stated their objections to Indian tribes exercising any management role whatsoever and they stated their objections to any additional federally operated or Indian-operated fish hatcheries and in the Fish and Wild-

life Service's description or memorandum report of that meeting, Secretary Morton did make commitments to them and did accede to every one of their objections.

The people who were in the room included Kahler Martinson, the regional director of fish and wildlife services, and some other departmental personnel, and they immediately gave a report at the meeting to Mr. Greenwalt so he would know what the commitments were on the question of hatcheries.

Now, about 2 years ago, a number of tribes asked the Fish and Wildlife Service for a feasibility study for a hatchery in southern Puget Sound and that because of some very decent, good comprehensive work that the Fish and Wildlife Service had done previously for the tribes, that we would get a good report.

Now, after the Secretary Morton meeting with Fish and Game, where they said, "We don't want any more Indian-related hatcheries," they finalized their report and they left out the bulk of 2 years' work that the Fish and Wildlife Service put in there. In place of that, they just submitted their conclusions, the objections of the State Game Department and State Fisheries Department, saying, "We are opposed to any Federal fish hatcheries for Indians."

So that the quality of the work of the U.S. Fish and Wildlife Service has been severely affected by the recent development of close relationships between Secretary Morton and the Fish and Game Departments of the State.

Secretary Morton, in that meeting with them, said, "Yes, I must agree that multiple management never works and that we will do what we can through contracting of finances to the State in order that we can keep the management responsibility where it belongs, with the State."

Now, this, as far as the fact that the State itself has multiple management systems besides the tribes in existence already. In this case area, there is the Canadian-American Management System and there is Federal management system outside the 3-mile limit.

So, this is an artificial issue. It is designed to prevent the tribes from ever getting out from under the thumb of the State and managing their resources without State interferences. But that June 24 meeting with the State was crucial and he did make commitments.

Mr. Martinson, at the regional level, accepted those statements at that meeting as the policy and commitment of the Department of the Interior and that is why the information was immediately communicated to Mr. Greenwalt.

As we indicate in our statement, Mr. Morton thinks a lot of Mr. Greenwalt, but promised the State that they would get to work on him to make certain that he was going in the right direction and that he knew what his position had to be in the State and so then, at that point, OMB actually had not formally requested the money at that time. The Interior appropriations bill had not been processed through the Congress and when it was finally processed, OMB, in the last minutes of the appropriation process, did get the request over here and the Congress did commit the \$690,000 plus \$1.3 million for the tribal BIA matters, apart from the direct fishery management question.

After the Congress acted, you were still talking about statements of needs from the state plus the Indians' \$690,000, but the only money that was appropriated by this Congress was the Indians' money. So, when you were talking about who gets what, we were talking about who gets the Indians' money. Now, there was another meeting set up scheduled for August 27 in Portland, Oreg. and this was between the U.S. Fish and Wildlife Service and the State Departments of Fisheries and Game and the purpose of that meeting was to divide up the moneys which it seemed certain the \$690,000, and Indians were not invited to that meeting and, in fact, what happened—some field staff people, who had been working directly with the tribes refused to participate in that process or in that meeting of dividing up the Indians' funds without even divulging it to the Indians.

Also, we were able to point this out to the White House and the White House said "You had better be with the Indians" and so that means the meeting was canceled and this meeting for next Monday, September 23, was set up to meet with Indians and the two State agencies and Fish and Wildlife Service.

Again, as I say, it's demanded that the tribes come in with specifics and a new plan, a detailed plan, on what the tribes are going to do with the money, but that's how the money was generated to the plans that we already prepared. The State has prepared no plans. As I say, the only commitment we have left at this moment is a commitment to meet with us in a meeting that we forced to come about.

There is no commitment for funds if it remains under the departmental control.

Senator METCALF. Is that meeting in Washington?

Mr. ADAMS. It's in Washington State, in Olympia.

Senator METCALF. Are you going to be there, Mr. Adams?

Mr. ADAMS. Yes; we are.

Senator METCALF. You are all going to be there?

Mr. ADAMS. But even at that meeting the Regional Director, Mr. Martinson, who says as Mr. Greenwalt says, this morning, that he has the decision-making authority to decide what is done with that money. He tried to beg out of the meeting when we met with him previously. He said, "Do I have to be there?"

They weren't even going to put their decisionmakers in that meeting with us, except that we insisted "If you are going to make a commitment to a meeting, you at least ought to come to it."

So, this is what we are dealing with. Now, we do have serious questions about what is going on in the Department of Interior. We know, as Mr. Greenwalt states in a memorandum, that "We are dealing with a hot issue here. There is a lot of political pressure. There are a lot of non-Indian sports fishermen in this country. There is almost a million within the State of Washington, itself." There is some problem in making the readjustments that Judge Boldt has decreed that the treaties command.

But, somebody is going to have to suffer those readjustments and what the Department is saying at this point and many people who have an interest in these matters, is that we just have to readjust our politics and readjust the law in order that Judge Boldt's decision will never be implemented. So this is what we are dealing with and we don't have the power, really, to protect ourselves. This is why I took

the United States coming in to help us in this case because we have been fighting it for almost a century already. We have written a full record of Indian-white relations in Washington State, in the U.S. Supreme Court from 1905 up through last year, because each element of the right and each element of activity on the part of Indians is challenged by the State.

Just one other thing. Not through your committee file or anything, before I close, I do think I should point out some of the things that the State departments and agencies have done with the moneys that they have had before, in the past.

Now, in talking about the Nisqually and Puyallup Rivers in the State of Washington, the State has said that they need these Federal funds and they do already have a lot of Federal funds, there is \$17.4 million in fish funds this year's appropriations. There is an additional special \$300,000 in anadromous fish appropriation through Fish and Wildlife Service and so they are not talking about a single source like we are. This is our only availability source of funds, that \$690,000.

One of the things they are saying is that we need to put together a lot of new data and we are starting from a zero base on fisheries data on a lot of these rivers. This is true. This is true of the Puyallup River. This is true of the Nisqually River.

This notebook here shows where they have been collecting data. This is alphabetized. In that alphabet is every member of the Nisqually Indian Tribe, complete with pictures, arrest records, and all kinds of information that they have been digging out on Indian families.

They have information showing that the 44 Nisqually fishermen in 1963 averaged out an income of \$533 from the fishery resources in a year, that non-Indians took over 13 million salmon and 11 million in commercial fisheries and almost 2 million in sports fisheries and yet one tribe was only getting \$533, but the State game department, the department who is asking money to put together figures now, not only dug that out from their fish records, they went to the employers of every Indian to see how much money they were earning.

At Fort Lewis, the Department of the Army provided them the incomes, mostly part time, earned by the Nisqually Indians. There is welfare statistics in here that the State game department went out and sought out on every Nisqually Indian.

There is social security information provided by the Federal Government, and there are also statements that the Bureau of Indian Affairs provided as to money in individual Indian trust accounts.

This is what they have been wasting their money on in the past and we don't think, you know, that they should have just a blind commitment for new moneys to fight Indians in the future and certainly without justifying it to everyone.

We had to justify that \$690,000 to the Congress. They don't even have to justify it to Fish and Wildlife Service and they get a commitment to have some of it.

This here is a more exhaustive study on the Puyallup Tribe. Now, they are starting from a zero base on the fish resources on the Puyallup River system. That's why they say they need money. Now, this goes through 55 Puyallup Indians and it goes into reports on how much food the families have in their cupboards, how dirty their houses are, how clean they might be. It examines questions which of the Indian

children are legitimate or illegitimate. It goes to say how much the families are spending on fuel oil and where they purchase their fuel oil. It goes through the same sources to put together this information and again it is alphabetized and it is part of the reason why the tribes don't have any justifiable trust in the agencies which are about to get their money, to get the Indians' money.

I wish, you know, that some Senators would look at some of this information. It's the type of information that have brought governments down. It's—it goes on with the Indians, by who does it—

Senator METCALF. How did you get this information, Mr. Adams?

Mr. ADAMS. We have been in court for 10 years.

Senator METCALF. You got it by court order?

Mr. ADAMS. We got it by a discovery process.

Senator METCALF. A discovery process in court?

Mr. ADAMS. No.

Senator METCALF. Would you mind leaving that so that some of us can examine it with the assurance that it will be returned to you in its entirety without any missing pages?

Mr. ADAMS. Yes; I would be glad to do that, Senator, and I would, perhaps, like to put some paperclips on a few choice pages.

Senator METCALF. Very well. If you would call our attention to some of the items.

Mr. ADAMS. Because it does have also an expression of the attitude of these agencies saying that these Indians are like wild animals in the jungle, they don't deserve much of anything.

Senator METCALF. I am just directing the staff that, after you have left it here, next week, I hope, it will be called to my attention and some of us will be permitted to look through it. It's the kind of thing that maybe Senator Ervin, in his right of privacy bill, has been complaining and objecting about for a long, long time and it is something that should be a matter of grave concern. I don't know whether it is a matter of concern with respect to Mr. Greenwalt's confirmation or not, but it's a matter of concern for us that this sort of material is being compiled and this procedure is going on.

Mr. ADAMS. Yes, OK. We would appreciate it.

Senator METCALF. If you want to put some tabs in or some paperclips, or something, that would be helpful.

Mr. ADAMS. OK. Well, I think I will check to see if any of the other Commission members have additional remarks and then I am fairly well through. I would make two more submittals to the record and one is a letter from the Puyallup Tribe to the regional director dated August 21, dealing with those questions of the hatchery, the feasibility study, and then an article that was carried by the Seattle P.I. a few weeks ago relating to State actions in the implementation of the *Boldt* decision.

Senator METCALF. And those will be incorporated into the file, unless we find that excerpts are necessary for the completion and the understanding of the entire record and in that case they will be incorporated.

Mr. PETERSON. I don't think we have anything else, Senator Metcalf, and we wish to thank you very much for the time your Commission has given us to present our problems here before you.

Senator METCALF. We are delighted to have you here. We are always glad to have Mr. Adams here. He has been before the committee before and his usual articulate and eloquent presentation is appreciated.

Mr. ADAMS. Thank you, Senator.

Senator METCALF. Thank you, again.

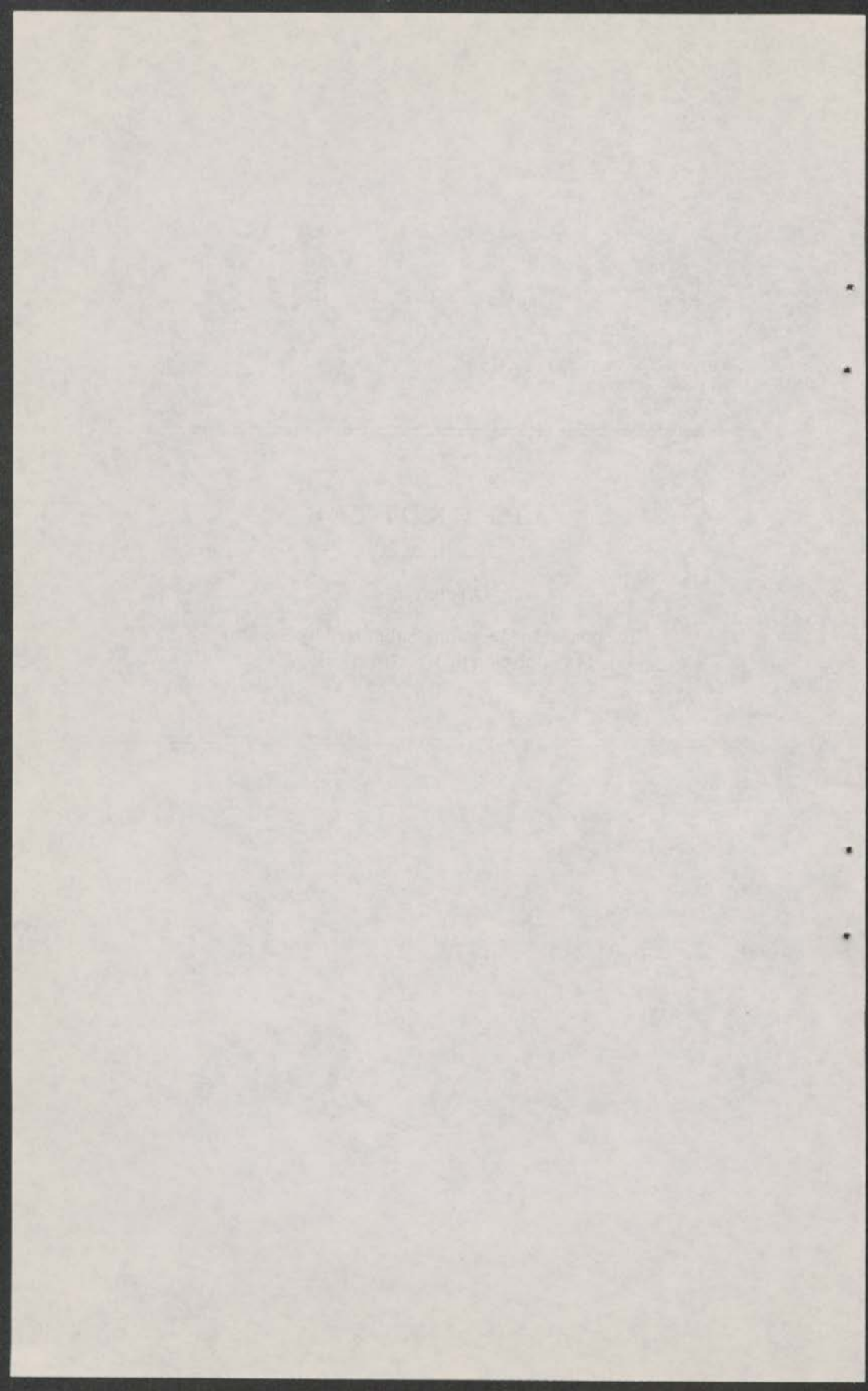
The committee will be recessed subject to the call of the two respective chairmen, Senator Jackson and Senator Magnuson, at which time we will examine financial reports in closed Executive Session.

[Whereupon, at 1:10 p.m. the committee recessed.]

APPENDIXES

APPENDIX I

Responses to Questions Submitted by Senator
Jackson to Mr. Greenwalt



HENRY M. JACKSON, WASH., CHAIRMAN
 ALAN BULL, ILL.
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PAUL J. PARNER, ARIZ.
 CLIFFORD P. HANSEN, IOWA
 MARK O. MATTHEWS, ORE.
 JAMES L. BUCKLEY, N.Y.
 JAMES A. MCCLURE, IOWA
 BENNY F. BARTLEY, DELA.

United States Senate

COMMITTEE ON
 INTERIOR AND INSULAR AFFAIRS
 WASHINGTON, D.C. 20510

JERRY T. YEAGLER, STAFF DIRECTOR

September 26, 1974

Mr. Lynn A. Greenwalt
 Assistant to the Director
 U.S. Fish and Wildlife Service
 Department of the Interior
 Washington, D.C. 20240

Dear Mr. Greenwalt:

I would first like to congratulate you for your nomination to be the Director of the U.S. Fish and Wildlife Service. Your professional experience and qualifications, earned as a result of almost thirty years of service to our nation and its wildlife, are indeed commendable.

Although I was not able to personally attend your confirmation hearing, I would like to pose several questions to you for the hearing.

1. Many letters from pet fanciers and people employed by the pet industry have been received by the Committee claiming that implementation of the proposed regulations would mean the end of the hobby and the industry. Would you care to comment on that?
2. In what stage of preparation are the regulations and what provision has been made for the incorporation of public comment.
3. What animals are presently considered to be "low-risk" and, therefore, eligible for importation?
4. Have there been studies made of the so-called "high-risk" species and is this information available to the public?

5. I have a letter from the Tropical Fish Institute of America that claims that:

"The Department has been asked many times for their justification. They reply in generalities, but they have not produced any hard scientific evidence to back up this proposed ban."

Would you comment?

6. Would the proposed regulations restrict interstate shipment of animals already in the possession of hobbyists or pet suppliers?
7. Would pet suppliers be restricted from maintaining breeding populations of "high-risk" species?
8. While we are on the subject of maintaining populations, what are your views regarding attempts to increase the numbers of endangered species through captive breeding programs?
9. Who is eligible to undertake such a program - what are the conditions which should be met?
10. Do you feel that the Service could condone such an activity by private citizens, properly regulated, of course?
11. What is the status of the proposed Federal regulations on falconry?
12. Would the proposed regulations permit captive breeding programs?
13. Would not the encouragement of captive breeding programs provide a population of birds which would discourage the taking of birds from the wild?
14. What about the use and possession of endangered species for falconry?
15. Could captively bred endangered species be used?

16. An attempt was made by the Congress to help protect whales by barring the interstate shipment of whale ivory products via enactment of the Endangered Species Amendments of 1973. Would you describe any difficulties the Service has encountered with that legislation and what do you think is necessary to remedy those problems, if any?
17. Do you believe that there should be no restrictions regarding whale products which were already in possession prior to enactment of the Amendments?
18. What is the procedure, by the Service, for review of applications to the Corps of Engineers for dredge and fill permits or permits for similar activities?
19. In the Service's review of the application - are economic factors taken into account or are you limited to strictly environmental factors?
20. Do you think that the human and economic needs of perhaps, a local community, should be considered in the evaluation of such application by the Service, and if so, what action would you take to implement this?
21. Is there a rule-of-thumb as to how long it takes for the Service's comments to be made available to the applicant?
22. I have in mind two applications by entities in the State of Washington for Corps of Engineers permits. The first is by the Port of Skagit County for a permit to expand an existing marina.

The draft environmental statement was submitted on January 2, 1974. Forty-five days later, comments had been received from all agencies except the then Bureau of Sport Fisheries and Wildlife.

A letter from the Bureau was finally set on February 19 declining to comment. Apparently, the statement had been "in transit" between two offices of the Bureau over 6 weeks.

Finally, on July 24, a form letter was sent to the Corps asking that the application be held in abeyance pending further study.

After knowing of the application for over six months, the Bureau finally decided that the application merits a review.

Another situation which has been called to my attention involves an application by the Port of Everett for a dredge and fill permit.

The draft Environmental Impact Statement was completed in 1972 with a copy forwarded in October to the then Bureau of Sport Fisheries and Wildlife, which declined to comment. Other Federal and state agencies reviewed the EIS and their comments were incorporated in the final EIS which was again circulated among interested parties including the Bureau of Sport Fisheries and Wildlife.

Comments by the Bureau of Sport Fisheries and Wildlife on the EIS were finally received by the Port of Everett in a letter dated March 5, 1974, almost two years after the Bureau became aware of the proposed project. Subsequently, the Fish and Wildlife Service opposed the issuance of the permit.

I think the feelings of the Port of Everett are best summarized by the statement of Mr. John G. Belford, Manager of the Port, in a letter of March 14, 1974, to the Bureau of Sport Fisheries and Wildlife:

"This is the type of comment we were soliciting for two years and would have readily responded to your objection at that time. Where were you then?"

Are delays such as these a common occurrence?

What do you plan to do to make the Service more responsive to local needs?

I am looking forward to receiving your response to these questions in the near future.

Sincerely yours,

Henry M. Jackson
Chairman

HMJ:rba



United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICEIn Reply Refer To:
FWS/LS

September 30, 1974

Henry M. Jackson, Chairman
Committee on Interior and Insular Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Jackson:

The enclosed information is provided in response to specific questions raised in your letter of September 26, 1974.

I appreciate and thank you for your kind words on my nomination.

I hope the enclosed information will be useful.

Sincerely yours,

Special Assistant
to the Director

Enclosure

Question No. 1

Many letters from pet fanciers and people employed by the pet industry have been received by the Committee claiming that implementation of the proposed regulations would mean the end of the hobby and the industry. Would you care to comment on that?

Response

The claims that the proposed injurious wildlife regulations would mean the end of the pet hobby and industry are completely unfounded. The trade in conventional, domestic pets, which constitute the backbone of the industry, would not be affected in any way. Wild animal pets that are native to this country are not affected. Exotic pets now in this country, and those produced in this country, are not affected. Only that part of the pet industry which depends on importation of exotic pets stands to be affected. Even a large portion of this trade would not be affected since 95 percent of the tropical fish and 50 percent of the birds now being imported would still be able to enter the country without restriction under the proposed regulations.

The following statistics have been extracted from the "Second Annual State of the Pet Industry Report", published in the Pets/Supplies/Marketing magazine in May 1974.

EFFECTS OF PROPOSED IMPORT REGULATIONS ON THE PET INDUSTRY
(In millions of dollars)

Total retail sales for 1973 \$3,612

Total livestock sales (16.5%) \$596

<u>Livestock Sales</u>	<u>Total</u>	<u>Affected</u>	
Dogs	\$204	0.0	
Aquaria	263	13.2	(5%)
Cats	32	0.0	
Birds	49	25.0	(50%)
Other	<u>48</u>	<u>24.0</u>	<u>(50%)</u>
Total	\$596	62.2	(10.4%)

<u>Retail Sales Category</u>	<u>Total</u>	<u>Affected</u>	
Dog-related items	\$1,671	0.0	
Cat-related items	586	0.0	
Aquarium-related items	698	35.0	(5%)
Bird-related items	269	135.0	(50%)
Misc.-related items	163	80.0	(50%)
Grooming	<u>225</u>	<u>0.0</u>	
Total	\$3,612	250.0	(6.9%)

The figures used for sales that might be affected by the regulations are overwhelmingly on the generous side since they presume that all fish, bird and other sales are dependent upon imports. We know this is not the case. In 1973 sale of bird-related items increased 4.6 percent despite the U.S. Department of Agriculture's new quarantine restrictions which, according to leading bird importers, caused bird imports to drop to 10 percent of the pre-quarantine level. This would indicate that imported birds do not constitute a large proportion of total pet industry sales.

It is also worth mentioning that the figure of \$269 million for bird-related items include \$152 million which represents food sales. The food sales include wild bird seed which represents a very large market that will not be affected in any way.

It is possible that certain importers who specialize in importation of species that will be restricted might be seriously affected by the regulations. It is our estimate that less than five percent of the total industry will be affected.

Question No. 2

In what stage of preparation are the regulations and what provision has been made for the incorporation of public comment.

Response

The proposed changes in regulations for importation of injurious wildlife were published in the Federal Register on December 20, 1973. A draft Environmental Impact Statement was prepared to assess effects of the proposed new regulations, and was made available for public comment in early June. Public hearings on the proposal were held during early August at Washington, D.C., Miami, Kansas City and San Francisco. The public comment period for the published proposed regulations and draft EIS was scheduled to close on July 29, but due to the controversial nature of the proposal was extended 45 days, and therefore, closed on September 13, 1974.

Over 4,300 letters of comment were received on the proposed regulations and about 100 on the EIS. Roughly 150 statements were presented at the four public hearings. All these expressions of public opinion are being analyzed and will be considered in preparing the final regulations.

In addition to the public comments received through the mail, the Service has contacted various interest groups which stand to be significantly affected by the regulation changes, to explore ways of reducing undesirable impacts. Meetings have been held with representatives of medical research, the American Association of Zoological Parks and Aquaria, falconers, game bird breeders, the Pet Industry Joint Advisory Council and others. These meetings have been extremely helpful in discovering and evaluating problems that would result from implementation of the regulations in their proposed form. Wherever possible, the final regulations will be modified to avoid adverse impacts that are not in consonance with the intent of the Lacey Act, under which authority the change in existing regulations will be promulgated.

Representatives of major conservation organizations have been briefed twice on the progress of the regulation changing process. The following steps now remain to be completed before the new regulations can go into effect.

1. Complete analysis of public comments.
2. Preparation of final wording of regulations, including revised list of low-risk species.

3. Preparation of final environmental impact statement.
4. Plan for implementation of new permit system.
5. Publish final regulations in the Federal Register.

Every effort is being made to expedite putting the new regulations into effect. With the steps still remaining, it is unlikely that the final regulations can be published before January 1975.

Question No. 3

What animals are presently considered to be "low-risk" and, therefore, eligible for importation?

Response

The animals presently considered to be "low-risk" are those shown on the attached list that was published in the December 20, 1973, issue of the Federal Register. As indicated in the Federal Register notice, the list is subject to revision from public comments and other information received during the comment period. The final list of species that can be imported without restriction is now being prepared and will be contained in the final regulations when published early next year.

Question No. 4

Have there been studies made of the so-called "high-risk" species and is this information available to the public?

Response

There have been no studies of "high-risk" species made by the Fish and Wildlife Service for the specific purpose of the injurious wildlife regulations. However, current scientific literature contains many studies and documented cases of damage from "injurious species". This literature has been published in scientific journals that are generally available in most public libraries. An extensive bibliography of such references, as well as a compilation of pertinent quotations from them, are appended to the draft Environmental Impact Statement and enclosed for your information. Over 2,000 copies of this Environmental Impact Statement were distributed to persons or organizations who requested it, and additional copies are still available.

Question No. 5

I have a letter from the Tropical Fish Institute of America that claims that:

"The Department has been asked many times for their justification. They reply in generalities, but they have not produced any hard scientific evidence to back up this proposed ban."

Would you comment?

Response

The scientific literature referenced in appendix 1 of the Environmental Impact Statement constitutes strong evidence that exotic animal imports

should be controlled. The reversal in philosophy of administering the Lacey Act was, we believe, a necessary step for properly carrying out the provisions of the Act. The regulations now in effect, with few exceptions, permit any number of wildlife species to be imported by anyone, from anywhere, for any purpose, to do with as he pleases, subject only to State law. Under such a system, an animal that causes damage is placed on the "injurious list" after the damage has occurred. This method virtually requires that damage occur before preventative action is taken. In too many cases (such as the walking catfish and numerous others), exotic species became established in this country before they were placed on the "injurious" list. Launching a program of eradication requires efforts that are always costly, seldom effective, and inevitably repugnant to a large segment of the American public.

The proposed revision of the regulations is based on the premise that any exotic organism introduced into an ecosystem will have an effect on that ecosystem. Any disruption of existing ecological interrelationships will be harmful to some organisms in the ecosystem. There is potential for these harmful effects to be significant, or even severe. Hence the justification for requiring a thorough evaluation of potential hazards before importation of a species.

The proposed regulations recognize that the threat posed by some species might be so low that full protection of the Act would not be required. Animals in this category, the "low risk" list, could be imported freely

without restriction of the Lacey Act. All animals not classified as "low risk" would be carried as an "injurious" species until scientific evidence is available that certain of these animals can be placed on the "low risk" list. This would provide the necessary screening for every species not previously imported to assess potential risk before it is imported. This philosophy is similar to that of the National Environmental Policy Act (42 U.S.C. 4321-4347; 83 Stat. 852) which requires that every Federal action which has the potential of causing significant environmental impact be thoroughly evaluated before the action is taken.

This information has been provided to those who have asked and has been included in special news releases. Unfortunately, some individuals still choose to believe that this is not supported by scientific evidence.

Question No. 6

Would the proposed regulations restrict interstate shipment of animals already in the possession of hobbyists or pet suppliers?

Response

The proposed regulations would not restrict interstate shipment of animals already in this country when the regulations go into effect. This fact has been publicized widely. A copy of a news release on the subject is enclosed.

Question No. 7

Would pet suppliers be restricted from maintaining breeding populations of "high risk" species?

Response

Pet suppliers would not be restricted from maintaining breeding populations of "high risk" animals that are already in the country when the regulations become effective. Under the proposed regulations, it will not be possible to import additional animals for this purpose.

Question No. 8

While we are on the subject of maintaining populations, what are your views regarding attempts to increase the numbers of endangered species through captive breeding programs?

Response

We recognize the role of captive propagation in the conservation of endangered species. In many cases this effort is essential if the species is to be saved. However, we do not equate the maintenance of a captive strain with the salvation of a wild population. We feel this technique, which may be lengthy, extremely costly, and in many cases fraught with uncertainties, to be very effective tool, but not the entire answer.

There are some species that presently exist only in captivity, and maintaining these "gene pools" is both an important and laudable effort. However,

our main thrust in the endangered species program has been and will be the continued insurance of these species in the wild.

Question No. 9

Who is eligible to undertake such a program - what are the conditions which should be met?

Response

Presently, anyone can engage in captive breeding of most animals. If the individual is dealing with a species on the Federal endangered species list, he must obtain a permit to engage in such activity. He may also require approval from the State in which the activity is undertaken.

With regard to endangered species, captive breeding of such species held in captivity prior to enactment of the 1973 Endangered Species Act may be undertaken without any special Federal permit. The sale or transport in interstate commerce of such species is, however, prohibited by the new Act. In addition, if an individual must obtain the initial stock of the endangered species from the wild, he must obtain a Federal permit.

With regard to conditions which should be met to engage in captive breeding activities, the Fish and Wildlife Service has responsibility in this area only if the animal to be propagated is a migratory bird or an endangered species. Regulations with regard to migratory birds are enclosed.

In the case of endangered species, the Service encourages the captive breeding of such species which were in captivity prior to December 28, 1973 (date of enactment of the Endangered Species Act). The Service itself has and is involved in research dealing with captive breeding of certain endangered species such as the whooping crane.

While we have not issued ~~regulations~~ or published criteria on captive breeding of endangered species, we have established liaison with the zoological community, game bird propagators and others involved in animal husbandry to encourage knowledgeable persons to undertake such activity.

To obtain a Federal permit to take an endangered species from the wild to conduct research in the area of captive breeding would generally require an individual to make a showing that:

- The facility where such research is to be conducted is adequately equipped, staffed and funded.
- The project will enhance the survival of the species.
- The researcher is qualified by education and experience.

Question No. 10

Do you feel that the Service could condone such an activity by private citizens, properly regulated, of course?

Response

The Service presently condones and encourages captive breeding activities of private citizens. If the activity deals with migratory birds or endangered species, it is presently conducted under Federal regulations as described in response to question nine above.

Question No. 11

What is the status of the proposed Federal regulations on falconry?

Response

The Service proposal for regulations for falconry permits is now in the review process. The proposed regulations are now being scrutinized for substantive context by Service management and enforcement officers. It should be emphasized that the proposed regulations are subject to changes throughout the review process.

Question No. 12

Would the proposed regulations permit captive breeding programs?

Response

The proposal for final rules is concerned only with falconry and the requirements for obtaining a permit and holding birds. Currently, raptor propagation can be authorized by a special purpose permit, issued in accordance with 50 CFR 21.27, enclosed.

Question No. 13

Would not the encouragement of captive breeding programs provide a population of birds which would discourage the taking of birds from the wild?

Response

Yes, that is one of the values we see to captive breeding of endangered or other species. We recognize that many of these species are used by man for legitimate purposes. Such programs would reduce the pressure on the wild populations.

In the case of raptors, we feel that propagation in captivity of certain species of raptors, especially those that are not abundant in the wild, could create a source of birds for use in the sport of falconry. Of course, if the raptor is listed as an endangered species, certain restrictions are placed on its use in falconry as well as on use in captive breeding activities as described in response to question 14.

Question No. 14

What about the use and possession of endangered species for falconry?

Response

The Endangered Species Act of 1973 does not impact the possession of endangered species held in captivity prior to enactment of the Act, December 28, 1973. Endangered raptors in possession before that date can be used for the sport of falconry or for any other activity so long as it is not for

a commercial purpose. Under the new Act, acquisition from the wild of an endangered species for falconry is not allowed, nor can the progeny of captive endangered raptors be sold for falconry purposes or other commercial purposes. We have proposed amendments to the Endangered Species Act which would allow certain commerce in captive reared endangered animals as described in the enclosed letter dated August 19, 1974, to the Chairman, Merchant Marine and Fisheries Committee, House of Representatives. We are also investigating with the Department's legal advisors the possibility of providing by regulation, pursuant to authority in the 1973 Act, certain exemptions from the prohibited acts for captive reared endangered animals.

Question No. 15

Could captively bred endangered species be used?

Response

Endangered species born in captivity after December 28, 1973, date of enactment of the Endangered Species Act of 1973, cannot be used for falconry. We hope either to amend the Act or by regulation, pursuant to authority in the Act, exempt captive bred populations of endangered species from certain prohibited acts.

Question No. 16

An attempt was made by the Congress to help protect whales by barring the interstate shipment of whale ivory products via enactment of the

Endangered Species Amendments of 1973. Would you describe any difficulties the Service has encountered with that legislation and what do you think is necessary to remedy those problems, if any?

Response

We are unable to respond to the problem of interstate shipment of whale ivory, since all whales and their products are under the jurisdiction of the Department of Commerce. The Marine Mammal Protection Act of 1973 vested in the Department of Commerce responsibility for all marine mammals except the polar bear, manatee, dugong, walrus and sea otter, which are under the jurisdiction of the Department of the Interior.

Although the Endangered Species Act of 1973 does not delineate agency responsibility for species of fish, wildlife or plants, a formal agreement has been signed by both agencies regarding management and protection of endangered and threatened species under the Act (copy enclosed). This agreement does not change the jurisdiction established in the Marine Mammal Act with regard to endangered or threatened marine mammals. We, therefore, defer to the Department of Commerce on your specific question of interstate shipment of whale ivory.

We should point out that we have experienced problems of interstate shipment of endangered animals under our jurisdiction.

The House Merchant Marine and Fisheries Committee, Subcommittee on Fisheries and Wildlife Conservation and the Environment, held hearings recently on H.R. 15893 and H.R. 16079, similar bills "To amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972." In our report dated August 19, 1974, and enclosed for your information, we addressed the situation where individuals legally possessed prior to enactment of the 1973 Endangered Species Act, live animals or their parts or products for the purpose of sale or other activity of a commercial nature which is now prohibited. We offered amendments to the Endangered Species Act of 1973 to overcome this problem. The final exception in proposed amendment one on page two of our report is intended to grant the Secretary of Commerce authority to deal with the specific problem of large stocks of sperm whale products, such as scrimshaw and ambergris.

Question No. 17

Do you believe that there should be no restrictions regarding whale products which were already in possession prior to enactment of the Amendments?

Response

As with question 16 above, we must defer to the Department of Commerce on the specific question of restrictions on whale products.

Again, we refer you to our report to the Chairman of the Committee on Merchant Marine and Fisheries, House of Representatives, dated August 19, 1974, and enclosed, for our views on the general problems of commerce in endangered species' parts and products. We do not believe there should be allowed unrestricted commerce in such species. However, the Endangered Species Act of 1973 has caused economic hardship on many individuals who were engaged in legitimate commercial activities prior to passage of the 1973 Act. The Endangered Species Conservation Act of 1969 did not prohibit the sale or other such commercial activities, but prohibited only the importation of species listed as endangered. With passage of the 1973 Act, all commercial activities were prohibited.

We fully support this prohibition so as to reduce the demand for certain animals whose continued existence was, and is, in jeopardy. Commercial demand for endangered animals should be reduced, and the United States should take the lead by reducing the demand of its citizens. However, we believe that a gradual reduction of this demand would create less severe economic hardship for many legitimate commercial enterprises. It will be necessary to amend the Endangered Species Act of 1973 to provide for commercial activity in the parts or products of endangered species not presently subject to an exemption in section 9(a) of the Act. However, any such exemption should not be unrestricted. The Secretary should be provided with authority to grant such activity under

such terms and conditions as he may prescribe. Certain restrictions and controls are absolutely essential if we are to prevent a drain on the wild populations of endangered fish and wildlife through the stimulation of a market, either directly or indirectly.

Question No. 18

What is the procedure, by the Service, for review of applications to the Corps of Engineers for dredge and fill permits or permits for similar activities?

Response

The enclosed diagram shows the process through which an application for permit or license goes during U.S. Fish and Wildlife Service review.

Question No. 19

In the Service's review of the application - are economic factors taken into account or are you limited to strictly environmental factors?

Response

While the Service is cognizant of the fact that economic factors enter into resources development decisions, the Service is limited by law to the consideration of fish, wildlife and environmental factors. The Fish and Wildlife Coordination Act, as amended, states that "...whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other

body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development."

The Service's expertise is in fish and wildlife and to consider economics on a Department of the Army Section 10 permit application would usurp the Corps of Engineers' responsibilities to consider all factors relevant to a proposed project, including conservation, economics, esthetics, historic values, navigation, recreation, water supply, water quality, and, in general, the needs and welfare of the public. Occasionally, other agencies in the Department of the Interior provide comments on a proposed project, and the Service forwards these comments to the authorizing agency. The Port of Skagit project is an example (see response to question 22).

Question No. 20

Do you think that the human and economic needs of perhaps, a local community, should be considered in the evaluation of such application by the Service, and if so, what action would you take to implement this?

Response

The U.S. Fish and Wildlife Service is not authorized under provisions of the Fish and Wildlife Coordination Act to evaluate human, economic, and other needs except as related to impacts on fish and wildlife resources and their associated habitat. Our function, as assigned under the Act, is to assess and evaluate the probable impact on fish and wildlife of construction proposals requiring a Federal license or permit and to report our findings to the Federal licensing or permitting agency along with our recommendations for preventing, minimizing, or mitigating such losses. The Federal licensing and/or permitting agency then considers our findings and recommendations along with many other factors in making a determination as to whether the issuance of license or permit would be in the best overall public interest.

It is important to remember that the Federal agency with licensing and/or permitting responsibilities makes the final determination concerning the issuance of a license or permit after considering all public interest factors. The U.S. Fish and Wildlife Service acts only in a consulting

capacity to the Federal licensing and/or permitting agency on fish, wildlife and related environmental matters.

Question No. 21

Is there a rule-of-thumb as to how long it takes for the Service's comments to be made available to the applicant?

Response

The U.S. Fish and Wildlife Service provides comments to the Corps of Engineers on permit applications, not to the applicant. The Service has no way of knowing or controlling the length of time that it takes the Corps of Engineers to provide these comments to the applicant. We are of the opinion, however, that the Corps of Engineers should make our comments available to the applicant immediately upon receipt. With regard to providing our comments to the Corps of Engineers, under current Corps of Engineers' regulations, such comments must be provided within 30 days from the date of issuance of a public notice unless additional pertinent information is required to adequately evaluate the permit application or time is necessary to investigate the project site. In these instances, Corps of Engineers' regulations provide for a maximum commenting period of 75 days. Under extenuating circumstances, such as the necessity for preparation of an environmental impact statement to fully address all environmental issues, time extensions beyond the 75-day commenting period can be granted. The Service attempts to make

comments and recommendations on all applications made to the Corps of Engineers for Department of the Army permits within the initial 30-day commenting period.

Question No. 22

I have in mind two applications by entities in the State of Washington for Corps of Engineers permits. The first is by the Port of Skagit County for a permit to expand an existing marina.

The draft environmental statement was submitted on January 2, 1974. Forty-five days later, comments had been received from all agencies except the then Bureau of Sport Fisheries and Wildlife.

A letter from the Bureau was finally sent on February 19 declining to comment. Apparently, the statement had been "in transit" between two offices of the Bureau over 6 weeks.

Finally, on July 24 a form letter was sent to the Corps asking that the application be held in abeyance pending further study.

After knowing of the application for over six months, the Bureau finally decided that the application merits a review.

Another situation which has been called to my attention involves an application by the Port of Everett for a dredge and fill permit.

The draft environmental impact statement was completed in 1972 with a copy forwarded in October to the then Bureau of Sport Fisheries and Wildlife, which declined to comment. Other Federal and State agencies reviewed the EIS and their comments were incorporated in the final EIS which was again circulated among interested parties including the Bureau of Sport Fisheries and Wildlife.

Comments by the Bureau of Sport Fisheries and Wildlife on the EIS were finally received by the Port of Everett in a letter dated March 5, 1974, almost two years after the Bureau became aware of the proposed project. Subsequently, the Fish and Wildlife Service opposed the issuance of the permit.

I think the feelings of the Port of Everett are best summarized by the statement of Mr. John G. Belford, Manager of the Port, in a letter of March 14, 1974, to the Bureau of Sport Fisheries and Wildlife:

"This is the type of comment we were soliciting for two years and would have readily responded to your objection at that time. Where were you then?"

Are delays such as these a common occurrence?

What do you plan to do to make the Service more responsive to local needs?

Response

With regard to the Port of Skagit application to expand an existing marina, the Seattle District, Corps of Engineers, issued Public Notice 21-16 on June 20, 1974. Prior to that the Service received on February 19, 1974, the State's EIS on the project, and declined to comment. The Fish and Wildlife Service Area Office submitted the Department's comments on the application to the District Engineers on July 24, 1974. On behalf of the Bureau of Indian Affairs the Service requested that project approval be held in abeyance pending further investigations of land ownership. Local Indians feel that the expansion proposal affects Indian reservation lands. The Fish and Wildlife Service has no objection to the project, but must relay views of other Interior agencies as well as its own position.

Public Notice 10-50 was issued on October 11, 1972, by the Corps of Engineers for a Section 10 application of the Port of Everett. At that time the Service was in process of transferring its field office from Spokane to Olympia, and Public Notice of the application was misplaced. Thus, no comments were submitted to the Corps of Engineers on the application until after July 17, 1973. Notification of permit revisions was received on that date. The Service did not address the State's draft Environmental Impact Statement on the proposed project because of funding and manpower constraints. However, Service comments were provided on the Corps of Engineers' supplemental draft EIS, received in December 1973.

Those comments were forwarded to the Secretary's Field Representative on February 11, 1974. On February 21, 1974, the Secretary's Field Representative forwarded the comments to the Corps of Engineers. On April 16, 1974, the Regional Director for the Fish and Wildlife Service's Region 1, headquartered in Portland, Oregon, transmitted to the Corps of Engineers, Seattle office, the Department of the Interior's suggested position that the project not be authorized until a comprehensive plan is assembled. It remains for the Corps of Engineers to either accept or reject Interior's suggestion.

Delays such as noted above are not common, nor are they excusable. However, in the case of the Port of Skagit there are serious problems between the applicant and the Indians. Approval of the application is therefore being held in abeyance until differences are resolved. In the case of the Port of Everett, we can only apologize for our lack of early response on the permit application due to the office move. Misplacing an application is inexcusable. We believe that our Olympia office, now staffed with 17 people, as opposed to three in 1972, will be much better prepared to avoid recurrence of problems of the type associated with the Port of Everett application.

QUESTION NO. 3
THURSDAY, DECEMBER 20, 1973

WASHINGTON, D.C.

Volume 38 ■ Number 244

PART IV



DEPARTMENT OF INTERIOR

Fish and Wildlife Service

■

INJURIOUS WILDLIFE

Proposed Importation Requirements

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PROPOSED RULES

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 16]

INJURIOUS WILDLIFE

Proposed Importation Regulations

By notice of proposed rulemaking published in the *FEDERAL REGISTER* of April 25, 1973 (38 FR 10208), it was proposed to revise and restructure Subchapter B of Chapter One of this title. That Proposed Rulemaking advised that the existing "Part 13—Importation of Wildlife or Eggs Thereof," would be redesignated "Part 16—Injurious Wildlife" and that modifications of that part would be proposed at a later date. The proposal and explanatory material set forth below fulfill that obligation and further propose modifications to the regulations regarding the importation of injurious wildlife as promulgated under the authority of the Lacey Act, (18 U.S.C. 42).

The references in this proposal to other sections or parts of Subchapter B of Title 50 are to the proposal published on April 25, 1973, and mentioned above. It is planned that that proposal will be in effect before the comment period on the present proposal expires.

BACKGROUND

In general, 42 18 U.S.C. 42 authorizes the Secretary to prescribe by regulation those wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, and reptiles or the offspring or eggs of any of the foregoing (hereinafter "wildlife"), which are injurious to human beings, to the interests of agriculture, horticulture, forestry, wildlife, or to the wildlife resources of the United States (hereinafter "the named interests"). Subject to certain statutory exceptions, such prescribed wildlife may not be imported into the United States, except as permitted by the Secretary for zoological, educational, medical, or scientific purposes.

Current information shows that injury caused to the named interests by imported wildlife is more widespread and serious than previously believed. Present ecological and other knowledge, including an awareness of the large and growing volume of imported live wildlife, demonstrate that a thorough regulation of such importations is necessary to protect the named interests from additional injury. Recent examples exist of injury caused to the named interests and to similar interests in other countries by imported wildlife. Control and eradication programs for pest or "exotic" species are costly, frequently unsuccessful and are curative rather than preventative in nature.

An Environmental Impact Statement will be prepared in conjunction with this proposal and will be made available for inspection as soon as possible. It is expected that the draft Environmental Impact Statement will be available for public comment within several weeks.

When the Environmental Impact Statement has been completed, a notice will be published in the *FEDERAL REGISTER* so advising the public. The comment pe-

riod with respect to these proposed amendments will remain open for at least 60 days after publication of the notice announcing the availability of the Environmental Impact Statement as mentioned above, in order that the public will have an opportunity to comment on the regulations after reviewing the Environmental Impact Statement.

PROPOSED CONTROLS

Accordingly, a system to provide scrutiny and control over the importation of wildlife sufficient to prevent further injury to the named interests is hereby proposed.

In general, the following proposal includes a determination based on scientific evidence presently available that all wildlife is or would be injurious to one or more of the named interests at some time or place when imported into the United States. The proposal would prohibit the importation of such live wildlife, except as allowed by the Secretary under a permit for scientific, educational, zoological, or medical purposes. However, the proposal also recognizes that the risk of injury to the named interests posed by some "low risk" species or genera of wildlife is so slight as to justify a determination that importation thereof can be allowed without a permit. In fact, the findings indicated that most species of marine fishes were "low risk."

The proposal would, therefore, establish a list of wildlife which the Secretary has determined pose little risk of injury to the named interests. This proposal to the named interests designated as "low risk." All wildlife not designated as "low risk" would be identified by exclusion as injurious and could be imported only pursuant to a permit for scientific, educational, medical, or zoological purposes. A permit, which may be issued when the Secretary finds there has been a proper showing of responsibility and continued protection of the named interests, would be required prior to the importation of such injurious wildlife.

Problems relating to potentially harmful marine fish importations are substantially different in character from those regarding their freshwater counterparts. In the latter case the primary concern was possible harm to the wildlife or the wildlife resources of the United States caused by escapes or deliberate introductions as the threat to humans is greater with marine species. In the case of marine fishes whose total estimated number is about 11,700 species, accidental or deliberate introductions resulting in the establishment of a species are almost unknown due to the species and unenclosed nature of the marine habitat. On the other hand, venomous (stinging) marine forms greatly outnumber those occurring in fresh water, and some of the more potentially dangerous species have been and are now readily available to the home aquarist. Biting or attacking marine fishes (sharks, morays, giant seabasses), are limited by their size and the occasional small species available to the aquarium

hobbyist are not considered to be of potential danger. Since most species of marine fishes were found to be "low risk," the list of marine fishes identifies all species as "low risk," except those genera listed.

The list contained in this proposal would be subject to continued review and modification as data are accumulated concerning the degree of risk posed by either listed or unlisted species. The common names included on the list of freshwater fishes may be revised during the public comment period, by the publication of a notice in the *FEDERAL REGISTER*. These common names are provided simply for the guidance of the public, and have no legal significance.

Further, this proposal would simplify the enforcement of these regulations by requiring the pre-clearance and issuance of permits for all injurious wildlife.

It should be recognized that *Frititacine* birds are excluded from this proposal by the statute and, therefore, importation of the monk parakeet (*Myiopitittia monachus*) would not be regulated in spite of its known danger to the named interests.

In addition, the importation into this country of certain forms of wildlife is controlled by the Migratory Bird Treaty Act, (16 U.S.C. 668-668d), Endangered Species Conservation Act of 1964, (16 U.S.C. 668aa-668cc-d), and the Marine Mammal Protection Act of 1972, (16 U.S.C.A. 1361) (Supp. 1973) and the implementing regulations contained in 50 CFR Chapter 1, Subchapter B. Accordingly, it will be necessary for an importer to examine the applicable provisions of Subchapter B as well as this proposed Part 16 in order that all statutory and regulatory requirements are met. In the revision of Subchapter B, as previously discussed, there will be a consolidation and reorganization of the various provisions in order that an importer, for example, of an endangered species of wildlife, which is also determined as injurious to the named interests, will be advised of the necessary information and requirements for an importation permit.

The list, as presented in this proposal, does not take into account comments from the National Marine Fisheries Service regarding aquatic species of significance to the commercial fishery industry. Therefore, the list will be subject to revision during the public comment period, in order to make the necessary modifications.

PUBLIC COMMENTS SOLICITED

The Director intends that the finally adopted rules be as responsive as possible to the named interests; he therefore desires to obtain the comments and suggestions of the public on the problems of achieving compliance with the proposed rules and the associated impact on the various concerned persons. Comments are particularly invited pertaining to the proposed lists of wildlife. It is important to recognize that the wildlife listed in this proposal are tentative and any suggestions for modifications should be

PROPOSED RULES

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accompanied by data to support these suggestions.

Public hearings on this proposal will be held in Washington, D.C., San Francisco, California, and Miami, Florida prior to final rulemaking. The dates, times, and places of the hearings will be announced at a later date by publication of a notice in the *FEDERAL REGISTER*. At least 60 days will be allowed between the publication of this proposal and the date of any such hearing.

The Director's final promulgation of injurious wildlife controls will take into consideration the comments and testimony he receives. Comments, testimony, and any additional information received, may lead the Director to adopt final regulations that differ in important ways from this proposal.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate, to the Director (FSP/LE), Bureau of Sport Fisheries and Wildlife, Washington, D.C. 20240. All relevant comments received from the date of this publication and for a period of 60 days after publication of a notice in the *FEDERAL REGISTER* announcing that the Environmental Impact Statement is available (and which notice will set out the date on which the comment period will end) will be considered. The Director will give consideration to an extension of the period for public comment in the event that the lists of wildlife are revised, as indicated above, in regard to the common names of freshwater fishes, or in regard to aquatic species of significance to the commercial fisheries industry. Any such extension will be announced by the publication of a notice in the *FEDERAL REGISTER*. The Bureau will attempt to acknowledge receipt of comments, but substantive responses to individual comments will not be provided. Comments received and the Environmental Impact Statement will be available for public inspection during normal business hours at the Bureau's office in Suite 600, 1612 K Street, NW., Washington, D.C. This notice of proposed rulemaking is issued under the authority of (18 U.S.C. 42).

Dated: December 18, 1973.

KENNETH E. BLACK,
Acting Director, Bureau of
Sport Fisheries and Wildlife.

It is proposed to redesignate Part 13 of 50 CFR Chapter I, Subchapter B to Part 16 of that same Title as follows:

PART 16—INJURIOUS WILDLIFE

Subpart A—Introduction

16.1 Purpose of regulations.

16.2 Scope of regulations.

Subpart B—Designation of Injurious Wildlife

16.11 Injurious wildlife.

16.12 Low risk wildlife list.

16.13 Amendments to the list of low risk wildlife.

Subpart C—Permits

16.21 General permit requirement.

16.22 Injurious wildlife permits.

Subpart D—Additional Restrictions and Exemptions

Sec.

16.31 Importation of live or dead fish of the family Salmonidae.

16.32 Importation by Federal agencies.

16.33 Pitttactine birds.

AUTHORITY: Lacey Act, 74 Stat. 754 (18 U.S.C. 42(a)(1)).

Subpart A—Introduction

§ 16.1 Purpose of regulations.

The regulations contained in this part identify those species and genera of live wildlife which the Secretary has determined pose a low risk of injury to human beings, to the interest of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States. All other species of live wildlife or the eggs thereof, and dead fish or eggs of salmonids of the fish family Salmonidae are deemed to be injurious to those interests. Procedures and criteria for issuance of permits for importation and shipment of injurious wildlife and for public participation in the amendment of the list of low risk wildlife are provided. The regulations for this part implement the Lacey Act (18 U.S.C. 42).

§ 16.2 Scope of regulations.

(a) The regulations in this part apply to all importations into the United States, any territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, of live injurious wildlife or the eggs thereof, except Pitttactine birds, but including dead fish or eggs of salmonids of the fish family Salmonidae. These regulations are in addition to any other regulations governing the importation of wildlife, including without being limited to, the requirements to import all wildlife through designated ports of entry (Part 14), or the prohibitions on the importation of endangered species (Part 17), marine mammals (Part 18), migratory birds (Part 21), or wildlife taken, transported,

or sold in violation of foreign law (Part 14). See those parts, or other appropriate statutes and regulations, for specific information.

(b) The regulations and permit system established for importation of Bald and Golden Eagles, marine mammals, migratory birds, and endangered wildlife are supplemented by the regulations of this part in order to avoid a multiple permit system. To the extent that importation is prohibited by this part, except under permit, the requirements and criteria of this part must be complied with. In addition to other provisions of Subchapter B. Therefore, to the extent the importation is also controlled by the regulations relating to marine mammals, Bald and Golden Eagles, migratory birds or endangered species, the permit applicant must provide the information and meet the criteria of those regulations as well as of this part, if the wildlife is injurious to the named interests.

Subpart B—Designation of Injurious Wildlife

§ 16.11 Injurious wildlife.

After reviewing scientific and other data available to him, the Secretary hereby determines that, with the exception of Pitttactine birds and those species listed in § 16.12 of this subpart, all live wildlife or the eggs thereof, as well as the dead fish or eggs of salmonids of the fish family Salmonidae, are injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States if or when imported into or shipped between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States.

§ 16.12 Low risk wildlife list.

After reviewing scientific and other data available to him, the Secretary has determined that the wildlife listed below are not injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States.

LIST OF LOW RISK WILDLIFE

BIRDS	
Rock dove; common pigeon (racing and show varieties).....	<i>Columba livia</i> (Gmelin)
Zebra finch.....	<i>Poephila guttata</i> (Vieillot)
Bengalese or society finch.....	<i>Lonchura striata</i> (Linnaeus)
Canary.....	<i>Serinus canaria</i> (Linnaeus)
MAMMALS	
Golden hamster.....	<i>Mesocricetus auratus</i> (Waterhouse)
Jird (the gerbil of pet trade).....	<i>Meriones unguiculatus</i> (Milne-Edwards)
Brown or Norway Rat (laboratory strains).....	<i>Rattus norvegicus</i> (Berkenhout)
House mouse (laboratory strains).....	<i>Mus musculus</i> (Linnaeus)
Guinea pig.....	<i>Cavia porcellus</i> (Linnaeus)
AMPHIBIANS	
Bullfrog.....	<i>Rana catesbeiana</i> (Shaw)
Leopard frog.....	<i>Rana pipiens</i> (Schreber)
CRUSTACEANS	
American lobster.....	<i>Homarus americanus</i>
Atlantic spiny lobster.....	<i>Pandulus argus</i>
Pacific spiny lobster.....	<i>Pandulus interruptus</i>

LIST OF LOW RISK WILDLIFE

	MOLLUSKS		
American oyster.....	<i>Crassostrea virginica</i>	<i>Mya arenaria</i>	Fam. Citharidae-Citharinids <i>Nannacitharis</i> -Scalloped citharinids <i>Neolebium</i> -Smoothtail citharinids
Soft shelled clam.....			Fam. Apterostomidae, Gymnotidae, and Rhamphichthyidae-Knifefishes <i>Apterostomus</i> -Quillback knives <i>Eugenmannia</i> -Glassknives <i>Gymnorhamphichthys</i> -NCN <i>Gymnotus</i> -Knifefishes <i>Hypomus</i> -Spotted glassknives <i>Odonoternarchus</i> -NCN <i>Ordemoglyphus</i> -NCN <i>Orthosternarchus</i> -NCN <i>Forsterius</i> -NCN <i>Rabdolepis</i> -NCN <i>Rhamphichthys</i> -Longnose knives <i>Stetogobius</i> -NCN <i>Sternarchella</i> -NCN <i>Sternarchogobius</i> -NCN <i>Sternarchorhamphus</i> -NCN <i>Sternarchorhynchus</i> -NCN <i>Sternarchus</i> -Glotheadfishes <i>Sternopygus</i> -NCN <i>Tatichthys</i> -NCN <i>Ubidia</i> -NCN <i>Uranara</i> -NCN
NOON.	REPTILES		
FRESHWATER FISH			Fam. Cyprinidae-Carps, barbs, and minnows <i>Aplocheilichthys</i> -False whiteclouds <i>Balantiocheilus</i> -Bala sharks <i>Barbus</i> -Anemus-Rhifin silver barb <i>B. arulius</i> -Longfin barb <i>B. biwaensis</i> -Spotted barb <i>B. callipterus</i> -Clasper barb <i>B. camptacanthus</i> -African redfin barb <i>B. chola</i> -Swamp barb <i>B. conchatus</i> -Roei barb <i>B. eumizus</i> -Goldie barb <i>B. dorsomaculatus</i> -Blackline barb <i>B. dunckeri</i> -Rippot barb <i>B. everetti</i> -Clown barb <i>B. fasciatus</i> -Striped barb <i>B. fasciatus</i> -African banded barb <i>B. flammicatus</i> -Blackspot barb <i>B. geminatus</i> -Brassy barb <i>B. pelius</i> -Dwarf barb <i>B. halsi</i> -Hale barb <i>B. hexazona</i> -Sixbanded barb <i>B. holotaenia</i> -Spot-tailed barb <i>B. huilerti</i> -Butterfly barb <i>B. kersteni</i> -Kersten barb <i>B. lateralis</i> -Spanner barb <i>B. lineatus</i> -Malayan striped barb <i>B. lineomaculatus</i> -Seven-spot barb <i>B. melanampyx</i> -Ember barb <i>B. nigrofasciatus</i> -Black ruby barb <i>B. oligolepis</i> -Checker barb <i>B. peludinus</i> -Long redfin <i>B. peripentazona</i> -Banded barb <i>B. pentazona</i> -Five banded barb <i>B. phakus</i> -Pony barb <i>B. puerellus</i> -Two spot barb <i>B. rolofi</i> -Streaked barb <i>B. suchan</i> -Golden barb <i>B. schwanenfeldii</i> -Tinfin barb <i>B. semifaculatus</i> -Halfstriped barb <i>B. somphongsi</i> -Blacktip barb <i>B. stigmus</i> -Bandtail barb <i>B. stigmatus</i> -Midspot barb <i>B. stoliczkae</i> -Platinum barb <i>B. terio</i> -Onespot barb <i>B. tetrazopus</i> -Bandfin barb <i>B. tetrazona</i> -Tiger barb <i>B. ticto</i> -Tictactoe barb <i>B. titzei</i> -Cherry barb <i>B. triplais</i> -Threespot barb <i>B. urotaenia</i> -Redfaced barb <i>B. usumbariae</i> -Dace barb <i>B. urotaenia</i> -Banded barb <i>B. urotaenia</i> -Silver barb <i>B. urotaenia</i> -Violetstripe barb <i>B. urotaenia</i> -Slender barb <i>B. urotaenia</i> -Belted barb <i>Brachydanio</i> -Dancos <i>Carassius auratus</i> -(ornamental va- rietals)-Goldfish
Freshwater fishes, including euryha- line fishes, are listed by order, family, and genera. The generic listing is arranged in alphabetical order within the family and only those genera or species names are included on this list of low risk wild- life. The order and family names are pro- vided for ease of identification only. Some of the more widely known com- mon names are included for guidance only and have no legal significance. The letters "NCN" following a name means that there is no generally known com- mon name for that fish.			
Order Polypteriformes-Lobehead lungfishes			
Fam. Polypteridae-Bichirs			
Polypterus-Bichirs			
Calamochelys-Reed fishes			
Order Osteoglossiformes			
Fam. Pantodonidae-Freshwater butter- fly fishes			
Pantodon-Freshwater butterfly fishes			
Fam. Notopteridae-African knife fishes			
Xenopoma-African Knife fishes			
Xenopoma-Smoothback African Knife fishes			
Order Mormyridae-Elephant fishes and Nile eels			
Fam. Mormyridae-Elephant fishes			
Camponotormyrus-NCN			
Genyomys-NCN			
Gnathonemus-NCN			
Heteromormyrus-NCN			
Hippopotamys-NCN			
Hyperopoma-NCN			
Ichthyophaga-NCN			
Mormyrus-NCN			
Mormyrus-NCN			
Paramormyrus-NCN			
Petrocephalus-NCN			
Solenomormyrus-NCN			
Stomatopoma-NCN			
Order Gonorynchiformes-Mulletfish and rela- tives			
Fam. Kneriidae-Bluntnose minnows			
Kneria-African bluntnose			
Fam. Phractolepidae-Thunfishes			
Phractolepis-Topmouth			
Order Cypriniformes-Carps, characins, and relatives			
Fam. Characidae (strict sense)-Char- acins			
Axiastes-Halfstripe characins			
Aphyocara-Congo characins			
Aphyocara-Bloodfin tetras			
Arnoldichthys-Bigeye characins			
Aspionax (including Anoptichthys) -Mexican tetras			
Azebridia-NCN			
Bathichthys-NCN			
Boehlke-NCN			
Bryconalestes-NCN			
Bryconalestes-NCN			
Chadara-Pinktail characins			
Charaz-Humpback headstanders			
Chelodons-Cardinal tetras			
Corynopoma-Swordtail characins			
Crenopoma-Goldstripe characins			
Crenopoma-Orange fin characins			
Crenopoma-Goldfin characins			
Crenopoma-Goldfin characins			
Crenopoma-Goldfin characins			
Crenopoma-Goldfin characins			
Crenopoma-Goldfin characins			

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- Crossocheilus*—Algae-eater barbs
Cyclocheilichthys—Roundscale barbs
Cyprinus carpio—(koi varieties)—koi
Danio—Giant danios
Eirmotus—False barbs
Epilabeo—Plying barbs
Esomus—Plying barbs
Garra—Stonelappers
Hemigrammocypris—NCN
Horadandius—Midget minnows
Lebaeus—Daddies
Lebeo bicolor
L. erythrurus } Sucker barbs
L. munensis
L. variegatus
Lucania—NCN
Morulus—NCN
Oryzias—Glass barbs
Pantiploites—Yellowcheek barbs
Rasbora—Rasboras
Rasbora—Keelbelly barbs
Tanichthys—Whitetails
Fam. *Gyrinocheilidae*—Algae eaters
Gyrinocheilus—Chinese algae eaters
Fam. *Homalopteridae*—Suckerloaches
Gastromyzon—Torrentfishes
Homaloptera—Suckerloaches
Fam. *Cobitidae*—Loaches
Acanthophtalmus—Coolie loaches
Acanthophtalmus—Longnose loaches
Cobitis—Weatherfishes
Lepidophtalmus—Indian loaches
Order *Siluriformes*—Catfishes
Fam. *Bagridae*—Seacats (some freshwater)
Chrysichthys—Popeye bagrids
Gephyrogonis—Toothless bagrids
Leiocassis—Piebald cats
Myliu—Indian cats
Paraschanna—Variegated cats
Fam. *Siluridae*—European catfishes
Kryptopterus—Glasscats
Fam. *Schilbeidae*—Flat catfishes
Eutropiellus—NCN
Schilbe—Longback cats
Parasilbe—Speckled X-ray cats
Phyllon—African glasscats
Fam. *Pangasidae*—NCN
Pangasius—NCN
Fam. *Amphiliidae*—NCN
Phractura—NCN
Fam. *Chactidae*—Chacacs
Chaca—Chacacs
Fam. *Mochokidae*—Branchwhisker catfishes
Synodontis—Upside-down cats
Fam. *Doradidae*—Thornycats
Acanthodoras—Chocolate cats
Apomysia—NCN
Amblydoras—NCN
Anadoras—NCN
Aporodoras—NCN
Astrodoras—NCN
Aufanadoras—NCN
Centrocheil—NCN
Centrodoras—NCN
Doras—Thornycats
Franciscodoras—NCN
Hoplorodas—NCN
Hypodoras—NCN
Leptodoras—NCN
Megalodoras—NCN
Nemadoras—NCN
Opadoras—NCN
Orinodoras—NCN
Oryzodoras—NCN
Platyodoras—NCN
Pseudodoras—NCN
Scorpiodoras—NCN
Trachydoras—NCN
Fam. *Auchenipteridae*—Frontfin catfishes
Centromochlus—Frontfin cats
Trachypogon—Airbreathing frontfins
Fam. *Aspredinidae*—Banjo catfishes
Agmatus—NCN
Amaralia—NCN
Aspredinichthys—NCN
Aspredo—NCN
Banoccephalichthys—NCN
Banoccephalus—Banjo cats
Chamaeleon—NCN
Dysichthys—NCN
Eusichthys—NCN
Hoplosternon—NCN
Petacara—NCN
Pististatus—NCN
Platyistatus—NCN
Pterobanoccephalus—NCN
Xilophtus—NCN
Fam. *Pinelodidae*—Longwhisker catfishes
Acentronichthys—Forktail ridgebacks
Heptapterus—Ridgebacks
Microplatys—Dwarf marbled cats
Pinelodella—Longwhiskers
Pseudopinelodus—False pinelodus
Fam. *Ageneiosidae*—NCN
Ageneiosus—NCN
Fam. *Helogenidae*—Thumb catfishes
Helogenes—Thumbcats
Fam. *Trichomycteridae*—Slender parasitic catfishes
Epiplatys—Loachcats
Fam. *Callichthyidae*—Armored catfishes
Brochis—Highback armored cats
Callichthys—Shrimps
Corydoras—Armored cats
Dianema—NCN
Hoplosternum—Longwhisker armored cats
Fam. *Loricariidae*—Suckermouth catfishes
Anelasma—Bearded suckercats
Cochlodon—NCN
Forficulopsis—Twig cats
Hassar—NCN
Hemiancistrus—Red plecostomus
Lasiacanthus—NCN
Loricaria—Slender armored cats
Otocinclus—Algae-eater cats
Oxylocheilus—NCN
Panaque—Bandedfin suckercats
Plecostomus (includes *Hypostomus*)
—Plecostomus catfishes
Pteropoptichthys—NCN
Spatulicaria—NCN
Stenella—Ballfin suckercats
Xenocara—Mopface cats
Fam. *Astrolepididae*—Keelback catfishes
Arger—NCN
Astrolepis—NCN
Cyclopterus—NCN
Order *Atheriniformes*—Silverides, topminnows, and relatives
Fam. *Exocoetidae*—Halfbeaks
Dermogenys—Livebearing halfbeaks
Hemirhamphodon—Hookbill halfbeaks
Fam. *Oryziatidae*—Ricefishes
Oryzias—Ricefishes
Fam. *Cyprinodontidae*—Egg-laying topminnows
Aphanius—Asian pupfishes
Aphaniemon—Lyretails
Aplocheilichthys—Lampreys
Aplocheilichthys—Panchax
Austrofundulus—NCN
Cualac—NCN
Cubanichthys—Cuban Killies
Cynolebias—Pearlfishes
Epiplatys—Epiplatys
Gurmanella—NCN
Lamprochthys—NCN
Micropanchax—Roundtail panchax
Notobranchius—Annual fishes
Pachypanchax—Stout panchax
Procatopus—NCN
Pterolebias—South American lyretails
Rachocara—Dwarf poolfishes
Simpsonichthys—NCN
Trigonectes—False panchax
Valencia—Spanish toothcarp
Fam. *Goodeidae*—Placental livebearers
Goodeichthys—NCN
Goodea—Placental livebearers
Habusia—NCN
Lernichthys—Flat notefishes
Neotoca—Guppy notefishes
Oligodon—Notefishes
Fam. *Anablepidae*—Poirey fishes
Anableps—Four-eyed fishes
Fam. *Poeciliidae*—Livebearing topminnows
Alfaro—Knife livebearers
Brachyraphis—Blasphes
Chesterodon—Churchkey livebearers
Girardinus—Metallic livebearers
Gladiichthys—Swiftstream livebearers
Jenynsia—One-sided livebearers
Phallichthys—Merry Widows
Phallostictus—Dusky livebearers
Pseudopogonias—Barred livebearers
Poecilia (incl. *Lepidostoma*, *Limia*, *Mollisania*, and *Micropoecilia*)—Guppies and mollies
Poeciliopsis—Banded livebearers
Poeciliopsis—Porthole livebearers
Prigella—Smoky livebearers
Pseudorhamphus—False swordtails
Quinfaria—Blackband livebearers
Tomeurus—NCN
Xenodora—NCN
Siphonophorus—Swordtails and Platies
Fam. *Atherinidae*—Silverides
Alepidomus—Spotted silverides
Beldia—Madagascar rainbowfishes
Melanotaenia—Australian rainbowfishes
Nematocentrus—Australian rainbowfishes
Telmatherina—Ceylon rainbowfishes
Pseudomugil—NCN
Order *Osteolepiformes*—Sticklebacks, pipefishes, and relatives
Fam. *Indostomidae*—Pigmy lake sticklebacks
Indostomus—Pigmy lake sticklebacks
Fam. *Syngnathidae*—Pipefishes
Doryichthys—Pipefishes
Microphis—Freshwater pipefishes
Nerophis—Pipefishes
Fam. *Perciformes*—Perchlike fishes
Fam. *Centropomidae*—Highfin perches
Chanda (includes *Ambassis*)—Glassperches
Gymnocharacin—Threadfin glassperches
Fam. *Kuhliidae*—Pigmy perches
Nannoperca—Pigmy perches
Fam. *Monodactylidae*—Fingerfishes
Monodactylus—Monodactylus
Fam. *Toxotidae*—Archerfishes
Toxotes—Archerfishes
Fam. *Scorpaenidae*—Scorpaenids
Scorpaenopsis—Scorpaenids
Scorpaenopsis—False scats
Fam. *Nandidae*—Nandids
Acharnes—NCN
Afronandus—African nandids
Batis—Dwarf chameleons
Monocetrus—South American leaf-fishes
Polycentropomus—African leaf-fishes
Polycentrus—Clearfin leaf-fishes
Pomanandus—NCN
Pristolepis—Banded nandids
Fam. *Cichlidae*—Cichlids
Aequidens—Acaras
Acarichthys—NCN
Aconoria—Bigeye cichlids
Apistogramma—Dwarf cichlids
Astronotus—Oscars
Aulonocara—NCN

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Batrachopus—NCN
 Biotodoma—NCN
 Biotocoxus—Glanscy dwarfcichlids
 Chaetobranchiopis—NCN
 Chaetobranchius—NCN
 Chirotilapia—NCN
 Chirotilapia—Chichlids
 Coreotodus—NCN
 Orencaria—Chesapeake cichlids
 Crenichlepis—Pike cichlids
 Cyathochromis—NCN
 Cyathocharys—NCN
 Cynotilapia—NCN
 Cyphotilapia—Wrasse cichlids
 Eretmodus—NCN
 Erythr—Chromids
 Genyochromis—Scale-eater Cichlids
 Geophagus—Earthstars
 Geophagus—Mouth breeders
 Hemimicromia—Jewfishes
 Hemiphaethichromis—NCN
 Hemitilapia—Leafcutter cichlids
 Herotilapia—NCN
 Hoplostilapia—NCN
 Julidochromis—Striped cichlids
 Labetrophysus—NCN
 Labidochromis—Bucktooth cichlids
 Lamprologus—Hog cichlids
 Letotilapia—NCN
 Lethrinops—Sand diggers
 Limnochromis—NCN
 Limnotilapia—NCN
 Lobotochilids—NCN
 Macropodus—NCN
 Macropodus—NCN
 Macropodus—Dwarf scaras
 Nanochromis—NCN
 Neotropheus—NCN
 Neotropheus—Includes subgenus
 Pelvicachromis—Spotfin cichlids
 Perissodus—NCN
 Pelota—NCN
 Petrosichromis—NCN
 Petrotilapia—Rockcrappers
 Plectodus—NCN
 Pseudotropheus—Damsel cichlids
 Pseudotropheus—Freshwater angels
 Retroculus—NCN
 Serranochromis—Seabass cichlids
 Simochromis—NCN
 Steatichromis—Bumblefishes
 Symphysodon—Discus
 Teleogramma—Slender dwarfcichlids
 Tetraodonichromis—NCN
 Tilapia—Lake cichlids
 Tilapia—Uru-Uru
 Xenotilapia—NCN
 Fam. Eleotridae—Sleepers
 Caranx—Australian sleepers
 Eleotris—River gobies
 Dormitorius—Sleepers
 Mugilids—Purplestriped sleepers
 Eleotris—Ginseng gobies
 Hypoclinemus—Chameleon cichlids
 Fam. Gobiidae—Gobies
 Bathypogon—Priflin gobies
 Enacypogon—Bumblefinches
 Eucyrtops—Burrer gobies
 Gobiopsis—Glass gobies
 Gobius—Gobies
 Scirtelion—NCN
 Scirtelion—NCN
 Scirtelion—Fringed gobies
 Fam. Periophthalmidae—Treeclimbing gobies
 Periophthalmus—Mudskippers
 Fam. Acanthuridae—Slimling perches
 Ctenopoma—Short-slimling perches
 Fam. Belontiidae—Labyrinthfishes
 Belontiids—Combatale paradisefishes
 Bettas—Slender gouramis
 Colisa—Banded gouramis
 Ctenopoma—Crowing gouramis
 Macropodus—Paradise fishes
 Malesin—NCN
 Sphaethys—Chocolate gouramis
 Trichogaster—Gouramis

Trichopodus—Dwarf gouramis
 Fam. Helostomatidae—Kissing gouramis
 Oxylostomus—Kissing gouramis
 Fam. Cichlidae—Giant gouramis
 Hoplosternum—Giant gouramis
 Fam. Lutocephalidae—Pikeheads
 Lutocephalus—Pikeheads
 Fam. Macropodus—Spiny eels
 Bdellohynchiidae—NCN
 Caeomastacacanthidae—NCN
 Macropodus—Filicorne spiny eels
 Macropodus—Filicorne spiny eels
 Parahngnathodidae—NCN
 Order Pleuronectiformes—Flatfishes
 Fam. Soleidae
 Achirus—Brazilian hogchokers
 Trinectes—Hogchokers
 Order Tetraodontiformes—Triggerfishes, puffers, and relatives
 Fam. Tetraodontidae—Puffers
 Carinotetraodon
 Colomesus
 Sphroedus
 Tetraodon
 Freshwater puffers

MARINE FISH

All marine fishes are included on this list of Low Risk wildlife, except the ones named below. Marine fishes which are excluded from this list of low risk wildlife are listed by order, family, and genera. The generic listing is arranged in alphabetical order within the family and only those genera named are excluded from this list of low risk wildlife. The order and family names are provided for ease of identification only. Some of the more widely known common names are included and have no legal significance. The letters "CNCV" following a generic name means that there is no generally known common name for that fish.

- Order Rajiformes—Skates and rays
 - Fam. *Dasysyllidae*—Stringrays
 - Dasysylla*—Common stringrays
 - Himantura*—Longspine stringrays
 - Paralichthys*—NCN
 - Torirus*—Oval stringrays
 - Urophycis*—Round stingrays
- Order Blennioformes—Catfishes
 - Fam. *Poecilostidae*—Coral catfishes
 - Poecilostus*—Coral catfishes
 - Order Batrachoidiformes—Toadfishes
 - Fam. *Batrachoididae*—Toadfishes
 - Dactylos*—Stinging toadfishes
 - Thalassopharyx*—Freshwater sting-
 - ing toadfish
- Order Scorpaeniformes—Mallikch fishes
 - Fam. *Scorpaenidae*—Scorpionfishes and stonefishes
 - Brachrus*—Lesser lionfishes
 - Himantichus*—Dragonhead scorpions
 - Pterois*—Lionfishes
 - Synanceja*—Stonefishes
- Order Perciformes—Percch-like fishes
 - Fam. *Tubinoididae*—Eelverfishes
 - Trachinus*—Weeverfishes

§ 16.13 Amendments to the list of low risk wildlife.

(a) The list of wildlife (§ 16.12) may be amended from time to time as additional data become available which demonstrate that a genus or species should be added to or removed from the list.

(b) The Director shall receive and maintain data regarding injurious wildlife. Notice of any proposed amendments of the list of low risk wildlife for any purpose will be published in the FEDERAL REGISTER, which notice shall give interested persons not less than 30 days to

submit written comments and suggestions.

(c) At any time any person may submit a request for a review of any particular listed or nonlisted wildlife. Such requests must be dated and in writing, and should be submitted to the Director. The request must contain the following information:

(1) Name and address of the person making the request:

(2) Association, organization, or business, if any, represented by the person making the request:

(3) Designation of the particular species in question by common and scientific name:

(4) Narrative explanation of the request for review:

(5) Scientific, commercial, or other data believed to support the request; and

(6) Signature of the person making the request

If it is determined that substantial evidence has been presented which warrants a review, a finding to that effect shall be published in the FEDERAL REGISTER. Such notice shall give all interested persons an opportunity to submit information on the status of the species under review in such form or manner as may be specified. After consideration of these comments a decision will be made and published in the FEDERAL REGISTER on whether to officially propose the addition or deletion of a particular species.

Subpart C—Permits

§ 16.21 General permit requirement.

Except as otherwise provided in Subpart D of this part, no person shall import into the United States, or export from the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, any injurious wildlife as designated in § 16.11, except as may be permitted under the terms of a valid permit issued pursuant to the provisions of

Any permit issued under the provisions of this Subchapter B for the importation of Bald and Golden Eagles, marine mammals, migratory birds, or endangered wildlife, which are injurious wildlife, must also comply with the conditions and criteria of this part.

§ 16.22 Injurious wildlife permits.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the importation into or shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States of injurious wildlife (See § 16.11) for zoological, educational, medical, or scientific purposes.

(a) *Application procedures.* Applications for permits to import or ship injurious wildlife for such purposes shall be

submitted to the appropriate Special Agent in Charge (See § 12.11(b) of this subchapter). Each such application must contain the general information and certification required by § 12.12(a) of this subchapter plus the following additional information:

(1) Common and scientific names of the species, number, age, and sex (if applicable) of the wildlife to be covered by the permit;

(2) The country of origin, name and address of the seller or consignee, number and weight (if available), and description of the wildlife;

(3) A full statement of justification for the permit, including details of the project or other plans for utilization of the wildlife in relation to zoological, educational, medical, or scientific purposes, as appropriate, and planned disposition of the wildlife upon termination of the project;

(4) A description and the address of the institution or other facility where the wildlife will be used or maintained to include a complete description, including photographs or diagrams, of the area and facilities in which the wildlife will be housed;

(5) A statement as to whether, at the time of application, the wildlife to be imported or shipped is either still in the wild, bred and born in captivity, or has been removed from the wild. If the wildlife is still in the wild, or has been removed from the wild within the 3 months previous to the date of application a detailed statement of the method of capture, whether or not the wildlife has shown any signs of disease, parasitism or other abnormalities, what—if any—medical treatment the wildlife has received, the time and conditions under which any quarantine of the wildlife was carried out and any precautions the importer or shipper plans to take to insure that importation or shipment of the wildlife will not result in exposure to the named interests to parasites, pathogens or other pests;

(6) A brief resume of the technical expertise available, including any experience the applicant or his personnel have had in transporting and maintaining in captivity the species to be imported or closely related species; and

(7) A complete statement of the proposed method of transportation of the wildlife, including a description of the cage or other enclosure, and the experience of the carrier in transporting such wildlife.

(b) *Additional permit conditions.* In addition to the general conditions set forth in this Subchapter B, permits to import or ship injurious wildlife for zoological, educational, medical, or scientific purposes shall be subject to the following conditions:

(1) In addition to any reporting requirements set forth in the permit, a report of the importation or shipment made under authority of any such permit shall be submitted in writing to the Director within 10 days following such importation or shipment.

(2) All injurious wildlife possessed under permit and all progeny thereof, must be confined in the approved facilities on the premises authorized in the permit.

(3) No injurious wildlife, imported under permit, or any eggs or progeny thereof, may be sold, donated, traded, loaned, or transferred to any other person unless such person has written authorization from the Director authorizing him to acquire and possess such wildlife or the eggs or progeny thereof.

(4) Permittees must notify the Director by letter within 10 days following the death and by telephone or telegraph within 24 hours following the escape of any wildlife or their progeny possessed under the authority of a permit, unless specifically exempted from either requirement by special terms of his permit.

(c) *Issuance criteria.* The Director shall consider the following criteria in determining whether to issue a permit to import or ship injurious wildlife for zoological, educational, medical, or scientific purposes:

(1) The degree of threat of injury to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States presented by such importation or shipment;

(2) Whether the purpose for which the permit is being sought is of sufficient merit to justify the degree of threat of injury presented by such importation or shipment;

(3) Whether the wildlife to be imported or shipped will be used for zoological, educational, medical, or scientific purposes;

(4) Whether the facilities for holding the wildlife in captivity are designed and constructed of material adequate to prevent escape;

(5) Whether the applicant by reason of his knowledge, experience, and facilities reasonably can be expected to provide adequate protection for such public interests and is aware of the dangers to the public interest posed by such wildlife; and

(6) If such wildlife is to be for zoological or aquarium exhibition purposes, whether such exhibition or display will be open to the public during regular appropriate hours.

(d) *Tenure of permits.* The tenure of permits to import or ship injurious wildlife shall be designated on the face of the permit.

Subpart D—Additional Restrictions and Exemptions

§ 16.31 Importation of live or dead fish of the family Salmonidae.

(a) *General restriction.* Except as otherwise provided in this section, no person shall import any live or dead fish or eggs of salmonids of the fish family Salmonidae unless such importations are by direct shipment, accompanied by a certification that the importation is free of the protozoan *Myxosoma cerebralis*, the causative agent of so-called "whirling disease," and the virus causing viral hemorrhagic septicemia or "Egtved disease."

hemorrhagic septicemia or "Egtved disease." The certification shall be signed by a designated official acceptable to the Secretary of the Interior as being qualified in fish pathology.

(b) *Certificate.* The certificate required by paragraph (a) of this section shall consist of a statement in the English language, printed or typewritten, stating that this shipment of fish or eggs is free from these two diseases by the methods outlined in Fish Disease Leaflet 9, and will contain (i) the date and port of export in the country of origin and the anticipated United States date of arrival and port of entry, (ii) surface or air carrier and flight number, or vessel name or number, (iii) bill of lading number or airway bill number, and (iv) the handwritten signature, in ink, of the authorized certifying officer, and may be substantially in the following form:

I, _____, approved by the Secretary of the U.S. Department of the Interior, _____, as a certifying officer for _____, as required by Title _____, (Country) _____, 50, CFR 16.31(a), do hereby certify, using the methodology described in Fish Disease Leaflet (FDL-9, July 1968), that this shipment of _____ of dead or live fish or fish eggs to be shipped under _____ is free of the (Bill of lading number, or airway bill number) _____, protozoan *Myxosoma cerebralis*, the causative agent of so-called "whirling disease," and the virus causing viral hemorrhagic septicemia or "Egtved disease." The shipment is scheduled to depart _____ on _____, via _____ (City and Country) _____, with anticipated arrival at the port of _____, U.S.A. on _____ (City) _____ (Date) _____ (Signature in ink of certifying officer) _____ (Date) _____

(c) *Processed or prepared items.* Nothing in this section shall restrict the importation of salmonids of the fish family Salmonidae when such fish or eggs have been processed by canning, pickling, smoking, or otherwise prepared in a manner whereby all spores of the protozoan *Myxosoma cerebralis*, the causative agent of so-called "whirling disease," and the virus causing viral hemorrhagic septicemia or so-called "Egtved disease," have been killed.

(d) *Oceanic fishermen.* Nothing in this section shall restrict the importation of salmonids of the fish family Salmonidae when such fish or eggs were taken on the high seas and imported directly into the United States without being landed or transhipped to or through any other country.

(e) *Wild caught fish from Canada and Mexico.* Nothing in this section shall restrict the importation of Salmonids of the fish family Salmonidae when such fish or eggs were caught in the wild in Canadian or Mexican waters and im-

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ported directly into the United States without being transhipped to or through any other country.

§ 16.32 Importation by Federal agencies.

Nothing in this part shall restrict the importation and transportation, without

a permit, of any live wildlife by Federal agencies solely for their own use.

§ 16.33 Psittacine birds.

Nothing in this part shall restrict the importation and transportation, without a permit, of birds of the family Psittacidae (parrots, macaws, cockatoos, para-

keets, lorries, lovebirds, etc.), the importation of which is governed by U.S. Public Health Service regulations under 42 CFR Parts 71 and 72 and U.S. Department of Agriculture regulations under 9 CFR Part 92.

[FR Doc.73-26958 Filed 12-19-73; 8:45 am]

QUESTION NO. 4

DEPARTMENT OF THE INTERIOR

DRAFT

ENVIRONMENTAL STATEMENT

DES 74-64

Proposed

IMPORTATION REGULATIONS
INJURIOUS WILDLIFE

Prepared by

DEPARTMENT OF THE INTERIOR
BUREAU OF SPORT FISHERIES AND WILDLIFE

Acting *Roland R. Schulz*
Chief, Office of Environmental Coordination

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SUMMARY

(XX) Draft () Final Environmental Statement

Department of the Interior, Bureau of Sport Fisheries and Wildlife

1. Type of action: (XX) Administrative () Legislative
2. Brief description of action: Establishes lists of wildlife species that pose a low risk of injury to human beings, the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States, and deems all other species injurious to these interests. Injurious species may be imported only by permit.
3. Summary of environmental impact and adverse environmental effects: The action is designed to prevent a detrimental impact on the environment by greatly reducing the possibility of the establishment of exotic species of wildlife in the United States. The major adverse impact will be economic and will be suffered by those who import and trade in exotic wildlife, and who will not be eligible for permits for scientific, educational, medical or zoological purposes.
4. Alternatives considered: A continuum ranging from a complete ban on all importations of wildlife for any purpose, to no change from present regulations.
5. Comments have been requested from the following:

Department of Agriculture
 Forest Service
 Soil Conservation Service
 Animal and Plant Health Inspection Service

Department of Commerce
 National Oceanic and Atmospheric Administration

Department of the Interior
 Bureau of Land Management
 Bureau of Outdoor Recreation
 National Park Service

Environmental Protection Agency

Department of Health, Education and Welfare
 Public Health Service

Department of State

National Science Foundation

6. DATE STATEMENT FORWARDED TO COUNCIL OF ENVIRONMENTAL QUALITY AND NOTICE OF AVAILABILITY TO THE PUBLIC SENT TO FEDERAL REGISTER.

MAY 29, 1974

I. DESCRIPTION OF THE PROPOSAL

In general, Section 42, Title 18, United States Code (Lacey Act) authorizes the Secretary of the Interior to designate by regulation those wild mammals, birds, fish, mollusks, crustaceans, amphibians, and reptiles, or the offspring or eggs of any of the foregoing (hereinafter "wildlife"), which are injurious to human beings, to the interests of agriculture, horticulture, forestry, wildlife, or to the wildlife resources of the United States (hereinafter "the named interests"). Subject to certain statutory exceptions, such proscribed wildlife may not be imported into the United States, except as permitted by the Secretary for zoological, educational, medical, or scientific purposes.

A system to provide scrutiny and control over the importation of wildlife sufficient to prevent injury to the named interests is proposed (Appendix 2). In general, the proposed action includes a determination that all live wildlife is or would be injurious to one or more of the named interests at some time or place when imported into the United States. The proposal would prohibit the importation of such live wildlife except as permitted by the Secretary for scientific, educational, zoological, or medical purposes. However, the proposal also recognizes that the risk of injury to the named interests posed by some species of wildlife is sufficiently slight as to justify a determination that importation thereof can reasonably be allowed.

The proposal would therefore establish a list of wildlife which the Secretary has determined pose little risk of injury to the named interests. All wildlife not designated as "low risk" would be identified as injurious by exclusion from that list, and could be imported only after receipt of a permit which may be issued only for scientific, medical, zoological, or educational purposes, and only when the Secretary finds there has been a proper showing of responsibility and continued protection of the named interests.

Problems relating to potentially harmful marine fish importations are substantially different in character from those regarding freshwater fishes. In the latter case, the primary consideration was possible harm to the wildlife or the wildlife resources of the United States caused by escapes or deliberate introductions. In the case of marine fishes, whose total estimated number is about 11,700 species, accidental or deliberate introductions resulting in the establishment of a species are uncommon because of the biology of the species and the nature of the marine habitat. The physiology of marine fishes is such that they cannot survive in fresh water. On the other hand, venomous (stinging) marine forms greatly outnumber those occurring in fresh water, and some of the more potentially dangerous species have been and are now readily available to the home aquarist. Importation of biting or attacking marine fishes (sharks, morays, giant seabasses), is limited by their size, and the occasional

small species available to the aquarium hobbyist are not considered to be of potential danger to humans. Since most species of marine fishes were found to be "low risk," the list of marine fishes identifies all species as "low risk" except those listed.

The list contained in this proposal would be subject to continued review and modification as data are accumulated concerning the degree of risk posed by either listed or unlisted species. A system is provided whereby animals can be added to or deleted from the list after presentation of satisfactory evidence supporting such action. It should be recognized that Psittacine birds (parrots, parakeets, etc.) are excluded from this proposal by the statute.

Regulations designed to provide a system of control of the importation of exotic wildlife (see Appendix 2 for draft of these regulations) will go into effect 30 days after their approval. These regulations will form Part 16 of Subchapter B of 50 CFR.

BACKGROUND

Current information shows that injury caused to the named interests by imported wildlife is more widespread and serious than previously believed. Present ecological and other knowledge, including an awareness of the large and growing volume of imported live wildlife, gives adequate reason to believe that thorough regulation of such importations is necessary to protect the named interests from additional injury. There are many examples of injury to the named interests here and in other countries by imported wildlife. The walking catfish competes for food with native game fishes in Florida, sometimes eliminating them from the natural community. Imported wild birds have introduced viral Newcastle Disease into poultry flocks of the United States. Wild pets have spread disease to humans and serve as hosts for parasites. These and many other examples are discussed in detail in Appendix 1. Control and eradication programs for introduced pest species are costly, usually unsuccessful, and are curative rather than preventive in nature.

In 1968, the Bureau of Sport Fisheries and Wildlife began publishing information on the number and kinds of live animals imported into the United States. The basis for the reports is the Bureau Form 3-177, "Declaration of Imported Wildlife," the filing of which has been required at the time of importation of living animals since mid-1967. The first full calendar year for which a relatively complete set of forms was available was 1968. Detailed reports on the species of birds and mammals imported have been prepared for the years 1968-1972. A compilation of the reptiles and amphibians imported in 1970 and 1971 has been prepared. Data on fish imported in the month of October, 1971, have been compiled. A list of Bureau publications and reports concerning the volume of importation will be found at the end of this statement. These series of reports provides the only information available on the numbers and kinds of animals declared for recent importation into the United States. Information on the volume of importations is summarized in Table 1.

A possibly valid way to judge the overall volume of animal importations is to look at the number of declarations of importations made. The number essentially doubled from 1968 to 1971, from 10,586 to 20,468. An unknown portion of this increase reflects higher levels of importation, while the rest results from better enforcement practices related to filing of declarations.

TABLE 1. WILDLIFE IMPORTATIONS INTO THE UNITED STATES
Numbers Refer to Individual Animals

	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
Birds*	510,630	639,814	708,007	770,435	689,404
Mammals	129,520	122,991	93,653	89,853	114,466
Reptiles	1,950,091	1,393,970	2,109,571	1,404,201	2,504,093
Amphibians	170,621	339,489	572,670	391,774	583,441
Fish	64,254,190	73,694,996	83,867,029	98,971,579	112,291,686
No. of Forms "3-177"	10,586	13,154	16,973	20,468	18,875

*(excludes canaries)

II. DESCRIPTION OF THE ENVIRONMENT

The environment affected by this proposed action is the total natural (undisturbed) and disturbed (agricultural, urban) environment of the United States and its possessions and territories, including the human population. Any importation of wildlife would have a potential effect on part or all of this environment. Similarly involved is the wildlife environment and the wildlife capture and export business of those other sections of the world that serve as the source of the wildlife imported into this country. Birds and mammals, for example, from at least 63 countries on all continental land masses except Antarctica have been imported into the United States, to some extent depleting an environmental resource of those countries.

The United States includes within its boundaries portions of several ecosystems. The fauna and flora of these ecosystems have evolved together through the geologic ages in such a way that each species has its own peculiar ecological niche and the system is in a dynamic balance. Much of the natural environment has been altered, either deliberately or fortuitously, by man and his activity, but even though great segments of habitat have been modified the ecological relationships and requirements of most wildlife species are little changed.

The import trade in the United States forms an important part of the present environment. The brief description of this trade that follows is based on the Bureau reports and publications listed at the end of this statement.

Kinds of Animals Imported.--Among imported animals, some sub-groups (families, genera, and species) make up disproportionate numbers of the total. In mammals, primates account for 80-90 percent of the total; primates along with lagomorphs, carnivores, rodents, and marsupials account for more than 97 percent of all mammals (Table 2). Squirrel monkeys and rhesus monkeys are the species most frequently imported (Table 3). Most of these are imported for medical or scientific research or for zoos, but many primates are for the pet trade. In both 1968 and 1969, only 20 species of birds made up more than 83 percent of all birds imported; 16 species were among the top 20 each year. Except that the domestic canary has displaced other species as the most prominent import, the first twelve species on the lists for the four years (1968-1971) for which data are available are essentially the same (Table 4). The same five families of birds lead the list for all four years, and contribute about 93 percent of all the birds imported (Table 5). The majority of birds is for the pet trade.

Table 2.--Families of mammals making principal contributions to importation totals, 1968-1972

Ordinal Rank in 1968, 1969, 1970, 1971 and 1972			Family	Number Reported 1972	Percent of Total Reported 1972	Numerical Change since 1971	Number Reported 1968-1972	Percent of Total Reported 1968-1972
1	1	1	Cebidae	39,234	43.37	-	253,371	48.13
2	2	2	Cercopithecidae	31,959	35.33	+	171,164	32.51
3	3	4	Callithricidae	5,746	6.35	+	30,405	5.78
13	14	10	Muridae	2,827	3.13	+	4,273	.81
5	4	5	Procyonidae	2,776	3.07	+	13,375	2.54
7	7	5	Didelphidae	1,269	1.40	-	5,709	1.08
6	6	6	Felidae	852	.94	-	5,404	1.03
9	13	12	Sciuridae	801	.89	+	2,928	.57
12	10	9	Myrmecophagidae	607	.67	+	2,472	.47
10	12	8	Tupaiidae	580	.64	-	2,699	.51
27	28	21	Macropodidae	317	.35	+	726	.14
18	18	23	Erinaceidae	271	.30	+	976	.19
20	21	18	Hydrochoeridae	270	.30	+	920	.17
11	11	14	Mustelidae	247	.27	+	1,622	.31
14	17	17	Lorisidae	246	.27	-	1,488	.28
16	16	15	Pongidae	236	.26	+	1,201	.23
15	19	11	Dasyproctidae	227	.25	-	1,449	.28
21	24	20	Hylobatidae	214	.24	-	753	.14
17	15	13	Phyllostomatidae	199	.22	-	1,489	.28
28	33	35	Dasypodidae	134	.15	+	322	.06
41	33	39	Viverridae	132	.15	-	356	.07
22	20	22	Bradyrodidae	128	.14	-	612	.12
19	22	25	Cricetidae	105	.12	+	595	.11
4	5	3	Leporidae	102	.11	+	14,110	2.68
39	41	41	Procayidae	101	.11	+	179	.03
				89,580	99.03		518,598	98.52

Table 3. Species of mammals most frequently imported, 1968-1972

Ordinal Rank in 1968, 1969, 1970 1971 and 1972		Species	Number and (percentage) of Total Imported 1972		Number and (percentage) of Total Imported 1968-1972	
1	1	Squirrel Monkey, <i>Saimiri sciureus</i>	25,293	(27.96)	173,049	(32.87)
2	2	Rhesus Macaque, <i>Macaca mulatta</i>	23,210	(25.67)	127,004	(24.12)
6	3	Douroucouli, <i>Atotis trivirgatus</i>	3,533	(3.91)	20,869	(3.96)
4	4 ^{1/6}	White-fronted Capuchin, <i>Cebus albifrons</i>	2,776	(3.07)	17,823	(3.39)
36	30 ^{1/2}	House Mouse, <i>Mus musculus</i>	2,512	(2.78)	2,937	(.56)
8	5	Cotton-top Marmoset, <i>Saguinus oedipus</i>	2,419	(2.67)	13,711	(2.60)
9	6	Woolly Monkey, <i>Lagothrix lagothricha</i>	2,125	(2.35)	12,808	(2.43)
5	7	Grivet Monkey, <i>Cercopithecus aethiops</i>	2,092	(2.31)	12,721 ¹	(2.42)
16	15	Black-capped Capuchin, <i>Cebus apella</i>	1,975	(2.18)	6,666	(1.27)
7	10	White-lipped Tamarin, <i>Saguinus nigricollis</i>	1,933	(2.14)	9,135	(1.74)
14	11	Black-handed Spider Monkey, <i>Ateles geoffroyi</i>	1,841	(2.04)	7,981	(1.52)
15	8	Stump-tailed Macaque, <i>Macaca arctoides</i>	1,676	(1.85)	6,717	(1.28)
11	12	Crab-eating Macaque, <i>Macaca fascicularis</i>	1,397	(1.54)	8,058	(1.53)
12	17	Crab-eating Raccoon, <i>Procyon cancrivorus</i>	1,395	(1.54)	2,505	(.48)
12	17	White-throated Capuchin, <i>Cebus capucinus</i>	1,209	(1.34)	7,448	(1.41)
10	17	Vervet Monkey, <i>Cercopithecus pygerythrus</i>	1,180	(1.30)	5,792 ¹	(1.10)
10	17	Moustached Tamarin, <i>Saguinus mystax</i>	1,064	(1.18)	3,706	(.70)
10	17	Olive Baboon, <i>Papio anubis</i>	1,063	(1.18)	3,039	(.58)
13	34	Coati, <i>Nasua nasua</i>	878	(.97)	5,285	(1.00)
20	27	Pig-tailed Macaque, <i>Macaca nemestrina</i>	581	(.64)	2,730	(.52)
22	26	Common Tree Shrew, <i>Tupaia glis</i>	550	(.61)	2,586	(.49)
28	28	Tamandua, <i>Tamandua tetradactyla</i>	547	(.60)	2,027	(.39)
26	32	Tropical Red Squirrel, <i>Sciurus granatensis</i>	484	(.54)	1,583	(.30)
21	23	Kinkajou, <i>Potos flavus</i>	473	(.52)	2,608	(.50)
48	29	Leopard Cat, <i>Felis bengalensis</i>	370	(.41)	1,322	(.25)
			82,575	(91.30)	460,110	(87.41)

^{1/} Not listed in report or ordinal ranking lower than 40.

^{2/} Five-year totals for *Cercopithecus aethiops* and *C. pygerythrus* are not highly accurate since it seems likely that a substantial number of *pygerythrus* were included with *aethiops* in the 1968, 1969, and 1970 reports. Totals for earlier years used here are based on the proportions of the two species imported in 1971 and 1972.

Table 4. Families of birds making principal contribution to importation totals, 1968-1971

Ordinal Rank in 1968, 1969, 1970 and 1971	Family	Number Reported 1971	Percent of Total Reported 1971	Numerical Change since 1970	Number Reported 1968-1971	Percent of Total Reported 1968-1971
1	Estrildidae	415,481	42.98	- 35,154	1,606,478	52.40
2	Psittacidae	235,935	24.41	+ 109,121	532,994	17.39
3	Fringillidae	233,267	24.13	- 39,537	594,731	19.40
5	Sturnidae	28,885	2.99	+ 24	102,513	3.34
4	Ploceidae	24,861	2.57	- 9,702	130,936	4.27
11	Timaliidae	6,642	.69	+ 2,676	13,452	.44
7	Thraupidae	3,589	.37	+ 358	14,780	.48
8	Ramphastidae	3,391	.35	+ 634	11,021	.36
9	Trochilidae	2,020	.21	+ 791	6,449	.21
14	Falconidae	1,560	.16	- 89	5,504	.18
6	Phasianidae	979	.10	+ 718	7,257	.24
13	Coerebidae	938	.09	+ 324	2,934	.10
20	Accipitridae	620	.06	+ 66	2,345	.08
27	Chloropseidae	599	.06	- 189	1,471	.05
17	Strigidae	596	.06	+ 138	1,966	.06
15	Phoenicopteridae	525	.05	+ 54	1,693	.06
16	Corvidae	469	.05	- 194	2,043	.07
12	Icteridae	440	.05	- 6	2,256	.07
18	Spheniscidae	402	.04	+ 142	1,133	.04
21	Zosteropidae	397	.04	+ 174	1,067	.03
21		961,596	99.49		3,043,025	99.26

Table 5. Species of birds most frequently imported in 1971¹

Ordinal Rank in 1968, 1969, 1970 and 1971	Species	Number (and percentage) of Total Imported 1971		Number (and percentage) of Total Imported 1968-1971	
23	Domestic Canary, <i>Serinus canaria</i>	196,126	(20.29)	437,786	(14.28)
5	Canary-winged Bee Bee, <i>Brotopogon versicolurus</i>	117,158	(12.11)	240,879	(7.86)
1	Red-eared Waxbill, <i>Estrilda troglodytes</i>	58,119	(6.12)	280,509	(9.15)
4	Black-headed Nun, <i>Lonchura malacca</i>	52,195	(5.40)	165,950	(5.38)
2	Strawberry Finch, <i>Amandava amandava</i>	48,028	(4.97)	231,552	(7.55)
7	Spice Bird, <i>Lonchura punctulata</i>	46,567	(4.82)	163,874	(5.35)
3	Red-cheeked Cordon Blue, <i>Uraeginthus bengalus</i>	43,883	(4.54)	174,407	(5.69)
2	Orange-cheeked Waxbill, <i>Estrilda melpoda</i>	43,276	(4.48)	189,016	(6.17)
9	Hill Mynah, <i>Gracula religiosa</i>	28,571	(2.96)	101,347	(3.31)
12	Quaker Conure, <i>Myiopsitta monachus</i>	27,038	(2.80)	61,980 ²	(2.02)
6	Green Singing Finch, <i>Serinus mosambicus</i>	24,469	(2.53)	111,138	(3.63)
9	Silverbill, <i>Lonchura malabarica</i>	19,210	(1.99)	93,896	(3.06)
29	Pin-tailed Nonpareil, <i>Erythrura prasina</i>	18,586	(1.92)	42,335	(1.38)
14	Orange-chinned Parakeet, <i>Brotopogon jugularis</i>	17,812	(1.84)	39,698	(1.29)
11	Halfmoon Conure, <i>Aratinga canicularis</i>	15,742	(1.63)	68,766	(2.24)
26	Golden-breasted Waxbill, <i>Amandava subflava</i>	14,105	(1.46)	27,622	(.90)
24	Society Finch, <i>Lonchura striata</i>	13,511	(1.40)	46,917	(1.53)
22	Zebra Finch, <i>Poephila guttata</i>	12,914	(1.34)	37,852	(1.23)
28	Red-billed Fire Finch, <i>Lagonosticta senegalensis</i>	9,449	(.98)	20,576	(.67)
30	Cut-throat Finch, <i>Amadina fasciata</i>	9,104	(.94)	21,848	(.71)
16	Orange Bishop, <i>Euplectes orix</i>	6,363	(.66)	35,445	(1.16)
39	Pekin Robin, <i>Leiothrix lutea</i>	6,038	(.62)	11,225	(.37)
58	Nanday Conure, <i>Nandayus nenday</i>	5,775	(.60)	13,340 ²	(.44)
22	White-headed Nun, <i>Lonchura maja</i>	5,735	(.59)	20,463	(.67)
42	Yellow-headed Amazon, <i>Amazona ochrocephala</i>	5,515	(.57)	10,203 ³	(.33)
4	Blossom-headed Parakeet, <i>Pittacula cyanocephala</i>	5,512	(.57)	6,332	(.21)
104	Ringneck Parakeet, <i>Pittacula krameri</i>	5,283	(.55)	7,842	(.26)
88	Pintail Whydah, <i>Vidua macroura</i>	5,120	(.53)	26,494	(.86)
13	Napoleon Weaver, <i>Euplectes afer</i>	4,381	(.45)	20,698	(.68)
18	Broad-tailed Paradise Whydah, <i>Vidua orientalis</i>	4,017	(.42)	21,486 ⁵	(.70)

Table 5. (cont'd)

Ordinal Rank in 1968, 1969 and 1970	Species	Number (and percentage) of Total Imported 1971	Number (and percentage) of Total Imported 1968-1971
6	Blue-fronted Amazon, <i>Amazona aestiva</i>	3,945 (.41)	8,255 ³ (.27)
34	Saffron Finch, <i>Sicalis flaveola</i>	3,615 (.37)	7,223 (.24)
6	Green-cheeked Amazon, <i>Amazona viridigenalis</i>	3,585 (.37)	6,653 ³ (.22)
17	Combassou, <i>Vidua chalybeata</i>	3,578 (.37)	20,944 (.68)
106	African Gray Parrot, <i>Psittacus erithacus</i>	3,444 (.37)	5,968 (.19)
4	Golden-crowned Conure, <i>Aratinga aurea</i>	2,887 (.30)	4,742 (.15)
19	Lavender Finch, <i>Estrilda caerulescens</i>	2,451 (.25)	20,622 (.67)
31	Bronze Mannikin, <i>Lonchura cucullata</i>	2,419 (.25)	5,536 (.18)
41	Orange-winged Amazon, <i>Amazona amazilia</i>	1,818 (.19)	3,075 (.10)
21	Gouldian Finch, <i>Poephila gouldiae</i>	1,658 (.17)	8,165 (.27)
6	Blue and Gold Macaw, <i>Ara ararauna</i>	1,509 (.16)	1,926 (.06)
35	European Goldfinch, <i>Carduelis carduelis</i>	1,278 (.13)	3,884 (.13)
44	Grey Singing Finch, <i>Serinus leucopygia</i>	1,243 (.13)	2,967 (.10)
6	Channel-billed Toucan, <i>Ramphastos vitellinus</i>	1,243 (.13)	2,177 (.07)
52	Green Avadavat, <i>Estrilda formosa</i>	1,230 (.13)	3,298 (.11)
4	Moustache Parakeet, <i>Psittacula alexandri</i>	1,213 (.13)	1,386 (.05)
4	Maximilian's Parrot, <i>Pionus maximiliani</i>	1,196 (.12)	3,203 (.10)
6	Red-crested Finch, <i>Coryphospingus cucullatus</i>	1,079 (.11)	1,694 (.06)
4	Green Conure, <i>Aratinga leucophthalmus</i>	1,073 (.11)	1,771 (.06)
4	Azara Conure, <i>Pyrrhura frontalis</i>	1,011 (.10)	1,719 (.06)
		911,077 (94.28)	2,846,684 (92.85)

¹Table includes all species of which over 1,000 individuals were imported in 1971. Some ordinal rankings may vary slightly from those found in preceding import listings due to re-evaluation of previous data.

²Total is inexact but is probably reasonably accurate.

³Total is probably somewhat low due to misinterpretation of names in 1968 import listing.

⁴Not listed.

⁵Numbers of this species imported in 1968 and 1969 are estimated from proportions of this species and *V. paradiisaea* found on 1970 and 1971 import forms.

⁶Totals were less than 70 birds.

One species of turtle, the red-eared slider (*Chrysemys scripta*) and one species of lizard, the common iguana (*Iguana iguana*) account for approximately 75 percent of all reptiles imported. More than 50 percent of all amphibians are one species, the grass or leopard frog (*Rana pipiens*). Many of the declaration forms list these frogs not by number of individuals, but by pounds. In 1970, over 20,000 pounds of *Rana pipiens* were trucked across the border from Mexico, along with 55,000 reported as individuals. Estimating 6.2 to a pound, this amounts to over 179,000 frogs. In 1971, 73,820 pounds of this frog were imported, or approximately 458,000 frogs.

Because of the great number of individuals imported and the diversity of species, comparable information on fish is not available except for October, 1971. Data for that month were compiled to serve as a sample for this group. In that month 15 species of freshwater fish made up 61 percent of all fish imported (Table 6). There were more than 1,000,000 individuals of a single species.

Number of Species.--Analysis of the reptile and amphibian import forms for 1970 indicates that about 150 species of reptiles and 30 species of amphibians came in, from about 30 countries. Included were some 500 individuals of about 25 venomous reptiles--cobras, vipers, and pit vipers--including some of the most dangerous in the world.

In the month of October, 1971, 7,969,529 individual fish of 582 species in 100 families were imported from 41 countries. The number of species would certainly increase if this sample were extended to include the full year.

Approximately 625 species of birds were imported in 1968, and about 815 in 1969; about 395 species were common to both lists, so that the total number of species was about 1,045. In 1970 about 745 species were imported, with about 223 of those not listed in the previous two years. Thus in the three year period, about 1,270 species of birds have been brought in. This represents nearly 15 percent of the species in the world's avifauna.

At least 302 species of mammals were imported in 1968; 338 were brought in 1969, and 299 in 1970. We have not calculated the total number of species involved. Difficulties in accurate identifications of species from the information on the forms precludes the possibility of precise figures.

Worldwide Picture.--This level of importation of wildlife into the United States represents a small proportion of the worldwide trade in wild vertebrate animals. In 1970, Thailand exported 255,888 birds; we imported 43,837, about 16 percent of their export.* In 1971, Thailand exported 204,581 birds; we imported from Thailand about 51,501, or about 25 percent.

*Based on "Animal Exportation from Thailand in 1962-71," a report of the Thailand National Wildlife Management Section, Ministry of Agriculture, 1972.

Table 6. Scientific names of most frequently imported aquarium fish, October, 1971, with number imported rounded to next lower hundred thousand.

<u>Name</u>	<u>Number</u>
<i>Carnegiella strigata</i>	100,000
<i>Gasteropelecus sternicla</i>	100,000
<i>Barbus tetrazona</i>	100,000
<i>Rasbora heteromorpha</i>	100,000
<i>Tanichthys albonubes</i>	100,000
<i>Acanthopthalmus kuhlii</i>	100,000
<i>Corydoras aeneus</i>	100,000
<i>Corydoras julii</i>	100,000
<i>Plecostomus plecostomus</i>	200,000
<i>Gyrinocheilus aymonieri</i>	300,000
<i>Poecilia reticulata</i>	300,000
<i>Pterophyllum scalare</i>	400,000
<i>Cheirodon axelrodi</i>	600,000
<i>Betta splendens</i>	600,000
<i>Paracheirodon innesi</i>	1,100,000

In a 12-month period from April 1968 to March 1969, India exported 4,391,882 birds*, of which 167,724 came to the United States. This country was the fourth in rank of countries importing Indian birds. In an 11-month period the following year, the number of birds exported to the United States rose to over 264,000, according to one source. Our compilation shows that we imported over 209,000 birds from India; in 1971, the figure was 185,000. Despite the fact that India was number 1 among countries from which we imported birds in 1970 and number 2 in 1971, we apparently account directly for only about 4 percent of their exports. However, many other Indian birds may be transshipped to us. Comparable figures for other countries or for other groups of animals are not available.

*Data from C. L. Boyle "Statistical Enquiry into Animal Traffic," report to XV International Council for Bird Preservation, Texel, Netherlands, 1970.

III. ENVIRONMENTAL IMPACT OF PROPOSED ACTION

The proposed action (Appendix 2) is designed to prevent a detrimental impact on the environment by greatly reducing the possibility of the establishment of exotic species of wildlife in the United States and its possessions and territories, and by preventing the introduction of wildlife that may be harmful to humans or that may introduce an agriculturally important disease. The proposed regulations, if implemented, should prevent unnatural ecological imbalance in native animal communities due to exotics. Perturbations in these communities can lead to excessive losses of native flora and fauna and physical environment (see Appendix 1).

The proposed action will not have any direct effect on the natural environment except to prevent alteration of the present faunal composition through introduction of exotic species. Promulgation of these regulations should prevent losses or injury to human life by deliberately imported communicable disease vectors, and to property, natural waters and terrain due to the establishment of harmful exotic animals.

Adoption of the proposed regulations will lessen the depletion of wildlife resources of the countries that export live wildlife to the United States. It is unlikely, however, that any reduction in the capture of wildlife in these countries will be equivalent to the reduction of animals imported into the United States, because many that might have been exported to this country may instead be exported to some other nation. Nonetheless, there should be a net reduction in the total number of animals taken from the wild populations throughout the world. There will be, as a corollary to the above, a loss of income to the citizens of exporting countries who derive all or part of their income from the capture, sale, holding or transportation of live wildlife destined for the United States market. We are not in a position to estimate the extent of such losses.

The portion of the pet and aquarium fish industry of the United States that is dependent on the importation of exotic wildlife will undoubtedly suffer some economic loss as a result of the proposed action. One estimate* places an annual value of \$2 billion on the ornamental aquarium fish and accessories trade. In lieu of a better figure, we estimate the remainder of the industry dependent on the importation of exotics to have an annual value of \$.5 billion.

Three of the four species on the proposed "low risk" list of birds (Canary, Bengalese Finch, and Zebra Finch) comprised 27.7 and 23.0 percent of all birds imported in 1970 and 1971, respectively. In those same years parrots of the family Psittacidae, excluded from the scope of the proposed regulations, made up 13.5 and 24.4 percent of the total importations.

*Letter, Dr. Walter R. Courtenay, Florida Atlantic Univ., to Gov. Reubin O'D. Askew, 6 April 1973.

Considering additional importations for purposes for which permits can be issued, implementation of the proposed regulations would reduce bird importation by approximately 50 percent. In fact, actual effects on bird importation cannot now be predicted accurately. Regulations of the U. S. Department of Agriculture reduced legal importation of birds to virtually nil in August of 1972. Under more recent regulations of that Department importation has resumed, but a lengthy quarantine period is required. We do not presently know at what level importation will continue under these conditions.

In the years 1968, 1969, and 1970, primates made up approximately 87 percent of the mammals imported. Assuming that 50 percent of the primates and 10 percent of the other mammals were imported for the purposes to be permitted under these regulations, the import trade in mammals would be reduced by about 45 percent.

Importation of reptiles will be reduced to that proportion presently imported for the purposes to be permitted under these regulations. This is estimated as 5 percent.

The two species of amphibians permitted unrestricted importation under these regulations comprised approximately 80 percent of the amphibians imported in 1970 and 1971. Allowing for other species imported for permitted purposes, importation of amphibians would be curtailed by about 15 percent under these regulations.

Based on the sample of import declarations for October, 1971, only 3 percent of the freshwater fish imported would be restricted by the proposed regulations. Similarly, 3 percent of the marine fishes would be denied import. Thus, under the proposed action, importation of fish could continue at about 97 percent of the previous level. None of the 15 species that made up the major portion (61 percent) of the importations in October, 1971, is affected by the proposed regulations.

In all instances, the anticipated reduction in importation of living wildlife will affect those species which are presumed to be harmful to the named interests. Although in some groups this will affect the great majority of the species presently imported, it will (except for reptiles) have a much smaller effect on the number of individual animals imported.

A large proportion of the economic loss to pet dealers and importers caused by the reduction of importation can be offset by the increased use of animals bred in captivity from stock presently on hand. Clear (1973)* has indicated this in reference to USDA prohibitions and regulations affecting bird importation, and Rentz (1973)* has indicated the positive values of such breeding programs. The possibility of the establishment of feral populations and thus of damage to the named interests, by wildlife that has been held in captivity for a number of generations before escape or deliberate release is believed to be relatively low. Captive populations are subject to loss of characteristics that enable individuals to survive in the wild, having been removed from natural selective factors and subjected instead to artificial selective factors favoring adaptation to captivity.

*See Literature Cited Section of Appendix 1 for full references.

An unknown, but probably high, proportion of the estimated value of the exotic pet industry is made up from the manufacture and sale of food, equipment, and other supplies necessary for the maintenance of the animals. This aspect of the industry would be relatively little affected by the proposed action because the continued trade in "low risk" and captive-bred animals would result in a continued need for these supplies and equipment.

That portion of the fish-farm industry that is economically dependent on the importation of exotics may suffer some revenue loss as a result of this action. However, this industry has not yet developed to the level where severe economic loss would occur if importation of potentially injurious exotics is prohibited. The demand for domestically raised aquarium fishes to replace in the market those exotics previously imported may prove to be beneficial to this industry.

A small aspect of the food supply industry in this country is based on the importation of live freshwater and land snails as food items. The proposed action would prevent such importation, with resultant loss of revenue to the importers. However, this is but a small portion of the food industry. Edible snails can be, and are, also imported in other than the living state.

The Giant Pacific Oyster industry has an estimated value of \$10,000,000 per year and employs approximately 1,500 people, according to John Glud, Deputy Regional Director for the National Marine Fisheries Service (pers. comm.). Although the greater part of the seed oyster on which this industry is dependent is produced in the State of Washington, a considerable amount of the seed oyster is imported from Japan and British Columbia, Canada. Glud estimates that the proposed restriction on importation affecting seed oysters would depress the value of the industry by approximately 50 percent, although he feels this effect would be only temporary. Hatchery success can be improved with seed banking--during good years the seed can be stored in the intertidal zone for resupplying after years of failure. Glud estimates that the industry would fully recover in five to ten years. Control of dredging in Willapa Bay, Washington, by the U.S. Army Corps of Engineers would permit a great increase in the production of seed oysters in that area. Although many parasites and commensals of oysters and other mollusks, and other marine organisms as well, have already been introduced with seed oyster and the accompanying water, and have become established, further introductions of this sort will be prevented by this proposed action.

IV. MITIGATING MEASURES INCLUDED IN PROPOSED ACTION

The proposed regulations, pursuant to subsection (a) (13) of the statute, provide for the continued importation of injurious wildlife by permit, for zoological, educational, medical, and scientific purposes. The statute requires that the applicant make a proper showing of responsibility and continued protection of the public interest and health.

The statute also contains other exemptions, which are reflected in the proposed regulations. First, since the statute applies specifically to species of wild mammals, birds, fish (including mollusks and crustacea), amphibians, and reptiles, other categories of animals, such as echinoderms, insects, and sponges are not included. Second, importations by Federal agencies, for their own use, are specifically exempted. Third, importation of dead natural history specimens for museums or for scientific collections are specifically exempted. Fourth, domesticated canaries and parrots (including all species of psittacine birds) are specifically exempted.

The proposed regulations provide a list of "low risk" wildlife, which may be imported without permit. This list consists of wildlife which has been found, after reviewing scientific and other data, to present a low risk of injury to the interests named in the statute. Prior to adoption of the proposed regulations, the "low risk" list is, like all other parts of the proposed regulations, a proposal. Thus, it is subject to public comment, and may be changed if and when the regulations are adopted.

Once adopted, the "low risk" list may be amended by either adding or deleting species. The process of amending the list by request from a member of the public consists of two steps. In the first step, any person may submit a request for a review of a listed or nonlisted species. It must contain whatever scientific, commercial, or other data the person has to support the request. If it is determined that the request has presented substantial evidence which warrants a review, a finding to that effect will be published in the Federal Register, inviting the public to comment and to submit information regarding the species. After consideration of these comments, a decision will be made and published in the Federal Register as to whether a proposed rulemaking will be issued to make the requested amendment. If a proposed rulemaking is issued, it, of course, is subject to the normal rules of law, under which public comment will be considered.

In addition, the Bureau of Sport Fisheries and Wildlife can amend the "low risk" list at any time, on its own motion. Any such amendment would be accomplished by the issuance of a proposed rulemaking, subject to public comment, prior to any final rule being adopted.

It should be noted that a public request to amend the list must be accompanied by scientific, commercial, or other data which presents "substantial evidence" that a review is warranted. It is not required that the member of the public "prove" his case beyond a doubt, but simply that he present sufficient evidence to warrant a review by the Bureau of Sport Fisheries and Wildlife. The judgment as to what constitutes "substantial evidence" must, of necessity, be made on a case by case basis. A variety of factors, such as the extent of scientific knowledge on the species involved and the reliability of the data submitted, must be considered in each such judgment.

V. ADVERSE EFFECTS WHICH CANNOT BE AVOIDED
SHOULD THE PROPOSAL BE IMPLEMENTED

The proposed action permits the importation of individuals of certain species of wildlife considered to be of low potential for environmental damage. However, there is some risk involved with any importation. Thus, there is a potential adverse effect that is proportional to the number of species considered to be of "low risk."

Large numbers of some exotic species will be in the United States at the time the regulations take effect. These animals can be used as breeding stock to maintain the caged pet industry. Thus there will be a reservoir of potentially harmful wildlife available for escape or deliberate release, from which feral populations could be established.

There remains the possibility of importing potentially harmful commensal, parasitic, or associated species with those species considered to be a "low risk," particularly in the water containing aquatic animals.

The importation of individuals of species native to the United States (some of which are on the "low risk" list) can be considered a form of genetic pollution. Even though conspecific with native populations, these individuals may represent populations with different physiological, behavioral, or physical adaptations which may be detrimental if introduced to the native populations.

Psittacine birds are excluded by statute (Lacey Act) from the purview of the proposed action. These birds present a particularly serious potential threat to the environment, to human health, and to agricultural interests when imported and established.

Restrictions on the importation of exotic animals for use as pets may result in the increased utilization of the resident fauna for this purpose. This may endanger some species of our native fauna and eventually the flora and general physical environment.

There may be an increase in the illegal importation (smuggling) of restricted wildlife. Many common importation techniques, such as the inclusion of fertilized fish eggs in first class mail, are difficult to detect and will cause problems in enforcing the regulations. Illegally imported wildlife is particularly dangerous in that normal quarantine and other protective procedures are avoided and there is a high risk of fortuitous damage.

The pet, shellfish, and fish-farming industries and individuals who import exotic animals for sale will suffer economic losses proportional to their dependence on these imports.

There will be losses in income to those persons in countries that export live wildlife proportional to their dependence on the capture, sale, care, or transportation of animals that would normally be destined for sale in the United States.

VI. THE RELATIONSHIP BETWEEN LOCAL
SHORT-TERM USES OF MAN'S ENVIRONMENT AND
THE MAINTENANCE AND ENHANCEMENT OF
LONG-TERM PRODUCTIVITY

Although the introduction and establishment of limited numbers of individuals of an exotic wildlife species in this country may seem to pose little threat to the named interests at the present or in the near future, there can be changes in the size and range of the populations and their resource use in future generations that may prove to be detrimental. Appendix 1 gives several examples of this concept. Some degree of regulation would aid in the maintenance of long-term productivity.

VII. ANY IRREVERSIBLE AND IRRETRIEVABLE
COMMITMENTS OF RESOURCES WHICH WOULD BE
INVOLVED IN THE PROPOSED ACTION SHOULD IT
BE IMPLEMENTED

Implementation of this proposed action will involve the commitment of resources in the form of manpower and funds for enforcement. At the present time, the Bureau of Sport Fisheries and Wildlife has a system of clearance of imports of wildlife at certain designated ports of entry. The authority for this system derives from the Endangered Species Conservation Act of 1969, in which the Secretary was given the authority to designate certain ports for the entry of fish and wildlife. The entry of fish and wildlife at any other port was a violation of the Act. This authority was continued and strengthened in the Endangered Species Act of 1973. Pursuant to this authority, the Secretary designated eight ports of entry--New York, Miami, New Orleans, Chicago, Los Angeles, San Francisco, Seattle, and Honolulu. The Bureau has placed Special Agents who are trained in the identification of wildlife and the laws which apply to the importation of wildlife at each of these designated ports. By regulation, the Secretary has provided for the entry of certain fish or wildlife into other ports of the United States under special circumstances. In addition, the Secretary has provided by regulations for permits to import wildlife through non-designated ports of entry.

The functioning of the system for clearance of fish and wildlife described above depends upon the cooperation of the Special Agents of the Bureau of Sport Fisheries and Wildlife and the Inspectors of the Customs of the Customs Service. In most cases, it is the inspectors of the Customs Service who first intercept the attempted entry of fish or wildlife into the country. They then notify an agent of the Bureau, who will come to inspect the shipment and the documentation accompanying it. The agent will then either clear the shipment for entry into the United States, or will detain it for further investigation if it appears to be in violation of any of the various laws relating to the importation of fish or wildlife. In addition to this on-site inspection and investigation system, the regulations of this Bureau require that all importations of fish or wildlife be accompanied by a Declaration of Importation. This declaration is filed with the Customs inspector at the time of Customs entry. The declarations are then forwarded to the special agents of the Bureau, where they are reviewed for potential violation of the law. If a violation is suspected, an investigation is initiated.

The system described above was designed to take note of the initial entry of fish and wildlife or to detect it by an investigation which occurs after the initial entry. A system of enforcement which would be adequate for the aims and purposes described by this proposal would require an absolute screen to the entry of fish or wildlife at the time

of entry, since it is the very entry into the country which is to be prohibited. This is analogous to the prevention of the entry of carriers of human disease or agricultural pests. In all these cases, detection and investigation after the entry has occurred is not adequate, since the damage to be avoided will most likely have taken place by that time. The creation of such an absolute screen would require additional manpower at each of the eight ports of entry and at the ports mentioned above through which fish or wildlife may enter under special circumstances, as well as personnel to cover activities at the non-designated ports of entry. In addition, money will be required for the creation of identification guides and keys to enable special agents to identify the wide variety of fish and wildlife that they will be required to inspect. These additions are made necessary by the fact that the Customs Service already enforces laws for a wide variety of other Federal agencies relating to the importation of various commodities. It would be nearly impossible for the Customs Service to expand the aid which it already gives to the special agents of the Bureau. Therefore, an expansion in the Bureau's own force of Special Agents would be required to provide a screen sufficient to assure that the fish or wildlife covered by this proposal did not actually enter the country.

VIII. ALTERNATIVES TO THE PROPOSED ACTION

Between the extremes represented by Alternatives A and C there is a broad spectrum of possibilities, including Alternative B and the proposed action. Some of these possibilities would require statutory amendments. Should the proposed action be implemented, there would probably be a continual fluctuation along the spectrum because of the flexible nature of the "low risk" list included in the proposed regulations.

A. No Regulations

One alternative to the proposed action is to take no action at all, in effect leaving the implementation of this portion of the Lacey Act as at present.

At present, there is a small list of species that are specifically prohibited importation, although other species can be added to the list. In practice, species are added to the list when they have been shown to be established in this country and to be causing harm, or to be demonstrating the potential for harm. This is not effective in preventing damage. Taking no action would permit the importation of most wildlife species at any rate. There would be no loss of income to industries now dependent on the importation of exotic species. There would remain the potential for the introduction and establishment of species harmful to the named interests (see Appendix 1 for examples), forcing a curative rather than preventive position.

B. Less Restrictive Allowance for Importation by Permit

The statute could be amended to allow a broader permit system so that any person who could demonstrate the ability and willingness to contain potentially injurious animals in such a way as to prevent their escape or release into the wild would be eligible for a permit to import them. This would reduce the economic loss to most of those who import exotic wildlife species, but would necessitate expenditures for proper housing for the potentially harmful species. It would necessitate the formulation of regulations stipulating what constitutes proper and safe housing and providing for inspection and licensing thereof. Experience has shown that no containment system for wildlife is infallible because of human error and/or "acts of God."

The named interests would still be affected by the importation of disease bearing animals and other hazards, although to a lesser degree than at present.

C. Prohibition of All Imports

Another alternative would be an amendment to the statute to the effect that since all species are potentially harmful if imported for any purpose, no exceptions should be allowed. This would effect a complete prohibition on importation of any exotic wildlife species. This alternative would cause severe economic losses to those who now import wildlife and/or trade in imported wildlife. It would remove the possibility of zoos, public aquaria, etc., adding to their holdings. It would greatly reduce the possibility of harm to the named interests. It would represent the extreme of preventive actions.

IX. CONSULTATION AND COORDINATION WITH OTHERS

1. Consultation and Coordination in the Development of the Proposal and in the Preparation of the Draft Environmental Statement.

Officials of the Council on Environmental Quality worked in close cooperation with representatives of the Bureau of Sport Fisheries and Wildlife in early stages of formulation of the concepts of the proposed regulations.

On January 18, 1973, Assistant Secretary of the Interior Reed briefed more than 20 invited leaders of conservation and environmental organizations on the general outline of the planned revision of regulations concerning the importation of live wildlife. Comments from those attending the briefing were incorporated into the milieu from which the proposal was written.

In January, 1973, information was solicited from the Statistics and Market News Section, National Marine Fisheries Service, NOAA, on the species of molluscs and crustaceans that were normally imported alive that might be affected by the proposed regulations. Further information was solicited from scientists in the National Marine Fisheries Service and the Smithsonian Institution. At the same time, information was solicited from the Animal and Plant Health Inspection of the U.S. Department of Agriculture on regulations, proposed or presently in effect, concerning the importation of live animals, with a view toward development of compatible regulations.

On May 31, 1973, a briefing was held by the Division of Law Enforcement (B.S.F.W.) for officials of the U.S. Public Health Service (Center for Disease Control) and the U.S. Department of Agriculture (Animal and Plant Health Inspection Service) at which the nature of the pending proposal was discussed and advice was solicited.

On April 13, 1973, a group of professional ichthyologists associated with the National Marine Fisheries Service and the Smithsonian Institution submitted (as private citizens) a list of species and groups of fish with a recommendation that these forms be prohibited from importation and that the proposed regulations include lists of prohibited rather than "low risk" forms. The list mentioned was drawn up in conjunction with Dr. Robert Rofen of the Pet Industry Joint Advisory Council, and others. A list of genera of fish with recommendations as to prohibition from importation or free entry by declaration was submitted to the Bureau on April 30, 1973, by Herbert R. Axelrod, Chairman of the Exotic Fishes Committee of the American Fisheries Society. This list was based, in part, on the one previously mentioned.

The two lists previously mentioned were sent, on June 12, 1973, to more than 100 persons and institutions with interests in fish--conservationists, scientists, other professional ichthyologists, aquarists, importers, and hobbyists--with a request for recommendations for additions, deletions, and other germane comments. The list of "low risk" fish published with the proposed regulations was prepared on the basis of these earlier lists and comments thereon.

In the period during which the proposal was being developed, several Bureau personnel spoke before interested groups representing various commercial and scientific uses of wildlife on the general topic of regulation of the importation of wildlife. Comments generated as a response to these talks were considered in further development of the regulations.

2. Coordination in the Review of the Draft Environmental Statement.

Copies of this environmental statement will be circulated to the following agencies for comment:

Department of Agriculture
Forest Service
Soil Conservation Service
Animal and Plant Health Inspection Service

Department of Commerce
National Oceanic and Atmospheric Administration

Department of the Interior
Bureau of Land Management
Bureau of Outdoor Recreation
National Park Service

Environmental Protection Agency

Department of Health, Education and Welfare
Public Health Service

RECENT PUBLICATIONS AND REPORTS OF THE BUREAU OF SPORT FISHERIES
AND WILDLIFE RELATING TO IMPORTED WILDLIFE

Special Scientific Report--Wildlife

136. Birds Imported into the United States in 1968. Richard C. Banks. September, 1970. 64 pp.

137. Mammals Imported into the United States in 1968. Clyde Jones. November, 1970. 30 pp.

147. Mammals Imported into the United States in 1969. Clyde Jones and John L. Paradiso. January, 1972. 33 pp.

148. Birds Imported into the United States in 1969. Richard C. Banks and Roger B. Clapp. April, 1972. 99 pp.

161. Mammals Imported into the United States in 1970. John L. Paradiso and Robert D. Fisher. November, 1972. 62 pp.

164. Birds Imported into the United States in 1970. Roger B. Clapp and Richard C. Banks. February, 1973. 102 pp.

170. Birds Imported into the United States in 1971. Roger B. Clapp and Richard C. Banks. October, 1973. 99 pp.

---. Birds Imported into the United States in 1972. Roger B. Clapp. In Preparation.

---. Mammals Imported into the United States in 1971. Roger B. Clapp and John L. Paradiso. In Press.

---. Mammals Imported into the United States in 1972. Roger B. Clapp. In Press.

---. Amphibians and Reptiles Imported into the United States in 1970-71. Stephen D. Busack. In Press.

Wildlife Leaflet

480. Wildlife Imported into the United States in 1967. March, 1968.

483. Wildlife Imported into the United States in 1968. February, 1969.

491. Wildlife Imported into the United States in 1968. February, 1970.

495. Wildlife Imported into the United States in 1970. February, 1971.

498. Wildlife Imported into the United States in 1971. February, 1972

502. Wildlife Imported into the United States in 1972. June, 1973.

Reports

Aquarium Fishes Imported into the United States during October, 1971.
John S. Ramsey. Report submitted to Division of Fishery Research, Bureau
of Sport Fisheries and Wildlife.

APPENDIX 1.

A REPORT OF SOME EFFECTS OF THE IMPORTATION OF WILDLIFE

Richard C. Banks
Research Staff Specialist
Division of Wildlife Research
Bureau of Sport Fisheries and Wildlife

INTRODUCTION

For centuries man has played an important role in determining the distribution of wildlife species on earth. By competition with, or by utilization of, various wildlife species, man has restricted or expanded the range of many of them either at will or by accident. He has forced the extinction of some species, and has greatly increased the numbers of others. This report considers some of the effects on fish and wildlife and on man himself of man's practice of moving individuals of animal species to geographic areas where those species are not native. The report specifically concentrates on those effects that are detrimental, or potentially so, to native wildlife species and/or their environment or to man and his varied interests.

Importation is the act of bringing living individuals of an animal species into a geographic area where that species is not native. Generally this is from one country or continent to another, although it could also include the movement of an animal from one part of a country to another. Importation does not necessarily imply the release of individuals of the species into the wild, although such a release, either accidental or deliberate, is often the result of importation. The release of an exotic species is called introduction. Establishment occurs when a released or introduced exotic species becomes able to maintain a reproducing wild or feral population in its new home.

Importation of individuals of a wildlife species may or may not have an effect on the importer or on other people or animals with which those individuals become associated. The introduction of such individuals necessarily has some effect, if only the temporary utilization of some resource. Establishment of a population implies and demands a utilization of several resources and a de facto ecological relationship. Although there are several potentially detrimental effects on man in merely importing individuals of exotic wildlife species, the greatest detriment lies in the possibility of the establishment of a population of the species in an area where it is not native. Because establishment by unnatural means always is preceded by importation, and because importation often leads to establishment, this report considers these phenomena to be inseparable. Elton (1958) has discussed the mechanics of the establishment of exotic populations.

The introduction of an exotic species may take place accidentally or deliberately. Animals can escape from cages or containers in transit, while being processed through customs checks, while in pet stores or zoos,

or when in the hands of private owners. Many exotic birds are first noted in the vicinity of major airports. Several zoological gardens in the southern states maintain birds and primates in essentially free-ranging conditions, and these animals may consequently escape. Aquatic organisms sometimes escape when holding or breeding ponds flood or leak. Small organisms may inadvertently be imported with larger animals.

Deliberate introductions are often made by persons hoping to establish populations of game species or to provide some control for pest species. Other persons may release pets when the novelty wears off or when they are no longer able to provide for them. Still others merely want to "enrich" their environment (see Laycock, 1966, esp. pp. 70-73).

It is impossible to predict whether any particular species, or group of individuals, will produce an established population after introduction. Many deliberate attempts to establish species have failed after repeated trials (Laycock, 1966:181 ff.). On the other hand, some species have become established very easily, after the introduction of only a few individuals. In some species it is possible that a single fertilized female could establish a thriving population.

Many species of animals quickly increase in number in a new environment, perhaps because of the lack of natural predators and parasites. Others may maintain only a small colony in a restricted geographic area for long periods of time. Of these, some will die out, some will continue, and some may suddenly increase greatly in number and range in a short period of time. In the latter, it is probable that some genetically controlled physiological or structural change has occurred that has permitted the species to overcome a previously limiting factor. The possibility of this happening suggests that any species can adapt to any set of environmental circumstances, given time and exposure to the environment.

This report does not present any new information. It is a summary of a part of a large body of technical and semi-technical literature that reports and documents what has happened in specific instances in the past. It describes a number of kinds of detrimental effects that have taken place as a result of the importation and/or establishment of wildlife species and suggests that each of these effects could occur repeatedly if these practices continue without regulation or control. It is impossible to predict with any certainty whether any particular result will occur with any particular species or individual animal.

The hazards of establishing populations of exotic species have been discussed by many authors in past years. This report will refer to some of these earlier writings as well as to many papers that merely report the situation without making a judgment as to whether it is harmful or beneficial. In many instances there has been too little study on which

such a judgment could be based. It is impossible to cover or list the entire literature pertaining to imported, introduced, or established wildlife because it is so vast. Good, but necessarily limited, bibliographies are presented by Laycock (1966), de Vos et al. (1956), and Lachner et al. (1970).

This report describes the effects of importation and related events first on the native wildlife and wildlife environment of an area, and then on man and his personal and economic interests. Finally, the effects on the populations from which the exotics are drawn are discussed in less detail.

EFFECTS ON NATIVE WILDLIFE AND ENVIRONMENTAL RESOURCES

There are five basic ways in which imported or established wildlife species can have an effect on native wildlife and on the environmental resources of the area to which they are introduced. These are:

1. Exotic wildlife species may offer direct competition to native species for food, nest sites, or some other essential resource;
2. Exotic wildlife species can at times become serious predators on elements of the native fauna;
3. Exotic species may alter the habitat in some way as to make it uninhabitable for forms of native wildlife;
4. Exotic animals may carry parasites or diseases that can be communicated to native species;
5. Exotic species may hybridize with closely related native (or domesticated) species, introducing detrimental characters into the native population.

The effects on native wildlife of importation in the strict sense, without consequent introduction or establishment are rather limited, and probably would fall only into the fourth of the indicated categories. Introduction or establishment in even a limited and restricted area could result in any or all of the suggested effects.

In addition to the primary species being imported, any importation of wildlife may include "hidden" species in water or cage litter. Water containing fish or other aquatic organisms during transit may also contain other organisms, perhaps in microscopic egg or larval form. Some of these may be released when the water is disposed of. Species introduced in this way may become established and may have serious consequences even if the primary species being imported is carefully maintained in captivity. Thus the mere act of importing one species may lead to the establishment of some other species. Further, any animal that is introduced deliberately or accidentally may carry with it parasites or commensals that constitute inadvertent or fortuitous introductions.

Several examples of the establishment of exotic species by inadvertent introduction are given by Carl and Guiguet (1971), Lachner et al. (1970), and Laycock (1966). Presumably larger animal species, such as most vertebrates, are unlikely to be imported unintentionally, although some reptiles and perhaps amphibians may arrive in shipments of fruit (Parrish and Khan, 1966) or in soil associated with plant importations. The burrowing snake *Typhlops braminus* is believed to have been introduced into Hawaii in this way (Oliver and Shaw, 1953).

Competition.--Within a natural community in which species are evolving together, environmental niches and food resources have been partitioned or divided among the species in such a way that there is relatively little or no competition between closely related forms. Rather complex mechanisms have evolved to enforce such a division of the resource; these may involve morphological, behavioral, physiological, and ecological processes. The result is that each species has evolved in such a way that it can exploit its environment without severe detriment to other species in the community and with little competition to or from them. In many instances, the balance is rather delicate; the introduction of a new organism into the system can be disruptive to the extent of eliminating a native species.

Writing of the walking catfish, Clarias batrachus, now well established in Florida as the result of its escape from a fish farm, Courtenay and Ogilvie (1971) note that: "During our wet season, these fish compete directly with native fish for food and space, which has presented a new problem to resident forms. In the 'dry' months, when canal and pond waters are reduced by evaporation, the catfish eat everything, including native fish." In further discussion of this species in Florida, Lachner et al. (1970) comment: "In its voracious food habits it competes with, and in time may deplete, the native food and game fishes, particularly the centrarchids, of the warm southeastern freshwaters with which it competes directly for food....This species is a severely harmful competitor, for it apparently reduces the entire freshwater community that it invades to one common denominator, more walking catfishes."

Lachner et al. (1970) discuss several groups of fish of which members have been introduced into North American waters. Among these are the Cichlids, a large family of 850 to 1000 species. They note that "Many species adapt both to fresh and estuarine waters and their predaceous habits make them competitive to native North American warm-water bass and sunfish." It is a member of this family, the peacock cichlid (Cichla ocellaris) that has become established in Gatun Lake, Panama, where it is an efficient predator on small fish, thus competing with other predatory fish (Zarat and Paine, 1973). This species has also been released in Florida (Lachner et al. 1970, and references therein).

A number of instances in which introduced mammals have competed with native forms, or even with other introduced forms, are cited by de Vos et al. (1956). Among these are: European rabbit (Oryctolagus cuniculus) with the European hare (Lepus europaeus) in various places; the raccoon dog (Nyctereutes procyonoides) with Siberian mustelids; fallow deer (Dama dama) with white-tailed deer (Odocoileus virginiana), and Florida cottontail (Sylvilagus floridanus) with New-England cottontail (S. transitionalis) on Martha's Vineyard, Massachusetts; nutria (Myocaster coypus) with muskrat (Ondatra zibethicus) in Louisiana; and reindeer (Rangifer tarandus) with caribou (R. arcticus) in North America.

Perhaps a classic example of the potential effects of competition by introduced species occurred in Australia with the release of the European rabbit. This was summarized by de Vos et al. (1956:178) as follows: "Free from the controlling factors of their original habitat, European Rabbits attained incredible numbers. They converted millions of acres of good agricultural country into semi-desert by denuding the plant cover and by girdling trees. This resulted not only in a decreased carrying capacity of the range for domestic stock, but also in the rapid disappearance of many specialized marsupials which could not stand the competition. Some marsupials have thus become extinct; others, fortunately, can live in areas too dry for rabbits, and some are arboreal."

The snail Melanoides tuberculatus, an intermediate host for several trematode parasites of man in the Orient, was introduced into the United States by the aquarium trade about 1935. As recently as 1970, individuals were sold in aquarium shops for 35 to 50 cents each (M. Imlay, pers. comm.). Murray (1970) noted that this species and the related Melanoides graniferus were established near San Antonio, Texas, at the type locality of the native snail Goniobasis comalensis, and that the latter species was extremely difficult to find where once it had been common. Murray suggested that one or both of the introduced snails could in time invade the ranges of localized endemic native species with serious results. A recent report (Landye, 1973) to the Bureau of Sport Fisheries and Wildlife confirms that this has happened. Landye reports that some 50 species of native freshwater snails of the American southwest are threatened by M. tuberculatus, several of them having been much reduced in numbers or eliminated. Melanoides tuberculatus bears a long sharp spiral which causes the fish in ponds to avoid it when feeding. The fish feed on the native snails selectively, and the ecologically competing Melanoides gradually replaces the native species

Sometime after 1935, an edible snail, Viviparus viviparus, was introduced into White Lake, Ontario. By 1965 the concentration of this species in the lake was as great as 10 individuals per square foot. The presence of this species had an adverse effect on other molluscan species in the lake, apparently causing the extirpation of four native species of clams and two species of snail by offering competition for space and other resources (La Rocque, 1965).

By natural range expansion, two species of hole-nesting North American ducks, the black-bellied tree duck (Dendrocygna autumnalis) and the wood duck (Aix sponsa) have recently met in southern Texas, where there is some competition for nesting sites (Bolen, 1971). A third cavity nesting duck, the exotic muscovy (Cairina moschata) occurs in a feral state in part of the range of the tree duck, and dominates the latter in the use of suitable nesting cavities. Bolen (1971) states: "It seems clear that contact with Muscovy Ducks is not to the advantage of the Black-bellied Tree Ducks nesting in southern Texas."

There are some instances of declines in populations of native species after the introduction of exotics that seem to be a result of competition although the data are not clear. Gray squirrels (Sciurus carolinensis) from North America have apparently been the cause of the gradual disappearance of native red squirrels (Sciurus vulgaris) in England (de Vos et al., 1956; Laycock, 1966, both citing works of Shorten), although it is not certain whether competition for food or the transmittal of disease is responsible. de Vos et al. (1956:169) note that the European hare has been introduced into Sweden where "it is gradually replacing the Alpine Hare (Lepus timidus), possibly because of a higher reproductive potential."

The effects of competition can also extend to man. Large-mouth Bass (Micropterus salmoides) and Black Crappies (Pomoxis nigromaculatus) were introduced into Atitlan Lake, Guatemala. The bass fed on the small native fishes, which for centuries had provided both protein and a source of cash income for local Indians. Now the native fish populations are decimated, and gone are the critical protein and the income source. The few large bass are not accessible for capture (Zarat and Paine, 1973).

Predation.--The African Clawed Frog, Xenopus laevis, has become established in southern California (St. Amant et al., 1973). Formerly used as a pregnancy test for humans, the frog was displaced from its role by more sophisticated methods. Presumably, excess supplies were released into the wild or sold through pet stores. "Suddenly, thousands of these creatures have been discovered in San Diego County's Sweetwater Reservoir and in drainage ditches in neighboring Orange County" (Revzin, 1973). These exotic frogs, which grow to a length of 10 inches, are reputed to have a voracious appetite and "will eat just about anything: crayfish, aquatic insects and larvae, small fish, and other amphibians..." (Mahrtdt and Knefler, 1973). They have also been reported as eating young birds and mice that fall into the water, and fresh-water snails (Wager, 1965). The African Clawed Frog was first found in the wild in San Diego County, California, in the summer of 1971. It is possible that it is responsible for the decline of a local population of tree frogs (Hyla), although this has not been fully established (Mahrtdt and Knefler, 1973). The fear is that they may reach the Colorado River waterway, where they might do much more damage (Revzin, 1973). The species can tolerate a high degree of salinity and water temperatures of 45 to 90 degrees F. (Mahrtdt and Knefler, 1973). It is obvious that this frog is a threat not only to the organisms on which it feeds in its new habitat, but also to native organisms that utilize the same food resources, particularly other amphibians. Thus it is both competitor and predator.

A predatory game fish, Cichla ocellaris, native to the Amazon basin, has become established in lakes and rivers of Panama. According to an article in Science News (Vol. 103, No. 14, April 7, 1973), "the peacock bass is such an efficient predator that some species of smaller fish are endangered, along with the animals that depend on them. As the population of a fish called Melaniris has decreased by half, the great tarpon that

come from the sea to feed on them have also decreased. Young black terns, which perch on stumps and channel buoys to feed on the Melaniris leaping from the water to escape the tarpon, are no longer common where Cichla stalk their prey." Another threat is the reduction of mosquito-fish, Gambusia, which has led to an increase in the number of mosquitoes and a consequent upsurge in malaria. Further details on this situation in Gatun Lake, Panama, are given by Zaraf and Paine (1973), who further state that "...Cichla has effectively eliminated six of the eight previously common fish species and drastically reduced a seventh."

A classic example of the effects an introduced predator can have is found in the mongoose, Herpestes auropunctatus, an Asian carnivore often introduced in the past to assist in the control of rats or snakes. In the Caribbean islands, "it has probably been instrumental in the complete or nearly complete extirpation of several species of mammals and birds" (de Vos et al., 1956:182). In Jamaica the mongoose quickly brought the rat population under control and then turned its attention to native mammals and birds that feed or nest on or near the ground, as well as snakes, lizards, toads, other amphibians and land crabs (de Vos et al., 1956). In Hawaii, the mongoose (introduced from Jamaica in 1883) has been an important predator on the native duck and goose, on introduced game birds, and probably others (Berger, 1972:9-10). Tomich (1969) cites many references on the effects of the mongoose in both Hawaii and the Caribbean region, and Kramer (1971) discusses its effects in Hawaii.

Similar examples of introduced predators can be found in many parts of the world. In Australia, ferrets, stoats, and weasels were introduced to prey on rabbits, which were themselves introduced, but proved to be extremely destructive to native birds and smaller mammals (de Vos et al., 1956).

The green monkey (Cercopithecus aethiops) from West Africa was introduced onto St. Kitts Island in the Caribbean. According to de Vos et al. (1956:184), "These monkeys prey on the eggs and young of birds, and are believed to have exterminated the St. Kitts Bullfinch (Loxigilla portoricensis grandis)."

The Aleutian Canada goose (Branta canadensis leucopareia) was formerly abundant on Amchitka Island in the Aleutians, as well as on several other islands in that chain. It was nearly exterminated when Arctic foxes (Alopex lagopus) were introduced to all the occupied islands except Buldir. Efforts are now being made to restock other islands with birds from the Buldir population (Bureau of Sport Fisheries and Wildlife, 1973:109).

The importation of oyster seed into British Columbia from Japan has apparently been responsible also for the introduction of several predators that now attack native as well as the planted oyster stock. Among these are a Japanese oyster drill (Ocenebra japonica), a flatworm (Pseudostylochus ostreophagus), and a parasitic copepod (Mytilicola orientalis). Other organisms presumably imported with Japanese oyster

seed include an anemone (Haliplanella luciae), and the tripunctate gribble (Limnoria tripunctata), the latter a crustacean that damages wooden structures (Carl and Guiguet, 1972).

In Hawaii, the Giant African Snail (Achatina fulica) was introduced in 1936. It soon became a pest, and efforts to eradicate it were unsuccessful. By 1964, 23 species of predatory snail were introduced to attempt biological control. Not only did the introduced predators fail to control Achatina, but one of them, Euglandina rosa, has become a serious threat to the continued existence of several endemic native snails and may prove to be more difficult to control than the Achatina (van der Schalie, 1969).

The hazards of the introduction of exotics are not restricted to species that are known carnivores or predators in the normal sense. Any organism that feeds on other animal life is a predator, even if that other life is insects, snails, or plankton. Our general lack of concern for predation on these organisms is merely a reflection of our lack of knowledge on the ecological role they play and the seeming abundance of organisms of small size, usually not identified beyond the class or ordinal level.

Habitat Alteration.--One of the most destructive wildlife species known when introduced to a new environment is the European rabbit (Oryctolagus cuniculus). de Vos et al. (1956) cite several examples of the destruction to the habitat caused by these rabbits, in Madeira, Australia, South America, and elsewhere. Laycock (1966) has discussed several examples of the destruction of native flora, and the dependent fauna, by introduced domestic rabbits, including the following (p.171): "In 1903 rabbits were taken to Laysan Island in the northern part of the Hawaiian group. Eventually their descendants ravaged the vegetation on the island, reducing the known list of twenty-six species of plants to four and causing the disappearance of several birds that had formerly occupied the island. It caused the near extinction of the Laysan duck and the Laysan finch-bill. Laysan was turned into a desert." Among the birds that became extinct as a result of this introduction were the Laysan millerbird (Acrocephalus familiaris familiaris), the Laysan rail (Porzanula palmeri), and the Laysan honeycreeper (Himatione sanguinea freethii) (Berger, 1972).

Feral populations of animals normally kept under domestication also often become destructive to the habitat, resulting in the loss or reduction of native species. Feral cattle, pigs, and goats have played an important part in the destruction of the native vegetation of Hawaii (Berger, 1972). "The destruction by introduced mammals was disastrous for native birds primarily because their habitat was destroyed. Also, of course, pigs may destroy the nests of ground-nesting birds" (Berger, 1972:9). de Vos et al. (1956:186-7) give several further examples of damage caused by introduced feral mammals.

Lachner et al. (1970:7) discuss the potential environmental effects of the grass carp or white amur, Ctenopharyngodon idella, in Alabama and Florida. Noting the reproductive potential of this species and the lack of interest in it and other carplike cyprinids as food fish, they state: "In the absence of any actual harvest these species increase rapidly and frequently destroy the habitat of other species more suited to our present economy."

Disease and Parasites.--Wildlife species native to one part of the world may carry diseases or parasites to which they and neighboring species are naturally immune or resistant but to which species in other areas have no natural immunity or resistance. Introduction of these exotic diseases or parasites to a non-resident fauna can have disastrous effects. The U.S. Department of Agriculture has placed extensive quarantine restrictions on imported Galliform, Anseriform, and Columbiform birds, and ruminants and swine, to prevent the introduction of diseases to domesticated animals. No similar regulations are in force specifically to prevent the introduction by exotic species of diseases that might affect native wildlife.

de Vos et al. (1956:172) note the possibility that western rabbits introduced tularemia to the islands of Martha's Vineyard and Nantucket in Massachusetts. These authors (p. 187) cite several other examples of the introduction of disease or parasites with exotic mammals, and comment on the potential damage to native species.

A number of insects, ticks, and mites that are natural obligate ectoparasites of birds are known to be vectors of wildlife disease (Herman, 1955). Endoparasites include protozoa, flatworms, roundworms, and tapeworms. Bacteria, fungi, and viruses are also found on and in birds. Information on the general topic of parasites and diseases in wild birds has been summarized by Herman (1955). The transportation of birds from one part of the world to another is certain to involve transportation of their parasites and diseases as well.

Borg and Rockborn (1972) reported that virus hepatitis, possibly caused by a herpes virus, was the cause of death of eagle owls (Bubo bubo) in breeding stations and zoos in Sweden. This disease, not found in native Swedish eagle owls, had possibly been imported into Sweden along with eagle owls brought from England. These authors recommended against further importation of that species into Sweden.

Warner (1968) has presented convincing evidence that the spread of avian malaria was a factor in the decline and extinction of a large portion of the native avifauna of Hawaii. Hawaiian birds, having evolved in isolation, are not naturally immune to avian malaria. Although the potential for avian malaria probably existed for thousands of years, by virtue of the fact that the blood parasites causing the disease were present in migrant birds, vectors of the disease, mosquitoes, were absent from the islands. However, night-flying

mosquitoes, Culex pipiens, now known to be a principal vector of avian malaria, were accidentally introduced to the island of Maui in 1826. Birds of the native Hawaiian family Drepanididae are not now found below the altitudinal range of the mosquito; avian malaria is widespread in the range of the mosquito. These facts strongly suggest that avian malaria, spread by an introduced vector, was a factor in the decline of the native birds. The spread of the virus causing birdpox or bumblefoot by the introduced mosquitoes or by introduced hippoboscids flies has also been implicated in this decline (Warner, 1963).

Newcastle disease, a virus disease of birds, may cause extensive losses among domestic poultry, and isolation of the virus in imported birds caused the U.S. Department of Agriculture to place a ban on the importation of birds in 1972. Herman (1955:459) states: "A number of species of wild birds have been found susceptible to infection with Newcastle virus and natural infections also have occurred. The effect of this disease on wild bird populations is not known but, presumably, it could be drastic."

Hybridization.--Geographic barriers to reproduction have permitted the development, in closely related forms, of characteristics which adapt the separate populations to their own peculiar environments or habitats. When brought into contact artificially, by the introduction of one form into the range of another, the transfer of genetically based characteristics by hybridization may result in the diminishing of the fitness of the native species. Another effect may be the infusion into the resultant cross of characteristics that make the population detrimental to man or to other components of the fauna.

de Vos et al. (1956) give several examples of hybridization between introduced and native species, including the following: "Reindeer (Rangifer tarandus), introduced into Alaska and Canada, have hybridized to some extent with the native Caribou (R. arcticus), with resultant genetic changes in each." In Australia, interbreeding of the Dingo (Canis familiaris dingo), probably itself introduced by early Aborigines or Malaysians, and domestic dogs "is increasingly common and has already eliminated 'pure' Dingos from the more settled areas." Wild boars (Sus scrofa) and mouflon sheep (Ovis musimon) introduced into the United States have interbred with domestic pigs and sheep, respectively. Another example given by de Vos et al. (1956:171) follows: "Central Maral Deer (Cervus elaphus asiaticus) from Asia and American elk (Cervus canadensis) were introduced into European Russia in the days of the Czars. Hybridization between the two species resulted in the development of animals with antlers having less spread, fewer points, and poorly developed burrs (Lindemann, 1956)." These authors further note (p. 171): "The transplantation of German Red Deer (Cervus elaphus) into Norway has apparently resulted in the virtual extermination of the species there, probably because the German strain was less hardy."

The mallard duck, Anas platyrhynchos, has been introduced into the range of the Australasian wild duck, Anas superciliosa. Gray (1958:33) reported that "In New Zealand the mallard readily interbreeds with superciliosa in the wild. The natural hybrids are generally larger and more vigorous than either parent and are said to endanger the existence of the native species." Lewin (1971) has noted that the introduction of the mallard into Hawaii poses a genetic threat to the closely related native Koloa or Hawaiian Duck, Anas wyvilliana.

EFFECTS ON HUMANS AND HUMAN INTERESTS

There are several inter-related ways that the importation, introduction, or establishment of exotic animals can have detrimental effects on humans and their diverse interests. These may be summarized as follows:

1. Exotic wildlife species may become important depredators of agricultural or horticultural crops or may introduce diseases into domesticated animals.
2. Exotic wildlife species may transmit diseases or parasites that are harmful to humans and may present other health hazards to man and to man's pets.
3. Exotic wildlife species may become pests or nuisances to human interests, affecting various economic or aesthetic concerns.

As with the effects on native wildlife, the severity of the effects on humans increases along the scale of importation, introduction, and establishment. The very important health hazards, however, are not contingent on the establishment of a population of these species. Even securely caged animals can transmit disease organisms. Many of the species that have an adverse effect on human interests arrive as fortuitous importations (see page 5).

Agricultural interests.--Many wildlife species throughout the world are noted for the damage they do to agricultural crops in their native lands. Most, or all, of these species can be expected to do similar damage if introduced into another region. The importation of several species of wildlife into the United States is presently prohibited because of the potential damage to agricultural interests.

Among exotic birds already established in the United States, the starling and house sparrow are well known to be in conflict with agricultural interests. Laycock (1966) summarizes some information on the losses caused by these species. He reports (Laycock, 1966:87) that livestock specialists place blackbird damage in western feedlots in the millions of dollars each year, with starlings being the chief offenders. "The starlings eat corn, grain sorghums, rice, truck crops, and fruits..." In Oregon the droppings of roosting starlings contaminate holly leaves, with damage sometimes reaching \$1500 per acre.

The red-whiskered bulbul, Pycnonotus jocosus, established in Florida, has not yet become a serious crop pest (Carlton, 1971) although fears of this have been expressed (Fisk, 1966) because of the fruit eating habits of the species in its native India and in Australia (Chaffer, 1933). In New Zealand, Dawson and Bull (1969) conducted a questionnaire survey of bird damage to fruit. Replies indicated that the "most troublesome

bird species in their crops were blackbird (Turdus merula), song thrush (Turdus ericetorum), myna (Acridotheres tristis), starling (Sturnus vulgaris), white-eye (Zosterops lateralis), and house sparrow (Passer domesticus); and that the most serious damage was to strawberries, grapes, cherries, pears, and apples." Four other bird species were mentioned. All birds mentioned are exotic to New Zealand, except that the white-eye may be a natural colonist.

Among mammals, rats (Rattus rattus) and mice (Mus musculus) are notorious for the agricultural damage done. Laycock (1966) discusses several aspects of these species in several parts of the world. Not only is the damage done by these species of tremendous economic importance, but the efforts to control them have been extremely costly. Some efforts to control rats have led to further importation of exotics (de Vos et al., 1956) particularly the mongoose. European rabbits (Oryctolagus cuniculus) are serious agricultural pests in many places, in part by competing with sheep and cattle for grazing land (de Vos et al. 1956). Further, the burrows of these rabbits can make the land unsuitable for grazing use.

The Japanese oyster drill (Ocenebra japonica), the eastern oyster drill (Urosalpinx cinerea), and an oyster-eating flatworm (Pseudostylochus ostreophagus) have all been introduced into the waters of British Columbia, and all have been responsible for some damage to the local shell-fishing industry (Carl and Guiguet, 1972).

The introduction of diseases to agriculturally important domestic animals can have severe economic effects. Hoof-and mouth disease has twice been introduced with domestic stock to North America, but was extinguished in the United States and Canada (de Vos et al., 1956:187). The U.S. Department of Agriculture rigorously enforces strict regulations regarding the importation of ruminants and swine, and birds of the orders Galliformes, Columbiformes, and Anseriformes, including extensive quarantine periods, to prevent the introduction of disease to livestock and poultry. However, other species of wildlife can also carry diseases that will affect domesticated animals. In 1972, viral Newcastle disease was found in flocks of chickens in California. It was determined that parrots and myna birds (families Psittacidae and Sturnidae) imported at that time were carrying the disease, and later it was found in other exotic species in zoos. According to a newspaper article (Anon., 1972) published in April, 1972, 1,366,000 hens in 84 flocks had been destroyed to prevent the spread of the disease. As a result of this, the Department of Agriculture placed a near complete ban on the importation of birds into the country in August of 1972 (Ryan, 1972).

Agriculturally important parasites can be imported independently of the animals normally considered to be the final host. Laycock (1966:129) mentions the following: "Snails have long been known as hosts of flukes that cause millions of dollars in annual damages to the livestock industry. One of these, Fascioloides magna, the large American fluke,

was first discovered in 1875, strangely enough not in North America but in Italy. Some years earlier American elk were transplanted to Italy and these animals are believed to have carried the flukes across the Atlantic to give them their start in Europe."

Carl and Guiguet (1972:78) report that "Several species of European slugs have become established in British Columbia, and some of them have proved to be serious pests in gardens, fields, and greenhouses."

Human Health Hazard.--Many species of wildlife carry diseases, or serve as alternate or intermediate hosts for parasites, that affect man. At times they may be more difficult to control in a new environment than in their own native surroundings.

The introduced Giant African Snail, Achatina, is used as food by some people in Hawaii. If the snails are uncooked they may transmit the parasitic rat lung worm, Angiostrongylus cantonensis, which causes a serious disease known as eosinophilic meningoencephalitis. In both rats and humans, this parasite travels through the brain to the lung. Details of the transmission of this disease, in which an introduced slug, Deroceras laeve, serves as an intermediate host, are given by van der Schalie (1969).

Held (1970) notes that: "Imported primates bring with them a number of agents which can infect human beings. There are several infectious agents for which transmission from captive nonhuman primates to humans has been documented. These include Herpesvirus simiae (Herpes B), (2) Yaba virus, (3,4) the virus of infectious hepatitis, (5,6,7) and Marburg virus, (8,9). In addition, the possibility exists for the transfer of a variety of other agents potentially pathogenic for man. These include Mycobacterium tuberculosis, (9,10) Salmonella and Shigella species, (11) Pseudomonas pseudomallei, (12) various viruses other than those previously mentioned, (13,14) and a wide variety of parasites. (15) Among the zoonoses are agents which can be transmitted in nature from noncaptive, nonhuman primates to human beings, such as yellow fever (16) and malaria. (17)."

Held (1970) discusses several of these diseases and their incidence among handlers of primates. Speaking of Herpesvirus simiae, he states: "Of 18 cases recently reviewed, 16 were fatal and only one of the two survivors was able to return to a semblance of normal life. (27)." Fatalities were also reported from Marburg virus. Although cases mentioned were among professional handlers of primates, Held notes that approximately half of the primates imported are for the pet trade. (Parenthetical numbers in above quotations designate references cited by Held.) Casey et al. (1972) provide a bibliography of 53 titles on viral diseases in non-human primates, many of which are transmissible to man. de Vos et al. (1956) cite other instances of imported wildlife affecting human health including the fact that the mongoose serves as a reservoir for rabies in Jamaica.

Birds also carry and can transmit diseases that can affect humans. Among these are ornithosis, cryptococcal meningitis, and histoplasmosis (Preble, 1973; Laybock, 1966:209-211). Many species of birds carry the viral agents responsible for various types of encephalitis (Laycock, 1966; Johnson, 1960).

The monk parakeet, Myiopsitta monachus, recently established in part of the northeastern United States and reported to be present in 40 states, is host to a number of arthropod parasites that live in the bulky parakeet stick nests. Among these are soft ticks of the genus Argas, frequently vectors of arboviruses transmissible to man, and bugs of the genus Triatoma, natural vectors of the virus agent of Chagas' Disease (Radovsky, pers. comm., May 10, 1973). In Argentina, the monk parakeet occurs in some of the areas of highest endemicity of this disease. According to Dr. Radovsky, the known reservoir hosts of Schizotrypanus cruzi (= Trypanosoma cruzi), the vector of Chagas' Disease, do not include birds, but M. monachus nests in this country could easily come to be used by rodents such as woodrats (Neotoma) that are reservoirs of S. cruzi and the bird could be indirectly involved in supporting the disease cycle. Carcavallo and Plencovich (1973) studied Chagas' Disease in Buenos Aires, Argentina, where the human infection rate ranges from 3.4 to 10.2 percent, and recommended that action to control the disease be directed at focal treatment of the vectors.

Turtles have been known to carry and transmit Salmonella poisoning. Several cases of this disease in humans have been traced to baby turtles readily available in pet stores, and the trade in turtles has been regulated by Federal law and prohibited in some communities as a result. John L. Behlen of the New York Zoological Society (in Anon., 1972b) notes recent studies showing "that there may be as many as 40,000 annual cases of turtle associated Salmonella poisoning in the United States." He further comments that "state health department reports have clearly documented that 20% and perhaps more of recent salmonellosis cases are turtle associated."

McCoy and Seidler (1973) performed bacterial analyses on fecal swabs and aquarium water of 27 individually purchased specimens of the small green pet turtle, Pseudemys scripta. Representatives of seven bacteria were isolated, of which several have public health significance. These authors question whether Salmonella-free certification alone is sufficient to render baby turtles safe as pets.

Snails of various species serve as intermediate hosts for a number of parasites that cause debilitating diseases in humans. Several of these, including liver and lung flukes and schistosomiasis, are discussed in detail by Laycock (1966).

Almost any animal can inflict a painful bite, and large animals can kill or maim a man. Some birds can inflict severe injuries by stabbing or cutting with their bills. It is well known that a number of snakes are venomous, and perhaps less well known that some fish, amphibians, lizards, and mammals are venomous to some degree. Even a bite from a non-venomous species carries a high risk of secondary infection. Some species of amphibians secrete a substance that is poisonous to dogs and cats, and possibly to humans.

Exotic pets bit at least 163 persons in New York City in 1972, according to Joseph R. Cimino, Health Commissioner of that city (UPI press release, carried in the Evening Star and Daily News, Washington, D.C., March 10, 1973). The actual number may have been several times as great, Cimino said, because people are reluctant to report such bites.

An anonymous report analyzing 162 bites from exotic animals in New York indicates that this was a dramatic increase over 1971, when only 92 bites were reported, and over the average of 120 bites for the years 1967-1971. Forty percent of the bites were to children under 20 years of age. More than 60 percent of the bites were on the hand or finger, and most of the rest were on the arm or leg. Information on ownership of 143 of the animals that inflicted bites revealed that 98 were privately owned, 17 were in pet shops, and 16 were strays. Seventy-four percent of the bites were committed by non-human primates. Animals other than primates inflicting bites from 1967 to 1972 included raccoon, ocelot, kinkajou, margay cat, skunk, snake, fox, coatimundi, parrot, raven, weasel, lion, leopard, lizard, alligator, falcon, and turtle.

Citing the work of others, Parrish and Khan (1966) estimated that about eight persons in the U.S. annually are bitten by exotic venomous snakes, and reported three fatalities from this source in the decade 1950-1959. Five of seven case histories reviewed by these authors involved snake handlers, zoo workers, or pet shop workers.

In the years 1970 and 1971, more than 6800 venomous reptiles were imported into the United States. Although there are no figures available on the number of venomous snakes imported or sold as pets earlier than 1970, the number was probably much lower. Probably an increase in the importation of venomous species has paralleled the general increase in importation of exotic animals. Thus it is reasonable to assume that the risk of receiving a bite from an exotic venomous snake is greater now than in the years discussed by Parrish and Khan (1966). Between January, 1967, and August, 1971, the New York Zoological Park received emergency requests for snakebite antivenin on seven occasions.

A Washington, D.C., newspaper carried two separate reports, on March 25, 1973, and March 27, 1973, of lions that had escaped from captivity. A Washington, D.C., man was reportedly knocked to the ground and bitten by a 220-pound lion that was kept in a stockroom of a service station. In Berlin Center, Ohio, a 600-pound lion escaped from a cage in a barn and killed three dogs before it was recaptured.

Another item in the Washington Star, June 29, 1972, reported that venomous fish were at that time being sold in local pet shops. The National Aquarium received 10 calls about people who had been stung, and one victim reportedly had to have a thumb amputated. Apparently neither salesmen nor customers were aware of the potential danger of the fish. Roche and St. Amant (1973) discuss the dangers of the sting of an Indian catfish, Heteropneustes fossilis, illegally (by state law) imported into California for the tropical fish trade. An additional potential danger from fish is electric shock that some species are able to deliver.

The giant, or marine, toad (Bufo marinus) has been established in southern Florida since sometime prior to 1955; the introduction probably resulted from the accidental release of specimens by an importer (King and Krakauer, 1966). The toads have a pair of large triangular poison glands behind the head. According to Krakauer (1970), "Any animal that bites a B. marinus will feel the effects of the poisonous skin secretions, a dangerous increase in heart rate. The poison is so powerful that it may kill dogs and cats that attack the toads. Usually the dose is not fatal, and the pet will recover, as will the toads." Elsewhere Krakauer (1968) notes that "Predation on B. marinus by undomesticated animals has not been observed in south Florida. Cats and dogs quickly learn the noxious nature of this toad and generally do not attack more than once."

Economic and Aesthetic Effects of Pest Species.—Even without committing serious biological or ecological damage, exotic species of wild-life can become pest species and can cause extensive economic problems. The problems of pigeons roosting on statues and starlings flocking in cities are familiar to every urban resident. Periodic clean-up campaigns to remove unsightly bird droppings are expensive items in many city budgets, and carry with them the threat of disease in workers assigned the task (Laycock, 1966:158-160). Expensive efforts to disperse roosting starlings and pigeons on days preceding special events, such as inaugural parades, are familiar to residents of Washington, D.C.

On March 14, 1972, a national emergency was declared by the Secretary of Agriculture because of the spreading outbreak of exotic Newcastle Disease in southern California. Between that time and June 23, 1973, 11.5 million chickens in that area were destroyed because of infection with or exposure to the disease. These birds were appraised at \$21.5 million. An additional \$2.6 million was obligated for supplemental indemnity for layers as egg producers (Anon., 1973b). A task force of up to 1200 workers had been assembled to combat the outbreak. Additional outbreaks were recorded in Texas and Puerto Rico in this period.

The Chinese clam Corbicula manilensis has spread across most of the United States since its first detection in Oregon in 1938 (Anon., 1973a) where it was intentionally brought into the United States for human consumption. It has spread through the midwestern and Gulf states (Sinclair, 1971) and has been found in six river systems on the eastern

seaboard in the last 3-5 years (Sickel, 1973; Fuller and Powell, 1973). Extensive losses occur in fire-mains, irrigation systems, condensers, water treatment systems, and water cooling systems through the clogging effect of masses of clam shells (Sinclair, 1971). In 1952, populations of this clam were found in the Delta-Mendota Canal in California. By 1969, clams lined parts of the canal in layers as much as three feet thick, with as many as 5000 clams per cubic foot. "It took a month and a half of shoving with bulldozers to clear out the 50,000 cubic yards of clams that had infested the canal bottom" (Anon., 1973a).

Another damaging effect relates to the use of dredged sand and gravel for concrete. Live clams in these materials ultimately die and leave holes, making the concrete essentially worthless (Sinclair, 1971).

The mere presence of exotic species is an affront to some individuals who believe that native biological communities should remain as natural as possible. The presence of exotics may be considered a form of biological pollution (Courtenay and Ogilvie, 1971). Bird watchers, for example, often pay little attention to exotics. Despite the fact that the English or house sparrow, Passer domesticus, was well established in the United States early in the 1900's, it was not until about 1925 that participants in Christmas bird censuses sponsored by the National Audubon Society began to list the species, and only then in such terms as "also House Sparrow abundant" (Bronx County Bird Club, 1926) appended to lists of native species. Starlings, however, were counted much earlier.

The U.S. Department of the Interior (1973) does not offer protection to established populations of exotic species (e.g., mute swan, Cygnus olor, and spotted-breasted oriole, Icterus pectoralis) that belong to families included in various migratory bird treaties for which it is responsible.

EFFECTS OF THE TRADE IN WILDLIFE ON NATURAL POPULATIONS OF EXOTICS

The removal of large numbers of individuals of any wildlife species is bound to have some effect on the natural population of that species, although the effect may be, or appear to be, negligible. Ryan (1972) comments that rarely is there a significant depletion of bird populations involved, because the more common species that occur in the vicinity of cities of export are most frequently exported. He notes, however, that "There are a few species...so valuable that it is commercially worthwhile to seek out the individual bird. Such species can be (and have been) placed in jeopardy by the exotic trade."

There are some indications that Ryan's (1972) assessment of the harm done to populations of common birds may be overly optimistic, and that not only the rarer species are placed in jeopardy. Massie (1971b) expressed concern about the wild populations of parrots in South America as follows: "There is already talk about the fact that these birds are not so plentiful as before on the streets of jungle villages and cities. They are becoming harder to find and more expensive." McClure and Chaiyaphun (1971) report that in 1967 and 1968, 5000 mynas (*Gracula religiosa*) were sold in Bangkok Sunday markets and 77,000 were exported, and express hope that enforcement of new regulations "might result in easing the pressure against the Hill Myna populations which have been rapidly depleted during recent years." Rentz (1973), an entomologist who studies in the tropics, says of the bird populations there: "...very few species are so abundant that they can be exploited from any one region for any extended period of time. Most tropical species of perching birds are not present in large numbers. You just don't come across large flocks of honey creepers or toucans in the tropical forests. In the tropics there is merely an abundance of different kinds of birds. Repeated collection in a given area soon leads to depletion."

Writing of the trade in monkeys from the Amazon Basin of Peru, Soini (1972) states: "The unrestricted exploitation of local monkey populations threatens many species with serious depletion, and possible extinction of some forms." Commerce in monkeys is an additive factor to other artificial mortality in that region. The demand for monkey meat as human food has already decreased the stock of some species before commerce in live animals began in 1950 (Soini, 1972).

Very few figures on the number of animals removed from wild populations for commerce are available. Figures relating to the number of individuals imported into the United States are available, but certainly these represent only a fraction of the world-wide trade in wildlife. Even total figures on importation would be misleading because there would be no consideration of mortality between the time of capture and the time of importation, or of the loss of other individuals from the population at the time of capture. Burton (1972) relates commerce with the scarcity of some turtles.

The trade in live mammals often, if not usually, involves young animals. Taslickis (1972) writes of South American primates: "Today, from time of capture during the three-week transit in Leticia and up to their final destination point, our overall mortality rate is under 8%." Soini (1972) states that "The mortality rate during transport and maintenance in temporary cages and compounds is relatively high among the young..." and cites intraspecific fighting, emotional stress, deficient diet, unsanitary quarters, and inadequate care as the primary factors.

In birds, too, mortality is high. McClure (1969:60) estimates a mortality of at least 20% in the handling of birds for local sales in Bangkok markets. This estimate is probably valid for the export trade as well. Clear (1971), in discussing costs of canary-winged parakeets (*Brotogeris versicolurus*) acknowledges that "There is a high mortality rate at every stage along the way."

Quite often the capture of young animals is accomplished only at the sacrifice of the parents. Soini (1972) states: "Most monkeys sold by occasional suppliers are the young of wild adults shot down with firearms or with blowgun and poisoned darts...". Discussing the capture of nestlings of South American parrots, Massie (1971a), notes that the nest tree is cut down and writes: "I am told that in the jungles the trapper often has to kill the parent parrots in self-defense."

SUMMARY

The importation of exotic wildlife has in many instances resulted in important adverse effects on native wildlife and its habitat, agricultural interests, and on the health and economic well being of man. Although these effects may occur as the result of merely importing caged animals, they are more severe if wildlife species are introduced and become established in a new environment. This report reviews examples of many kinds of these adverse effects.

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QUESTION NO. 6

Questions and answers about the proposed Revision of Regulations Affecting Importation of "Injurious Wildlife."

New Regulations - Not New Legislation

Q: I hear that the Department of the Interior has enacted some new regulations about animals imported from other countries. Is this true?

A: Partly. The Department (actually the Fish and Wildlife Service) has proposed to revise the present regulations regarding the importation of injurious wildlife.

Q: Is this the Endangered Species Act I've heard about?

A: No, these regulations have nothing to do with that recent legislation, although some species might be both injurious and endangered. The regulations we refer to come under the authority of the Lacey Act.

Q: What is the Lacey Act?

A: The Lacey Act is a congressional Act, passed in 1900, (and amended several times since) that gives the Department of the Interior responsibility for regulating a number of activities regarding wildlife. One aspect of the Act deals with regulating wildlife imported from other countries in such a way as to protect various interests in this country.

Q: What interests?

A: Human interests, both health and property; agricultural, horticultural, and forestry interests; and the interests of our native wildlife and the environment.

Damage Done by Introduced Wildlife

Q: How does foreign wildlife harm these interests?

A: There are many examples of damage done by exotic wildlife, both here and in other countries. Some of these prompted the passage of the Lacey Act 75 years ago. Animals can bite, maim or poison people, or transmit disease, damage property, eat crops, compete with domestic fish or wildlife, spread disease in domestic flocks or herds, prey on native wildlife species, and destroy native habitats.

Q: Don't the present regulations prevent this damage?

A: Under present regulations, the importation of a few species known to be harmful is allowed only by permit. Other species can be added to the "permit required" list when they are shown to be detrimental, but by then it is usually too late to prevent a problem from developing.

Different Approach

Q: How do the new regulations differ?

A: The proposed regulations will permit importation of only those animals that have been shown to pose a low risk to the named interests. The basis for this approach is the biological fact that any animal species is potentially harmful to one or more of the interests in an environment where it is not native. No one can predict how an animal will act in a new environment.

Q: Where is the evidence for that fact?

A: The evidence is found in the scientific and technical literature of the last century or so, and in many unhappy and costly experiences in this country and abroad.

Not a Ban

Q: Is this a complete ban on the importation of wildlife?

A: No. The Lacey Act covers only vertebrates, mollusks and crustaceans. Within these groups, those species on a "low risk" list can come in freely. The remainder, no matter how potentially harmful, can come in under appropriate permits.

Q: Are any species exempted from regulations?

A: Domestic canaries and parrots are specifically exempted from the regulations by the Lacey Act itself. The regulations include lists of "low risk" species that can be imported at will.

Q: What kinds of animals are on the "low risk" lists, and why?

A: The initial list includes few common cage birds and mammals, a couple of frogs, a large number of tropical fish, and some common mollusks and crustaceans used as food. The likelihood of those particular species doing harm is considered to be minimal.

Q: No reptiles?

A: Not in the present proposal.

Q: Can reptiles and other things be added to the list?

A: Other species may be added to the "low risk" list before the regulations are finalized. The regulations also provide for amendment of the list in the future, as evidence becomes available to show a species should be added or deleted from the list.

Permits

Q: Will any importation of animals not on the "low risk" list be allowed?

A: Yes. Importation of any species, no matter how potentially harmful, will be permitted for zoological, scientific, medical, or educational purposes, provided that the recipient shows the ability to prevent damage from occurring.

Q: Will permits be hard to get?

A: Not for qualified people with legitimate needs.

Q: Can I get a permit for my imported pet?

A: You will not need a permit for any exotic (non-native) animals already in your possession or in the country before the regulations go into effect. You would not be able to get a permit to import another "injurious" animal for a pet. No permits are necessary for species on the "low risk" list.

Not Retroactive

Q: Must anyone give up foreign animals they already have?

A: No. In fact, we anticipate that many of these will be used for breeding purposes so that there will be a continuing supply of domestically raised "exotics".

Q: Won't they be just as "injurious" as imported animals?

A: They might--but their numbers will probably be relatively small, and we believe that animals raised in captivity tend to lose many of the characteristics that permit them to survive in the wild.

Interstate Movements

Q: If I move to another state will I be able to take my imported pet with me?

A: Yes, as long as such action is not against a state law or some other Federal regulation. The proposed regulations have nothing to do with interstate transportation--except to and from Hawaii. (The Endangered Species Act, which some people confuse with this proposal, does restrict interstate transportation of endangered animals).

Q: Why Hawaii?

A: Movement of animals between geographic entities--the continental United States, Hawaii, Puerto Rico, and the various territories and possessions of the United States, is treated as importation.

Pet Industry

Q: Won't the pet industry suffer from these regulations?

A: Only that portion of the industry which depends on importation of exotic wildlife considered to be injurious will be affected.

Q: Does this proposal affect cats and dogs and other common pets of this sort?

A: Not at all. The proposed regulations do not even mention pets.

More Information

Q: Where can I find out more about these regulations?

A: An Environmental Impact Statement, which has the regulations appended, can be obtained from the Director, U.S. Fish and Wildlife Service, Washington, D. C. 20240.

Q: Is there any way I can express my opinion on this proposal?

A: Yes, of course, and we would like to have it. The period in which comments are invited for consideration, on either the regulations or the Impact Statement, is open until September 13, 1974. Address your comments to: Director (FSF/LE), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D. C. 20240.

Q: When do these regulations take effect?

A: There is no scheduled date at present. If the proposal is adopted without extensive revisions, it could not become effective before the end of 1974 at the earliest.

FACT SHEET

Proposed "Injurious Wildlife" (Lacey Act) Regulations

Revised regulations controlling the importation of so-called "injurious wildlife" are being promulgated under the Lacey Act. This is not a new legislative proposal but rather a revision of the system used to implement a law enacted around the turn of the century.

Among other things the Lacey Act charges the Secretary of the Interior with protecting "...human beings, the interests of agriculture, horticulture, forestry, wildlife or the wildlife resources of the United States..." from injury caused by the importation of living vertebrates, molluscs, or crustaceans. He is to provide this protection by regulating the importation of such creatures which he deems to be injurious to those interests.

The proposal does not involve "a ban or prohibition" on the importation of any species--regardless of how injurious it may be. However, it does insure that creatures which pose a threat are imported only by responsible people for justifiable purposes. Animals deemed to be "injurious" may still be imported into the United States under permits issued by the Secretary for scientific, educational, medical or zoological purposes.

This proposal will not prevent persons from moving their animals across State lines as long as such movement is not contrary to State (or other Federal) law. The proposed "injurious animal" regulations apply only to importation into the United States or to movements between Hawaii, Puerto Rico etc. and the mainland.

The Lacey Act originally was enacted at a time when the movement of wild animals was accomplished by steam ships. The availability of most wild, exotic animals was limited and those that were available had to be in good health etc. to withstand the rigors of such transportation. Consequently, the number of such animals imported into the United States was small, the cost was high and generally only persons with a real need attempted such operations.

With few exceptions, the regulations originally promulgated to implement the Lacey Act allowed:

- any number
- of any species
- to be imported by anyone
- from anywhere
- for any purpose
- to do with as he pleased subject only to State law.

Many States have no authority to deal with exotic species of wildlife--their authority is limited to game species, furbearers, or other species native to their State.

Those original (and still existing) procedures are such that an imported species which causes damage is placed on a List of "injurious wildlife" after which further importation of that species is regulated. That system almost guarantees that the interests the law was designed to protect are required to suffer injury before any preventive action is taken. In addition, after such injury has occurred, we are faced with the dilemma of either:

1. taking no action toward those creatures causing the injury
--thereby insuring the continuation and perhaps increase in magnitude of the hazard faced by that interest, or
2. launching a program for the eradication of the offending species. Such programs are always costly; seldom, if ever, effective; and repugnant to a large and growing segment of the American public.

Improvements in techniques for capturing animals, improved access to remote areas, the availability of efficient transportation systems (especially air freight) and an increasing interest in acquiring exotic species have led to a skyrocketing increase in the number of such creatures imported into the United States each year. For example, nearly a million living birds and mammals, larger numbers of reptiles and amphibians and, it is estimated that over one hundred million living fish are imported into this country each year. Modern transportation systems make it possible for an animal to be transported from the wild in their native country to the United States in 48 hours or less--along with any parasites, disease vectors or other unwelcome hitch-hikers they may harbor.

These factors, in the light of an increasing ecological awareness that any exotic organism introduced into an ecosystem will have an effect upon that ecosystem, together with this government's responsibility to safeguard the continued existence of all species of native plant and animal life (in accordance with the Endangered Species Act of 1973), has led the Department of the Interior to the conclusion that the protection provided the named interests under their present policies and regulations is inadequate.

The current proposal is intended to remedy this situation and to provide better protection to those named interests. The Proposal presently pending in the Federal Register (Vol. 38, No. 244 Dated December 20, 1973) recognizes that any exotic is injurious if imported under uncontrolled circumstances and would pose a threat to one or more of those named interests at some time or place in the United States.

However, that Proposal also recognizes that the threat posed by some species may be so minimal as not to require the full protection provided by the regulatory mechanism. Therefore, the Proposal would establish a list of so-called "low risk" species which may be imported under essentially no Federal regulation (insofar as the Lacey Act is concerned--some may be regulated by other statutes).

The Proposal also would provide for the amendment of this list of so-called "low risk wildlife" on a continual basis as additional data become available concerning the risk--or lack thereof--presented to the named interests by any listed or unlisted species.

In addition to providing a more effective and responsible means of insuring the protection of the named interests, this procedure also recognizes that large numbers of animals have been imported into this country over a long period of time and that a great deal is known about some of them--enough to determine that it is unlikely that they would pose a significant threat. However, the Proposal also recognizes that there are many animals about which not enough is known, even though large numbers may have been imported, to conclude they would not prove to be a plague to the named interests under certain circumstances.

It also recognizes there are many animals which have not been imported into this country; about which little is known and which likely would prove to be serious pests if imported into this country. Therefore the Proposal would control (not eliminate) importation of those animals until knowledgeable persons had assessed the threat such creatures pose and had made a reasoned judgement as to whether or not that threat is low enough to permit unregulated importation.

If such assessments indicate the controls were unnecessary then that animal would be added to the list of "low-risk" species and thereby decontrolled.

On the other hand, if the assessment indicated the animal would present a major problem if importation was not controlled, then importations would be restricted and the injury would be prevented or at least minimized.

Therefore, this Proposal sets up a system whereby the risk posed by an exotic species is evaluated fully before unregulated importation is permitted.

We recognize there are some legitimate users of "injurious wildlife" whose facilities and activities are such that animals imported by them would pose no threat to the named interests. Certain qualified zoos and research institutions for example, may fall into this category. The permit requirements set forth in this Proposal would not necessarily provide any additional protection if fully applied to such institutions and may create a significant paperwork burden.

Suggestions as to how this Proposal could be modified to recognize these facts, provide the needed protection and minimize these administrative problems are being considered.

An Environmental Impact Statement has been prepared in compliance with the National Environmental Policy Act. The Federal Register, Volume 39 Number 109 dated June 5, 1974, carried an announcement that this Statement was available for review. Four public hearings on this Proposal will be held:

- Washington, D. C. on August 5 from 9a.m. until 4p.m. at the Auditorium of the U.S. Department of the Interior, 18th & C Streets, N.W.
- Miami, Florida on August 5 from 9a.m. until 4p.m. at the Miami Dade Community College, North Campus, 1130 Northwest 27th St.
- Kansas City, Missouri on August 6 from 9a.m. until 5p.m. at Centennial B Room, Crown Center Hotel, 1 Perishing Road
- San Francisco, California on August 9 from 9a.m. until 5p.m. at Veterans Auditorium, Memorial Building, Van Ness and McAllister Street

All interested parties are invited to attend these meetings, express their views and/or submit written comments to: Director, Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior, Washington, D. C. 20240.

DEPARTMENT of the INTERIORnews release

FISH AND WILDLIFE SERVICE

For Immediate Release August 1, 1974

McGarvey 202/343-5634

PET OWNERS UNDULY ALARMED OVER
PROPOSED WILDLIFE IMPORT REGULATION

False rumors circulating throughout the country have caused pet owners to become unduly alarmed over proposed new regulations on importing foreign animals into the United States, Lynn A. Greenwalt, Director of Interior's U.S. Fish and Wildlife Service, said today.

"The proposed regulations," Greenwalt said, "are authorized under the Lacey Act of 1900 and are intended to prevent the importation of any animals that might be injurious to humans, agriculture, or the native environment. But unfortunately, the rumors have it that even dogs and cats would be prohibited from travel between the various states. Another rumor holds that all pets except dogs and cats would have to be given up. Neither rumor is true.

The facts are:

1. People with conventional domestic pets would not be affected in any way.
2. People with wild animal pets that are native to this country, such as snakes, would not be affected in any way.
3. People who now possess exotic (imported) pets would not be affected in any way.
4. The only pet fanciers who stand to be affected are those who might want to import exotic pets after the regulations go into effect. They would no longer be able to bring into the country pets which might be injurious to humans, agriculture, or the native environment. They would still be able to bring in many exotic pets which are on the "low hazard" list.

The Lacey Act, which is the basis for the new regulations, is the law which directs the Department of the Interior to protect various interests in this country from importation of injurious wildlife. It is not a new law, but the Interior Department is proposing new regulations that would accomplish more effectively what the law intended.

The regulations presently in effect allow importation of any animals that are not on a short list of injurious species. It is estimated that nearly a million living birds and mammals, larger numbers of reptiles and amphibians, and over 100 million living fish were imported into the U.S. last year. With so many animals being imported, the risk of bringing in an injurious species is very high.

A need to tighten these regulations has been recognized. In the past, animals have been placed on the "injurious" list only after a bad experience with the species proved that it should be there. Many unfortunate mistakes were made that can never be corrected. The English starling, the giant toad, the walking catfish, and others are examples.

The new regulations are intended to prevent future mistakes. Only those animals that have been determined to pose a low risk would be permitted to come into the country without restriction. All other animals would be carefully regulated, but could also come into the country under a special permit, issued only for zoological, scientific, medical, or educational purposes. No animals would be completely banned from importation.

Public hearings will be held at the following locations:

August 5, 1974

Auditorium
Department of the Interior
18th & C Streets, N.W.
Washington, D.C.
9 a.m. - 4 p.m.

August 5, 1974

Miami-Dade Community College
North Campus
Ten Players' Theater
11380 N.W. 27th Avenue
Miami, Florida
9 a.m. - 5 p.m.

August 6, 1974

Crown Center Hotel
Centennial B. Room
1 Pershing Road
Kansas City, Missouri
9 a.m. - 5 p.m.

August 9, 1974

Auditorium
Veterans' Memorial Building
Van Ness and McCallister
San Francisco, California
9 a.m. - 5 p.m.

Recently raised questions include:

ARE THESE REGULATIONS THE SAME AS THE ENDANGERED SPECIES ACT?

NO. These concern the Lacey Act of 1900 which has been amended several times. This Act charges the Department of the Interior with responsibility for regulating a number of wildlife activities including imports.

WHAT DAMAGE HAS IMPORTED WILDLIFE DONE?

Small turtles have caused 40,000 cases of salmonella poisoning annually. Monkeys have infected humans with tuberculosis and hepatitis. In 1972, viral Newcastle disease was found in flocks of chickens in California and in parrots and myna birds imported at that time. It was necessary to destroy 11 million chickens to prevent the spread of the disease. These are just a few examples. Animals can bite people, eat crops, compete with domestic fish and wildlife, spread disease in domestic flocks and herds, prey on native wildlife, and destroy native habitat.

WOULD THERE BE A COMPLETE BAN ON WILDLIFE IMPORTS?

NO. Domestic canaries and parrots are exempted from the regulations by the wording of the Lacey Act. Species known to be "low risk" could be imported freely. These include several common cage birds and mammals, several frogs, a large number of tropical fish, and some common mollusks and crustaceans used as food.

HOW DO I KNOW IF AN ANIMAL IS LOW RISK?

A list of species that are proposed to be classified as low risk was published in the Federal Register on December 20, 1973. These are animals about which there is evidence to show their risk to be low. These animals could be imported at will. Those not on the list would require a permit to be imported. After the list is approved, it can be amended if evidence shows a species should be added or deleted.

WOULD ANY ANIMALS BE RESTRICTED THAT PREVIOUSLY ENTERED FREELY?

The proposed regulations would reduce the number of birds imported by about 50 percent, mammals by about 45 percent, amphibians by about 15 percent, and fish by about three percent.

COULD I MOVE A PET FROM STATE TO STATE?

YES. The proposed regulations have nothing to do with interstate transportation except to and from Hawaii. Movement of species between the continental United States and Hawaii, Puerto Rico, and the various island territories of the United States is treated as importation.

x x x

federal register

QUESTIONS NO. 9 AND 12

FRIDAY, JANUARY 4, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 3

PART III



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

■

TAKING, POSSESSION,
TRANSPORTATION, SALE,
PURCHASE, BARTER, EXPORTATION
AND IMPORTATION OF WILDLIFE

Title 50—Wildlife and Fisheries

CHAPTER I—BUREAU OF SPORT FISH-
ERIES AND WILDLIFE, FISH AND WILDLIFE
SERVICE, DEPARTMENT OF THE
INTERIORSUBCHAPTER B—TAKING, POSSESSION, TRANS-
PORTATION, SALE, PURCHASE, BARTER, EX-
PORTATION, AND IMPORTATION OF WILDLIFE

By notice of proposed rulemaking published in the *FEDERAL REGISTER* of April 25, 1973 (38 FR 10206-10234), it was proposed to revise and restructure Subchapter B of Chapter I of Title 50.

Since evaluation of comments, suggestions, and objections to the proposed rulemaking of April 25, 1973, referred to above took considerable time, it was decided to adopt the proposed changes in Subchapter B in segments, rather than republish it in its entirety. Further it was necessary to publish additional proposed rulemaking as substantive changes were developed.

Accordingly, in the *FEDERAL REGISTER* on July 5, 1973 (38 FR 17841), Subchapter B of 50 CFR, Chapter One, was retitled and Part 20—Migratory Bird Hunting, was added, reserving Subparts A through K and M, and publishing only Subpart L—Administrative and Miscellaneous Provisions. Subpart K—Annual Season, Limit, and Shooting Hours Schedules, was published in Part 13 of the *FEDERAL REGISTER* on August 1, 1973, 38 FR 20456.

In the *FEDERAL REGISTER* on August 15, 1973 (38 FR 22015), the remainder of Part 20 was adopted and Subpart L republished. Subpart K of Part 20 was not republished as it was to be further modified. In this same *FEDERAL REGISTER* publication, Part 10 was retitled "General Provisions," amended, and adopted. In summary, final rulemaking to date has retitled Subchapter B and adopted new Parts 10 and 20. The rulemaking contained herein will complete the restructuring and revision of Subchapter B with the exceptions indicated below. This rulemaking adopts new titles for the following parts and completely amends such parts to read as set forth herein:

- Part 11—Civil Procedures.
- Part 12—Seizure and Forfeiture Procedures.
- Part 13—General Permit Procedures.
- Part 14—Import, Export and Interstate Transportation of Wildlife.
- Part 15—Feather Import Quotas.
- Part 16—Injurious Wildlife.
- Part 17—Endangered Wildlife.
- Part 19—Airborne Hunting.
- Part 21—Migratory Bird Permits.
- Part 22—Eagle Permits.

This rulemaking differs from the proposed rulemaking of April 25, 1973, referred to above, and other proposed rulemakings as set forth below, in several ways which are, in the main, conforming, editorial, and generally cosmetic in nature. However, other substantive changes also have been made and are generally discussed below.

Part 10, General Provisions—Regulations made effective on August 15, 1973, established a rule of construction applicable to regulations then or thereafter published in 50 CFR Subchapter B,

that such regulations are to be prospectively applied. 50 CFR 10.4 (38 FR 22015). To clarify that rule as applied to appeal provisions of the civil penalty procedures set forth in Part 11 of these regulations (§ 11.25), it is necessary that § 10.4(a) be amended at this time.

Part 11—When Part 11 was proposed on April 25, it contained a Subpart C—Holding, Return, and Disposal of Seized Property. It is now determined to create a new Part 12 for these rules. The April 25th proposal did not address the question whether intra-departmental appeals from the decisions of administrative law judges should be as a matter of right, or whether they should be granted at the discretion of the appellate officials. The Department recognizes the necessity for arriving at standards for review of an administrative law judge's decision and for establishing appropriate grounds for appeal. Until such time as those standards and grounds are arrived at, the Department has adopted a discretionary appeal by "certiorari" provision. (See § 11.25.)

Part 12—As indicated above, Part 12 has been established to deal with the seizure and forfeiture procedures formerly proposed in Part 11. Subpart C of this Part has been reserved to provide for later rules dealing with forfeitures under the Bald Eagle Protection Act and the Fish and Wildlife Act of 1956.

Part 13—Part 12 in the April 25th notice of proposed rulemaking has been redesignated as Part 13 to allow for the new Part 12—Seizure and Forfeiture Procedures. Part 13 provides uniform rules and procedures relative to the application, issuance, renewal, conditions, revocations, and general administration of permits issuable pursuant to this subchapter. A change in the April proposal was made to accommodate those unforeseen situations which would make it impossible to submit an application in writing for a permit. This is accomplished by adding paragraph (c) to § 13.21, which authorizes issuance of a permit if certain specified requirements are met. Another change is in § 13.26(a)(1) relative to the right of succession of permitted activities. The proposed rule would have provided for succession to pass to the surviving spouse or child, among others. It was decided that better permit administration would be realized if that provision was reworded to exclude the surviving spouse or child, but authorize executor, administrator, or other legal representative, to continue the permitted activity for an interim period during the probate of the estate.

Also § 13.51, relative to the suspension or revocation of a permit (except in cases of willful violation or in cases where public health or safety requires), has been reworded to conform more closely with 5 U.S.C. 558.

Part 14—This part was originally proposed as Part 13 and has been moved to Part 14 to make room for a new Part 12 as discussed above. Previously, the regulations required that documentation from the country of origin or the country of export must accompany shipments of wildlife if foreign law or regulations

restrict taking, possession, transportation, exportation, or sale of such wildlife, in order to establish that the foreign law and regulations have not been violated. Appropriate documents may be required by the owner, importer, or consignee to show that such laws or regulations have not been violated. This change will expedite shipments and is made in the interest of the welfare of the wildlife and to avoid undue delays. In cases where an import permit is not required by this Subchapter, appropriate documents may be required, under the new § 14.41, of the owner, importer, or consignee to show that such laws or regulations of the foreign country have not been violated. When an import permit is required under this subchapter, the compliance with foreign law must have been demonstrated prior to the issuance of the permit and the permit must have been issued prior to importation.

Part 15—In the April 25th proposal this part was designated Part 14. It is now adopted as Part 15 to allow for new Part 12 as discussed above. No substantive changes, differing from the proposal, are contained in this part.

Part 16—A notice of proposed rulemaking was published in the *FEDERAL REGISTER* on December 20, 1973 (38 FR 34970) to completely revise Part 16. The preamble to that proposed rulemaking fully sets forth the scope and purpose of the proposed revisions and the reasons therefor. At least 60 days will be provided during which the interested public may submit written data, views, or arguments with respect thereto. Also, at least 3 public hearings will be held, providing opportunity for submission of oral or written comments. Specific dates, times, and location of each of these meetings will be published in the *FEDERAL REGISTER* and will allow at least 60 days between the date of the notice and the first such meeting. However, in order to adopt the new structure and modifications of Subchapter B as contained herein, it is necessary at this time to recodify former Part 13—Importation of Wildlife or Eggs Thereof, to Part 16—Injurious Wildlife. In addition, current Part 13 is hereby restructured and amended to conform with the other provisions of Subchapter B. No substantive changes are made in this part from the rules as they previously existed in Part 13—Importation of Wildlife or Eggs Thereof.

Part 17—An additional requirement to § 17.23 provides for the inclusion, in an application for a permit, of a description of the type, size, and construction of the container, and arrangements for feeding, watering, and otherwise caring for wildlife in transit; and of the arrangements for caring for the wildlife upon importation into the United States.

Part 18—Regulations adopted by publication in the *FEDERAL REGISTER* on December 21, 1972 (37 FR 28173-28177), remain in effect, and are not affected by their publication; except for Subpart F, which is hereby revoked. Procedures contained in former Subpart F appear in Parts 11 and 12. Proposed amendments to Part 18 were published in the *FEDERAL*

REGISTER on August 16, 1973 (38 FR 22143-22149), and the comment period on these proposals has expired. However, evaluation of the comments has not been completed and any substantive changes in Part 18 will be made in a later publication.

Part 19—By publication in the FEDERAL REGISTER of August 28, 1973 (38 FR 22967), notice was given that a new Part 19—Airborne Hunting, was proposed to be added and comments were invited to October 19, 1973. All comments and other relevant matter received having been considered, it is determined that Part 19 should be added at this time. Only minor changes in wording have been made with respect to permits which will facilitate administration and understanding of this part.

Part 21—By publication in the FEDERAL REGISTER of October 19, 1972 (37 FR 22633), an interim rule was established concerning falconry. That rule has remained in effect and it has been determined to codify that rule on an interim basis in § 21.28 Falconry permits. In addition, by publication in the FEDERAL REGISTER of July 30, 1973 (38 FR 20264), notice was given that it was proposed to add to Subpart C of Part 21 regulations concerning permits for falconry. This was proposed in § 21.28 Falconry permits. Subsequently, the comment period was extended to September 30, 1973. Because of the wide interest in falconry and falconry permit regulations, it has been determined that a revised proposed rulemaking should be published and additional comments concerning that revised proposed rulemaking should be invited to give the interested public ample opportunity to participate in the rulemaking process. Accordingly, the text of § 21.28 Falconry permits, is hereby adopted to include the current existing rule. However, it should be recognized that further proposed rulemaking will be forthcoming to provide for a system of falconry permits.

Part 22—Because of the difference in statutory definitions, § 22.3 has been added in this Part to incorporate the definition of "take" in the Bald Eagle Protection Act. Also, § 22.23 is reworded to clarify procedures relative to deprecating golden eagles when relief is requested by the Governor of any State for the protection of domestic flocks and herds. Section 22.24 is reserved to provide for contemplated falconry regulations, which will be published at a later date. Accordingly,

PART 18—MARINE MAMMALS

Subpart F [Revoked]

1. Subpart F—Procedures for Civil Violations, of Part 18—Marine Mammals, is hereby revoked.

PART 10—GENERAL PROVISIONS

2. Part 10—General Provisions, is revised by amending section 10.4(a) to read as follows:

§ 10.4 When regulations apply.

(a) Civil penalty proceedings. Except as otherwise provided in section 11.25, the

civil penalty assessment procedures contained in this Subchapter B shall apply only to any proceeding instituted by notice of violation dated subsequent to the effective date of these regulations, regardless of when the act or omission which is the basis of a civil penalty proceeding occurred.

3. All comments and other relevant material presented having been considered, Parts 11, 12, 13, 14, 15, 16, 17, 19, 21 and 22, are recodified, revised, amended and added to Chapter One, Subchapter B, Title 50 CFR as follows:

- Part 11—Civil Procedures
- Part 12—Seizure and Forfeiture Procedures
- Part 13—General Permit Procedures
- Part 14—Import, Export, and Interstate Transportation of Wildlife
- Part 15—Feather Import Quotas
- Part 16—Injurious Wildlife
- Part 17—Endangered Wildlife
- Part 19—Airborne Hunting
- Part 21—Migratory Bird Permits
- Part 22—Eagle Permits

PART 11—CIVIL PROCEDURES

Subpart A—Introduction

- Sec. 11.1 Purpose of regulations.
- 11.2 Scope of regulations.
- 11.3 Filing of documents.
- Subpart B—Assessment Procedure
- 11.11 Notice of violation.
- 11.12 Petitions for relief.
- 11.13 Decision by the Director.
- 11.14 Notice of assessment.
- 11.15 Request for a hearing.
- 11.16 Final administrative decision.
- 11.17 Payment of final assessment.

Subpart C—Hearing and Appeal Procedure

- 11.21 Commencement of hearing proceedings.
- 11.22 Appearance and practice.
- 11.23 Hearings.
- 11.24 Final administrative decision.
- 11.25 Appeals.
- 11.26 Reporting service.

AUTHORITY: Lacey Act, 16 U.S.C. 669-681, 16 U.S.C. 669-681; Bald Eagle Protection Act, sec. 2, 54 Stat. 251, 16 U.S.C. 668a; Endangered Species Conservation Act of 1969, sec. 4(e), 83 Stat. 278, 16 U.S.C. 669cc-4; Marine Mammal Protection Act of 1972, sec. 112(a), 96 Stat. 1042, 16 U.S.C. 1362.

Subpart A—Introduction

§ 11.1 Purpose of regulations.

The regulations contained in this part provide uniform rules and procedures for the assessment of civil penalties in connection with violations of certain laws and regulations enforced by the Bureau.

§ 11.2 Scope of regulations.

The regulations contained in this part apply only to actions arising under the following laws and regulations issued thereunder:

Lacey Act, 16 U.S.C. 661; Bald Eagle Protection Act, 16 U.S.C. 668-668d; Endangered Species Conservation Act of 1969, 16 U.S.C. 669cc-1 to 669cc-6; and Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1394 and 1401-1407.

§ 11.3 Filing of documents.

(a) Whenever a document or other paper is required to be filed under this

Part within a certain time, such document or paper will be considered filed as of the date of the postmark if mailed, or the date actually delivered to the office where filing is required. The time periods set forth in this Part shall begin to run as of the day following the date of the document or other paper.

(b) If an oral or written application is made to the Director up to 10 calendar days after the expiration of a time period established in this Part for the required filing of documents or other papers, the Director may permit a late filing within a fixed period where reasonable grounds are found for an inability or failure to file within the time period required. All such extensions shall be in writing. Except as provided in this subsection, no other requests for an extension of time may be granted.

Subpart B—Assessment Procedure

§ 11.11 Notice of violation.

(a) A notice of violation (hereinafter "notice"), shall be issued by the Director and served personally or by registered or certified mail, return receipt requested, upon the person believed to be subject to a civil penalty (the respondent). The notice shall contain: (1) A concise statement of the facts believed to show a violation, (2) a specific reference to the provisions of the statute or regulation allegedly violated, and (3) the amount of penalty proposed to be assessed. The notice may also contain an initial proposal for compromise or settlement of the case. The notice shall also advise the respondent of his right to file a petition for relief pursuant to § 11.12, or to await the Director's notice of assessment.

(b) The respondent shall have 45 days from the date of the notice of violation in which to respond. During this time he may:

(1) undertake informal discussions with the Director;

(2) accept the proposed penalty, or the compromise, if any, offered in the notice;

(3) file a petition for relief; or

(4) take no action, and await the Director's decision, pursuant to § 11.13.

(c) Acceptance of the proposed penalty or the compromise shall be deemed to be a waiver of the notice of assessment required by § 11.14, and of the opportunity for a hearing. Any counter offer of settlement shall be deemed a rejection of the proposed offer of compromise.

§ 11.12 Petition for relief.

If the respondent so chooses he may ask that no penalty be assessed or that the amount be reduced, and he may admit or contest the legal sufficiency of the charge and the Director's allegations of facts, by filing a petition for relief (hereinafter "petition") with the Director at the address specified in the notice within 45 days of the date thereof. The petition shall be in writing and signed by the respondent. If the respondent is a corporation, the petition must be signed by an officer authorized to sign such documents. It must set forth in full the legal or other reasons for the relief.

§ 11.13 Decision by the Director.

Upon expiration of the period required or granted for filing of a petition for relief, the Director shall proceed to make an assessment of a civil penalty, taking into consideration information available to him and such showing as may have been made by the respondent, either pursuant to § 11.11 or § 11.12, or upon further request of the Director.

§ 11.14 Notice of assessment.

The Director shall notify the respondent by a written notice of assessment, by personal service or by registered or certified mail, return receipt requested, of his decision pursuant to § 11.13. He shall set forth therein the facts and conclusions upon which he decided that the violation did occur and appropriateness of the penalty assessed.

§ 11.15 Request for a hearing.

Except where a right to request a hearing is deemed to have been waived as provided in § 11.11, the respondent may, within 45 calendar days from the date of the notice of assessment referred to in § 11.14, file a dated, written request for a hearing with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. The request should state the respondent's preference as to the place and date for a hearing. The request must enclose a copy of the notice of violation and notice of assessment. A copy of the request shall be served upon the Director personally or by registered or certified mail, return receipt requested, at the address specified in the notice.

§ 11.16 Final administrative decision.

(a) Where no request for a hearing is filed as provided in § 11.15 the Director's assessment shall become effective and shall constitute the final administrative decision of the Secretary on the 45th calendar day from the date of the notice of assessment.

(b) If a request for a hearing is timely filed in accordance with § 11.15, the date of the final administrative decision in the matter shall be as provided in Subpart C of this part.

§ 11.17 Payment of final assessment.

When a final administrative decision becomes effective in accordance with this Part 11, the respondent shall have 20 calendar days from the date of the final administrative decision within which to make full payment of the penalty assessed. Payment will be timely only if received in Office of the Director during normal business hours, on or before the 20th day. Upon a failure to pay the penalty, the Solicitor of the Department may request the Attorney General to institute a civil action in the U.S. District Court to collect the penalty.

Subpart C—Hearing and Appeal Procedures

§ 11.21 Commencement of hearing procedures.

Proceedings under this subpart are commenced upon the timely filing with

the Hearings Division of a request for a hearing as provided in § 11.15 of Subpart B. Upon receipt of a request for a hearing, the Hearings Division will assign an administrative law judge to the case. Notice of assignment will be given promptly to the parties, and thereafter, all pleadings, papers, and other documents in the proceeding shall be filed directly with the administrative law judge, with copies served on the opposing party.

§ 11.22 Appearance and practice.

(a) Subject to the provisions of 43 CFR 1.3, the respondent may appear in person, by representative, or by counsel, and may participate fully in these proceedings.

(b) Department counsel designated by the Solicitor of the Department shall represent the Director in these proceedings. Upon notice to the Director of the assignment of an administrative law judge to the case, said counsel shall enter his appearance on behalf of the Director and shall file all petitions and correspondence exchanged by the Director and the respondent pursuant to Subpart B of this Part, which shall become part of the hearing record. Thereafter, service upon the Director in these proceedings shall be made to his counsel.

§ 11.23 Hearings.

(a) The administrative law judge shall have all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions in accordance with 5 U.S.C. Sections 554-557. Failure to appear at the time set for hearing shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the record made at the hearing. Copies of the transcript may be inspected or copied.

(b) The transcript of testimony, the exhibits, and all papers, documents, and requests filed in the proceedings, shall constitute the record for decision. The judge will render a written decision upon the record, which shall set forth his findings of fact and conclusions of law, and the reasons and basis therefor, and an assessment of a penalty, if any.

§ 11.24 Final administrative action.

Unless a notice of request for an appeal is filed in accordance with § 11.25 of this Subpart C, the administrative law judge's decision shall constitute the final administrative determination of the Secretary in the matter and shall become effective 30 calendar days from the date of the decision.

§ 11.25 Appeal.

(a) Either the respondent or the Director may seek an appeal from the decision of an administrative law judge rendered subsequent to January 1, 1974, by the filing of a "Notice of Request for Appeal" with the Director, Office of Hearings and Appeals, United States Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 calendar days of the date of the administrative law judge's decision. Such notice shall be accompanied by

proof of service on the administrative law judge and the opposing party.

(b) Upon receipt of such a request, the Director, Office of Hearings and Appeals, shall appoint an ad hoc appeals board to determine whether an appeal should be granted, and to hear and decide an appeal. To the extent they are not inconsistent herewith, the provisions of Subpart G of the Department Hearings and Appeals Procedures in 43 CFR Part 4 shall apply to appeal proceedings under this Subpart. The determination of the board to grant or deny an appeal, as well as its decision on the merits of an appeal, shall be in writing and become effective as the final administrative determination of the Secretary in the proceeding on the date it is rendered, unless otherwise specified therein.

§ 11.26 Reporting service.

Copies of decisions in civil penalty proceedings instituted under statutes referred to in Subpart A of this Part and rendered subsequent to June 3, 1970, may be obtained by letter of request addressed to the Director, Office of Hearings and Appeals, United States Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Fees for this service shall be as established by the Director of that Office.

PART 12—SEIZURE AND FORFEITURE PROCEDURES

Subpart A—Introduction

Sec. 12.1 Purpose of regulations.

12.2 Scope of regulations.

Subpart B—Holding, Bonding, and Return of Certain Wildlife or Other Property

12.11 Notification of seizure.

12.12 Seizure by Customs.

12.13 Bonded release.

12.14 Return of seized wildlife or other property.

12.16 Abandonment provisions.

Subpart C—[Reserved]

AUTHORITY: Lacey Act, 16 U.S.C. 279-281 (16 U.S.C. 42-44); Endangered Species Conservation Act of 1969, sec. 4(e), 82 Stat. 278 (16 U.S.C. 668c-4); Bald Eagle Protection Act, sec. 2, 54 Stat. 251 (16 U.S.C. 668a); Marine Mammal Protection Act of 1972, sec. 12(a), 86 Stat. 1042 (16 U.S.C. 1382); Fish and Wildlife Act of 1956, sec. 13, 85 Stat. 480, as amended, 86 Stat. 908 (16 U.S.C. 742-1).

Subpart A—Introduction

§ 12.1 Purpose of regulations.

The regulations in this part provide rules and procedures for the seizure, holding, bonding, abandonment, and forfeiture of wildlife and other property, which under certain laws enforced by the Bureau are subject to seizure and forfeiture.

§ 12.2 Scope of regulations.

(a) The regulations contained in Subpart B of this Part apply only to actions arising under the following laws and regulations issued thereunder:

Lacey Act, 16 U.S.C. 43.

Endangered Species Conservation Act of 1969, 16 U.S.C. 668c-1 to 668c-8, and Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1384 and 1401-1407.

(b) The regulations contained in Subpart C of this Part apply only to actions arising under the following laws and regulations issued thereunder:

Bald Eagle Protection Act, 16 U.S.C. 668-669; and
Fish and Wildlife Act of 1956, 16 U.S.C. 761j-1.

Subpart B—Holding, Bonding, and Return of Certain Wildlife or Other Property

§ 12.11 Notification of seizure.

Except where the owner or consignee is personally notified or seizure is made pursuant to a search warrant, the Director shall, as soon as practicable following his seizure or other receipt of seized wildlife or other property, mail a notification of seizure by registered or certified mail, return receipt requested, to the owner or consignee, if known. Such notification shall describe the seized wildlife or other property, and shall state the time, place, and reason for the seizure.

§ 12.12 Seizure by Customs.

Any authorized employee or officer of the U.S. Customs Service who has seized any wildlife or other property shall deliver such seizure to the appropriate Special Agent in Charge (See § 10.22 of this subchapter), or his designee, who shall either hold such seized wildlife or other property or arrange for its proper handling and care.

§ 12.13 Bonded release.

The Director may, in his sole discretion, accept an appearance bond or other security in place of wildlife or other property seized. Said bond or security may contain such additional conditions as may be appropriate. Such bond or security may be in an amount up to \$10,000 per offense and shall only be allowed where the Director determines either that the health or safety of any wildlife so requires, or that the release of the seized wildlife or other property would not frustrate the purposes of the statute.

§ 12.14 Return of seized wildlife or other property.

If, at the conclusion of the appropriate proceedings, the seized wildlife or other property is to be returned to the owner or consignee, the Director shall issue a letter or other document authorizing its return. This letter or other document shall be delivered personally or sent by registered or certified mail, return receipt requested, and shall identify the property, and, if appropriate, the bailee of the seized wildlife or other property. It shall also provide that upon presentation of the letter or other document and proper identification, the seized wildlife or other property is authorized to be released, provided it is properly marked in accordance with applicable State or Federal requirements.

§ 12.15 Abandonment provisions.

When any wildlife or other property is subject to seizure and forfeiture, a

blank assent to forfeiture form (Customs Form 4607, or a similar Bureau form) may be given or sent, with the notification required by § 11.11 or by § 12.11, to the owner thereof. The owner may voluntarily abandon the wildlife or other property to the Government by executing and returning the assent to forfeiture form. Such abandonment will be considered by the Director in the disposition of the case, and may be the basis for the compromise of any proposed assessment of a civil penalty under Part 11 of this Subchapter B.

Subpart C—[Reserved]

PART 13—GENERAL PERMIT PROCEDURES

Subpart A—Introduction

- Sec.
- 13.1 General.
- 13.2 Purpose of regulations.
- 13.3 Scope of regulations.
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Subpart E—Violations of the Permit

- 13.51 Penalties for violation of a permit; notice; demonstration of compliance.
- Authority—Lacey Act, 62 Stat. 687, as amended, 63 Stat. 89, 74 Stat. 731, and 83 Stat. 281 (16 U.S.C. 42-44); Black Bass Act, sec. 5, 44 Stat. 578, as amended, 46 Stat. 846 (16 U.S.C. 852c); Migratory Bird Treaty Act, sec. 3, 40 Stat. 755 (16 U.S.C. 704); Bald Eagle Protection Act, sec. 2, 54 Stat. 251 (16 U.S.C. 668a); Tariff Classification Act of 1962, 19 U.S.C. 1302, "Schedule 1, Part 13D, Headnote 2(d), Tariff Schedules of the United States," 54 Stat. 251; Endangered Species Conservation Act of 1969, sec. 4(e), 83 Stat. 278 (16 U.S.C. 668c-4); Fish and Wildlife Act of 1956, sec. 13(d), 86 Stat. 905 amending 85 Stat. 480 (16 U.S.C. 742-1); Marine Mammal Protection Act of 1972, sec. 112(a), 86 Stat. 1945 (16 U.S.C. 1382); Act of August 31, 1951, ch. 376, Title 5, section 501, 65 Stat. 290 (51 U.S.C. 483a).

Subpart A—Introduction

§ 13.1 General.

Each person intending to engage in an activity for which a permit is required by this Subchapter B shall, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by this Subchapter B must make application for such permit in accordance with the requirements of this Part 13 and the other regulations in this Subchapter B which set forth the additional requirements for the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one Part of this Subchapter B, the requirements of each Part must be met. If the information required for each specific permitted activity is included, one application will be accepted for all permits required, and a single permit will be issued.

§ 13.2 Purpose of regulations.

The regulations contained in this part will provide uniform rules and procedures for application, issuance, renewal, conditions, revocation, and general administration of permits issuable pursuant to this Subchapter B.

§ 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter B and apply to all permits issued thereunder, including "Import and Marking" (Part 14), "Feather Imports" (Part 15), "Injurious Wildlife" (Part 16), "Endangered Wildlife" (Part 17), "Marine Mammals" (Part 18), "Migratory Birds" (Part 21), and "Eagles" (Part 22).

§ 13.4 Emergency variation from requirements.

The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations will not hinder effective administration of this Subchapter B, and will not be unlawful.

Subpart B—Application for Permits

§ 13.11 Procedure for obtaining a permit.

The following general procedures apply to applications for permits:

(a) *Forms.*—Applications must be submitted on an appropriate Bureau application form, except for those applications for which the regulations provide that a letter application which contains all necessary information, attachments, certification, and signature is acceptable. In no case will oral or telephoned applications be accepted.

(b) *Forwarding instructions.*—Applications must be submitted to the Special Agent in Charge of the Law Enforcement District in which the applicant resides, unless otherwise required in the section which applies to the specific permit desired. Persons not residing in the United States must submit applications to the Director. The address of such officials are listed in § 10.21 and 10.22 of this subchapter.

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(c) **Time requirement.**—Applications must be received by the appropriate official of the Bureau at least 30 calendar days prior to the date on which the applicant desires to have the permit made effective. The Bureau will, in all cases, attempt to process applications in the shortest possible time, and most complete and properly addressed applications will be acted on within 30 days. The Bureau does not, however, guarantee 30 day issuance and some permits cannot be issued within that time period.

(d) **Permit fees.**—Applications must be accompanied by a permit fee in the form of a check or money order made payable to "Bureau of Sport Fisheries and Wildlife" for those permits for which a fee is shown on the following schedule. Such permit fees shall not be refunded if that application is denied.

Type of permit	Fee
Feather import quota (part 18 of this subchapter)	
Importation or entry	\$10
Marine mammals permits (part 18 of this subchapter)	
Scientific research	Individual basis
Public display	Individual basis

§ 13.12 Information requirements on permit applications.

(a) **General information required for all permit applications.**—All applications for permits must contain the following information:

(1) Applicant's name, mailing address, and phone number;

(2) Where the applicant is an individual, his date of birth, height, weight, color of hair, color of eyes, and sex; and business or institutional affiliation, if any, having to do with the wildlife to be covered by the permit;

(3) Where the applicant is a corporation, firm, partnership, institution, or agency, either private or public, the name and address of the president or principal officer;

(4) Location where the permitted activity is to be conducted;

(5) Part and section of this subchapter B under which the permit is requested and such additional information and justification, including supporting documents from appropriate authorities, as required by that section (Paragraph (b) of this section contains a list of sections of this subchapter B where the additional information needed on applications for various permits may be found.)

(6) Where the permitted activity involves an importation from any foreign country which restricts the taking, possession, transportation, exportation or sale of wildlife, the appropriate documentation, as indicated in § 14.42 of this subchapter;

(7) Certification in the following language:

I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 15, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I of Title 50, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my

knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. 1001.

(8) Desired effective date of permit except where issuance date is fixed by the part under which the permit is issued;

(9) Date;

(10) Signature of the applicant; and

(11) Such other information as the Director determines relevant to the processing of the application.

(b) **Additional information required on permit applications.**—As stated in paragraph (a)(5) of this section certain additional information is required on all applications. These additional requirements may be found by referring to the section of this subchapter B cited after the type of permit for which application is being made:

Type of permit	Section
Importation at nondesignated ports:	
Scientific	14.21
Deterioration prevention	14.22
Economic hardship	14.23
Marking of package or container	
Symbol marking	14.24
Feather import quota:	
Importation or entry	15.21
Injurious wildlife:	
Importation or shipment	16.22
Endangered wildlife permits:	
Economic hardship	17.23
Zoological, educational, scientific propagation	17.24
Marine mammals permits:	
Scientific research	18.31
Public display	18.31
Migratory bird permits:	
Import or export	21.21
Banding or marking	21.22
Scientific collecting	21.23
Taxidermist	21.24
Waterfowl sale and disposal	21.25
Special aviculturist	21.26
Special purpose	21.27
Falconry	21.28
Depredation control	21.41
Eagle permits:	
Scientific or exhibition	22.21
Indian religious use	22.22
Depredation control	22.23
Falconry purposes	22.24

§ 13.13 Abandoned application.

Upon receipt of an incomplete or improperly executed application, the applicant shall be notified of the deficiency in the application. If the applicant fails to supply the deficient information or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned and the permit fee shall not be returned.

§ 13.14 Insufficient fee.

Upon receipt of an application filed with an insufficient fee, or without fee where one is required, the application and any fee submitted will be returned to the applicant.

Subpart C—Permit Administration

§ 13.21 Issuance of permits.

(a) No permit may be issued prior to the receipt of a written application therefor, unless a written variation from the requirements, as authorized by § 13.4, is inserted into the official file of the Bureau. An oral or written representation of an employee or agent of the United

States Government, or an action of such employee or agent, shall not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 10.12.

(b) Upon receipt of a properly executed application for a permit, the Director shall issue the appropriate permit unless—

(1) The applicant has been assessed a civil penalty as convicted of any civil or criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility;

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application;

(3) The applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility;

(4) The authorization requested potentially threatens a wildlife population, or

(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) Each permit shall bear a serial number. Such number may be reassigned to the permittee to whom issued so long as he maintains continuity of renewal.

(d) The applicant shall be notified in writing of the denial of any permit request, and the reasons therefor. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall not be considered a new application. The final action by the Director shall be considered the final administrative decision of the Department.

§ 13.22 Duration of permit.

Permits shall entitle the person to whom issued to engage in the activity specified in the permit, within the limitations of the applicable statute and regulations contained in this subchapter B, for the period stated on the permit, unless sooner terminated.

§ 13.23 Amendment of applications or permits.

Where circumstances have changed so that an applicant or permittee desires to have any term or condition of his application or permit modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in § 13.21.

§ 13.24 Renewal of permit.

Where the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, he shall, unless otherwise notified in writing by the Director, file a request for permit renewal, together with a certified statement that the information in his

original application is still currently correct, or a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of his permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by his expired permit until his renewal application is acted upon.

§ 13.25 Permits not transferable; agents.

(a) Permits issued under this part are not transferable or assignable. Some permits authorize certain activities in connection with a business or commercial enterprise and in the event of any lease, sale, or transfer of such business entity, the successor must obtain a permit prior to continuing the permitted activity. However, certain limited rights of succession are provided in § 13.26.

(b) Except as otherwise stated on the face of a permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for the purposes authorized by the permit, may carry out the activity authorized by the permit.

§ 13.26 Right of succession by certain persons.

(a) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

- (1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; and
- (2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to secure the right provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

§ 13.27 Change of mailing address.

During the term of his permit, a permittee may change his mailing address without procuring a new permit. However, in every case notification of the new mailing address must be forwarded to the issuing official within 30 days after such change. This section does not authorize the change of location of the permitted activity for which an amendment must be obtained in accordance with § 13.23.

§ 13.28 Change in name.

A permittee continuing to conduct a permitted activity is not required to obtain a new permit by reason of a mere change in trade name under which a business is conducted or a change of name by reason of marriage or legal decree. *Provided*, That such permittee must furnish his permit to the issuing official for endorsement within 30 days from the date the permittee begins conducting the permitted activity under the new name.

§ 13.29 Official endorsement of changes required.

Any change in a permit must be made by endorsement of the Director or issuing officer. Any modification or change in an issued permit, other than those specifically provided for in this subpart, may be granted or denied in the discretion of the Director.

§ 13.30 Certain continuance of activity.

A permittee who furnishes his permit to the issuing official for endorsement or correction in compliance with the provisions of this subpart may continue his operations pending its return.

§ 13.31 Discontinuance of activity.

When any permittee discontinues his activity, he shall, within 30 days thereof, mail his permit and a request for cancellation to the issuing officer, and said permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made where the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

Subpart D—Conditions

§ 13.41 Recall and amendment of permit during its term.

Except for marine mammal permits (See Part 18), all permits are issued subject to the condition that the Bureau reserves the right to recall and amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

§ 13.42 Permits are specific.

The authorizations on the face of a permit which set forth specific times, dates, places, methods of taking, numbers and kinds of wildlife, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

§ 13.43 Alteration of permits.

Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid. Unless specifically permitted on the face thereof, no permit shall be copied, nor shall any copy of a permit issued pursuant to this Subchapter B be displayed, offered for inspection, or otherwise used for any official purpose for which the permit was issued.

§ 13.44 Display of permit.

Any permit issued under this part shall be displayed for inspection upon request to the Director or his agent, or to any other person relying upon its existence.

§ 13.45 Filing of reports.

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or

any portion thereof, during which a permit was in force, unless the regulations of this subchapter B or the provisions of the permit set forth other reporting requirements.

§ 13.46 Maintenance of records.

From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of wildlife pursuant to such permit. Such records shall be kept current and shall include names and addresses of persons with whom any wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records, unless otherwise specified, shall be entered in books, legibly written in the English language. Such records shall be retained for 5 years from the date of issuance of the permit.

§ 13.47 Inspection requirement.

Any person holding a permit under this subchapter B shall allow the Director's agent to enter his premises at any reasonable hour to inspect any wildlife held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of this subchapter B.

Subpart E—Violations of the Permit

§ 13.51 Penalties for violation of a permit, notice; demonstration of compliance.

(a) Any violation of the applicable provisions of this Subchapter, or of the statute under which the permit was issued, or a condition of the permit, may subject the permittee to the following penalties:

(1) The penalty provided in the statute under which the permit was issued;

(2) Temporary suspension of the permit for a specified period; and

(3) Revocation of the permit. When revoked, permits must be surrendered to the Director on demand.

(b) Except in cases of willfulness or those in which the public health safety or interest requires, and prior to any suspension or revocation of a permit, the permittee shall be given:

(1) Notice by the Bureau in writing of the facts or conduct which may warrant the suspension or revocation; and

(2) Opportunity to demonstrate or achieve compliance with all permit requirements.

PART 14—IMPORT, EXPORT, AND INTERSTATE TRANSPORTATION OF WILDLIFE

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- 14.31 Permits to import wildlife at non-designated port for scientific purposes.
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 14.83 Symbol marking permit.

AUTHORITY: Lacey Act, 62 Stat. 687, as amended, 63 Stat. 89, 74 Stat. 753, and 83 Stat. 281 (18 U.S.C. 42-44); Endangered Species Conservation Act of 1969, sec. 4(e), 83 Stat. 278 (16 U.S.C. 668c-4); Marine Mammal Protection Act of 1972, sec. 112(a), 86 Stat. 1042 (16 U.S.C. 1362); Eagle Act, sec. 2, 54 Stat. 251 (16 U.S.C. 668a); Act of August 31, 1951, ch. 376, Title 5 section 501, 63 Stat. 289 (31 U.S.C. 483a); Black Bass Act, 44 Stat. 576, Sec. 5, as amended, 83 Stat. 281 (16 U.S.C. 802c).

Subpart A—Introduction

§ 14.1 Purpose of regulations.

The regulations contained in this Part provide uniform rules and procedures for the importation, exportation, and interstate transportation of wildlife.

§ 14.2 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other regulations of this subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife. (See also Part 13.)

§ 14.3 Definition.

In addition to definitions contained in Part 10 of this subchapter, and unless the context otherwise requires in this Part H: "Sport fishermen" means a person who takes fish for recreational purposes.

Subpart B—Importation at Designated Ports

§ 14.11 General restrictions.

Except as otherwise provided in this part, no person shall import or cause to be imported any wildlife into the United States at any place other than a Customs port of entry designated in § 14.12.

§ 14.12 Designated ports.

The following Customs ports of entry are designated for the importation of wildlife and shall be referred to hereinafter as "designated ports":

- (a) New York, N.Y.;
- (b) Miami, Fla.;
- (c) Chicago, Ill.;
- (d) San Francisco, Calif.;
- (e) Los Angeles, Calif.;
- (f) New Orleans, La.;
- (g) Seattle, Wash.;
- (h) Honolulu, Hawaii.

§ 14.13 Emergency diversion.

Wildlife which has been imported into the United States at any port or place other than a designated port solely as a result of a diversion due to an aircraft or vessel emergency may proceed as an in-transit shipment under Customs bond to a designated port, or to any port where a permit or other provision of this part provides for lawful entry.

§ 14.14 In-transit shipments.

Wildlife destined for a point within or outside the United States may be imported into the United States at any port if such wildlife proceeds as an in-transit shipment under Customs bond to a designated port, or to any port where a permit or other provision of this part provides for lawful entry.

§ 14.15 Personal and household effects.

(a) Wildlife products or manufactured articles which are not intended for sale and are worn as clothing or contained in accompanying personal baggage may be imported into the United States at any Customs port of entry. Provided, That this exception to the designated port requirement shall not apply to any raw or dressed fur, and green, salted or crusted hide or skin, game trophy, or to any item of endangered wildlife.

(b) Wildlife products or manufactured articles, including mounted game trophies or tanned hides, which are not intended for sale and are part of a shipment of the household effects of persons moving their residence to the United States may be imported at any Customs port of entry. *Provided*, That this exception to the designated port requirement shall not apply to any raw, or dressed fur, and green, salted or crusted hide or skin or to any item of endangered wildlife.

§ 14.16 Canadian and Mexican wildlife.

(a) Except for endangered or injurious wildlife, wildlife lawfully taken by U.S. sportsmen in Canada or Mexico, and imported for noncommercial purposes, may be imported at any Customs port of entry.

(b) In addition to the other exceptions contained in this part, wildlife, other than endangered or injurious wildlife, whose country of origin is Canada, or which was previously exported from the United States to Canada, may be imported into the United States at any of the following Customs ports of entry:

- (1) State of Alaska—Tok Junction;
- (2) State of Washington—Blaine, Sumas, Orville;
- (3) State of Idaho—Eastport;
- (4) State of Montana—Sweetgrass, Raymond;
- (5) State of North Dakota—Portal, Pembina, Dunseith;
- (6) State of Minnesota—Noyes, International Falls, Grand Portage, Minneapolis-St. Paul;
- (7) State of Michigan—Sault Sainte Marie, Detroit, Port Huron;
- (8) State of Ohio—Cleveland;
- (9) State of New York—Buffalo-Niagara Falls, Champlain;
- (10) State of Vermont—Highgate Springs, Derby Line, Norton;
- (11) State of Maine—Houlton, Calais; or
- (12) State of Massachusetts—Boston.

(c) In addition to the other exceptions contained in this part, wildlife, other than endangered or injurious wildlife, whose country of origin is Mexico, or which was previously exported from the United States to Mexico, may be imported into the United States at any of the following Customs ports of entry:

- (1) State of California—Calixico, San Diego-San Ysidro;
- (2) State of Arizona—Nogales, San Luis; or
- (3) State of Texas—El Paso, Laredo, Brownsville.

§ 14.17 Oceanic sport fishermen.

Fish taken by sport fishermen on the high seas, or within the territorial seas or fisheries zones of any country may be imported into the United States at any port or place.

§ 14.18 Marine mammals.

Any person under the jurisdiction of the United States who has lawfully taken a marine mammal on the high seas and is authorized to import such marine mammal in accordance with the Marine Mammal Protection Act of 1972 and the regulations issued pursuant thereto (parts 18 and 216 of this title) may import such marine mammal at any port or place.

§ 14.19 Imports into Alaska, Puerto Rico, or the Virgin Islands.

In addition to the other exceptions contained in this part, wildlife, other than endangered or injurious wildlife, which is imported for final destination in Alaska, Puerto Rico, or the Virgin Islands may be imported through those Customs ports of entry named hereinafter for the respective State or territory:

- (a) Alaska—Juneau, Anchorage, Fairbanks, Tok Junction;
- (b) Puerto Rico—San Juan;
- (c) Virgin Islands—San Juan, Puerto Rico.

§ 14.20 Exceptions by permit.

Wildlife may be imported into the United States at any Customs port of entry designated in the terms of a valid permit issued pursuant to subpart C of this part 14.

§ 14.21 Shellfish and fishery products.

Except for endangered wildlife, the following shellfish and fishery products, as further defined in the "Tariff Schedules of the United States," imported for commercial purposes, may enter the United States at any Customs port of entry:

- (a) Frogs (T.S.U.S. No. 106.60).
- (b) Frog meat (T.S.U.S. No. 107.65).
- (c) Fish, fresh, chilled, or frozen (T.S.U.S. Nos. 110.10-110.70)—trout and salmon to conform to § 14.61, concerning form 3-177, and part 16 of this subchapter, concerning injurious species.
- (d) Fish, dried, salted, pickled, smoked, or kippered (T.S.U.S. Nos. 111.10-111.92).
- (e) Fish in airtight containers (T.S.U.S. Nos. 112.01-112.94).
- (f) Other fish products (T.S.U.S. Nos. 113.01-113.60).
- (g) Shellfish (T.S.U.S. Nos. 114.01-114.55).
- (h) Fish oils (T.S.U.S. Nos. 177.02-177.28).
- (i) Bod oil (T.S.U.S. No. 178.65).
- (j) Products of American fisheries (T.S.U.S. Nos. 180.00-180.20).
- (k) Edible preparations (T.S.U.S. Nos. 182.05, 182.11, 182.48, 182.50).
- (l) Animal feeds (T.S.U.S. Nos. 184.54, 184.55).
- (m) Pearls (T.S.U.S. Nos. 741.05, 741.06).
- (n) Coral (T.S.U.S. No. 741.15).

§ 14.22 Tropical, ornamental and aquarium fish.

In addition to the other exceptions contained in this part, other than endangered or injurious wildlife, tropical, ornamental, and aquarium fish may be imported at the Customs port of entry at Tampa, Fla.

Subpart C—Designated Port Exception Permits

§ 14.31 Permits to import wildlife at nondesignated ports for scientific purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing a scientist to import wildlife, other than endangered wildlife, for scientific purposes at any Customs port of entry. Such permits may authorize a single importation, a series of importations, or importation into the United States over a specific period of time, and such authorization may, in the discretion of the Director, be incorporated into the terms of another type of importation permit.

(a) *Application procedure.* Applications for permits to import wildlife, other than endangered wildlife, at a nondesignated port for scientific purposes shall be submitted to the appropriate Special Agent in Charge (See § 13.11(b) of this subchapter). Each such application must contain the general information

and certification required by § 13.12 (a) of this subchapter plus the following additional information:

- (1) Description of purpose or uses of the scientific specimens to be imported;
- (2) Number and kinds of wildlife to be imported, described by species and subspecies, including the scientific and common names;
- (3) Country or place of origin;
- (4) Method of shipment;
- (5) Port or ports of entry where importation is requested;
- (6) Statement as to whether exception is being requested for a single shipment, a series of shipments, or importations over a specific period of time; and
- (7) Statement of the reasons why importation should be allowed at the requested port or ports of entry rather than at a designated port.

(b) *Additional permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B, permits to import wildlife, other than endangered wildlife, at a nondesignated port issued under this section, shall be subject to the following condition:

Permittee shall file such reports as may be specified on the permit, and if no report is specified on the permit shall file an annual report for each calendar year or portion thereof ending December 31. Such reports shall be filed not later than March 31 of the preceding year and shall itemize importations by: Date, port of entry, method of shipment, country of origin, and numbers and kinds of wildlife.

(c) *Issuance criteria.* The Director shall consider the following in determining whether to issue a permit to import wildlife, other than endangered wildlife, at a nondesignated port by a scientist:

- (1) A benefit to a bona fide scientific research project; or
- (2) Facilitation of the exchange of preserved museum specimens.

(d) *Tenure of permits.* The tenure of permits to import wildlife, other than endangered wildlife, at nondesignated ports for scientific purposes shall be that which is designated on the face of the permit, but shall in no case extend beyond December 31 of the second full calendar year following the year of issue.

§ 14.32 Permits to import wildlife at nondesignated ports to minimize deterioration or loss.

The Director may, upon receipt of an application which demonstrates to his satisfaction that importation of wildlife at the ports required by the regulations of this part will result in a substantial deterioration or loss of wildlife, issue a permit authorizing the importation of wildlife, including endangered species, at any Customs port of entry. Such permits may authorize a single importation, a series of importations, or importations into the United States over a specific period of time, and such authorization may, in the discretion of the Director, be incorporated into the terms of another type of importation permit.

(a) *Application procedure.* Applications for permits to import wildlife at a nondesignated port to minimize deteri-

oration or loss shall be submitted to the appropriate Special Agent in Charge (See § 13.11(b) of this subchapter). Each such application must contain the general information and certification required in § 13.12(a) of this subchapter plus the following information:

- (1) Number and kinds of wildlife to be imported, described by species and subspecies, including the scientific and common names;
- (2) Country or place of origin;
- (3) Date or dates of intended importation;
- (4) Method of shipment, including names of carriers, if any;
- (5) Port or ports of entry where importation is requested;
- (6) Purpose for which wildlife is being imported;
- (7) Statement as to whether exception is being requested for a single shipment, a series of shipments, or importations over a specified period of time; and
- (8) Statement of the reasons why the importation should be allowed at the requested port or ports of entry rather than at a designated port, including evidence that an importation at a designated port by any method at the time in question would result in a substantial deterioration or loss to the wildlife.

(b) *Additional permit conditions.* In addition to the general condition set forth in Part 13 of this Subchapter B, permits to import wildlife at a nondesignated port to minimize deterioration or loss shall be subject to the following conditions:

- (1) Permittee shall file such reports as may be specified on the permit and if no report is specified on the permit shall file an annual report for each calendar year or portion thereof ending December 31. Such reports shall be filed not later than March 31 of the preceding year and shall itemize importations by: Date, port of entry, method of shipment, country of origin, and numbers and kinds of wildlife.
- (2) Permittee shall pay costs incurred by the Director in inspecting permittees importations at nondesignated ports, including the salary, per diem, and travel costs of the Bureau agent.

(c) *Issuance criteria.* The Director shall consider the likelihood of a substantial deterioration or loss of wildlife in determining whether to issue a permit to import wildlife, including endangered species, at a nondesignated port.

(d) *Tenure of permits.* The tenure of permits to import wildlife at nondesignated ports to minimize deterioration or loss shall be that which is designated on the face of the permit, but shall in no case extend beyond December 31 of the second full calendar year following the year of issue.

§ 14.33 Permits to import wildlife at nondesignated ports to alleviate undue economic hardship.

The Director may, upon receipt of an application which demonstrates to his satisfaction that importation of wildlife at the ports required by the regulations of this part would subject the applicant to undue economic hardship, issue a per-

mit authorizing the importation of wildlife, other than endangered wildlife, at any Customs port of entry. Such permits may authorize a single importation, a series of importations, or importation into the United States over a specific period of time, and such authorization may, in the discretion of the Director, be incorporated into the terms of another type of importation permit.

(a) *Application procedures.*—Applications for permits to import wildlife other than endangered wildlife, at a nondesignated port to alleviate undue economic hardship shall be submitted to the appropriate Special Agent in Charge (See § 13.11(b) of this subchapter). Each such application must contain the general information and certification required in § 13.12(a) of this subchapter, plus the following additional information:

- (1) Number and kinds of wildlife to be imported, described by species and subspecies, including the scientific and common names, and a description of the form in which it is to be imported, as "live," "frozen," "raw hides," or a full description of any manufactured product;
- (2) Country or place of origin;
- (3) Name and address of supplier;
- (4) Method of shipment;
- (5) Port or ports of entry where importation is requested;
- (6) Purpose for which wildlife is being imported.

(7) Statement as to whether exception is being requested for a single shipment, a series of shipments, or for importations over a specified period of time. If the permit is being requested for a series of shipments over a period of time include a narrative statement of circumstances including the attachment of documentary evidence showing a pattern of such importations for a period of at least 1 year, or other documentary evidence to support the need for period requested; and

(8) Cost data showing the monetary difference between the cost of importation at the port requested and the lowest cost of importation at the port through which importation is permitted by these regulations without a permit.

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, permits to import wildlife, other than endangered wildlife, at nondesignated ports to alleviate undue economic hardship are subject to the following conditions:

(1) Permittee shall file such reports as may be specified on the permit, and if no report is specified on the permit shall file an annual report for each calendar year or portion thereof ending December 31. Such reports shall be filed not later than March 31 for the preceding year and shall itemize importations by: Date, port of entry, method of shipment, country of origin, and numbers and kinds of wildlife.

(2) Permittee shall pay costs incurred by the Director in inspecting permittee's importations at nondesignated ports, including the salary, per diem and travel costs of the Bureau agent.

(c) *Issuance criteria.* The Director shall consider the following in determining whether to issue a permit to import wildlife, other than endangered wildlife, at a nondesignated port to alleviate undue economic hardship:

- (1) The difference between the cost of importing the wildlife at the port requested and the lowest cost of importing such wildlife at a port permitted by these regulations; and
- (2) The severity of the economic hardship that likely would result should the permit not be issued.

(d) *Tenure of permits.* The tenure of permits to import wildlife at nondesignated ports to alleviate undue economic hardship shall be that which is designated on the face of the permit, but shall in no case extend beyond December 31 of the second full calendar year following the year of issue.

Subpart D—Foreign Documentation

§ 14.41 Foreign documentation requirement.

If the laws or regulations of the country of origin, the country of export, or a subdivision thereof, restrict the taking, possession, transportation, exportation, or sale of wildlife, the owner, importer, or consignee may be required to produce foreign documentation showing that such laws or regulations have not been violated.

§ 14.42 Definition of foreign documentation.

The foreign documentation which will satisfy the requirements of § 14.41 may be either of the following:

(a) Official permits or other documents showing legal taking, possession, transportation, exportation, and sale issued by an appropriate agency or official of the country of origin, and where applicable, from the country of export; if such permits and documents are not written in English, the original documents and certified English translations thereof; or

(b) A consular certificate from the appropriate U.S. consul which shows that an appropriate foreign government official has certified to the U.S. consul the information required in paragraph (a) of this section for the country of origin and, where applicable, the country of export; or

(c) For wildlife lawfully taken in Canada or the United Mexican States by sportsmen, valid Canadian or Mexican export permits, fishing, or hunting licenses.

§ 14.43 Exceptions to foreign documentation requirement.

Notwithstanding the provisions of § 14.41, except for endangered wildlife, foreign documentation shall not be required for importation of the following wildlife:

(a) Wildlife products or manufactured articles which are not intended for sale and are worn as clothing or contained in accompanying personal baggage, except raw or dressed furs, and green, salted, or crusted hides, or skins, game, or game trophies;

(b) Wildlife products or manufactured articles which are not intended for sale and are a part of a shipment of the household effects of persons moving their residence to the United States, except raw or dressed furs, and green, salted, or crusted hides or skins; and

(c) Shellfish and fishery products as defined in § 14.21.

Subpart E—Inspection and Clearance of Imports

§ 14.51 Inspection of imported wildlife.

All wildlife shall be subject to inspection by Bureau agents and Customs officers upon importation into the United States. Such inspection may include examination of the wildlife, the package or container in which such wildlife was shipped or transported, foreign documentation, declarations, Bureau or other permits, and invoices, waybills, manifests, or other documents relating to such wildlife importation.

§ 14.52 Clearance of imported wildlife.

Except as otherwise provided by this subpart, all wildlife imported into the United States must be cleared by a Bureau agent prior to release from detention by Customs officers pursuant to 19 U.S.C. 1499. Such clearance shall not be construed as a certification of the legality of an importation under the laws or regulations of the United States.

§ 14.53 Clearance procedure.

(a) Bureau agents, or Customs officers, pursuant to § 14.54, may refuse clearance of imported wildlife when they have reasonable grounds to believe:

(1) A Federal law or regulation has been violated;

(2) That the correct identity of the wildlife has not been established (in such cases the burden shall be upon the owner, importer, or consignee to prove such identity);

(3) That any foreign documentation required to accompany such wildlife is not authentic; or

(4) That the importer or his broker has filed an incorrect or incomplete declaration for importation as provided in subpart F of this part 14.

(b) Where clearance of imported wildlife has been refused, the wildlife may, at the discretion of the Bureau, be:

(1) Seized;

(2) Exported by the owner, importer, or consignee at his request and expense;

(3) Abandoned pursuant to the provisions of § 12.15 of this subchapter; or

(4) Released under such bond as may be required, and/or subject to recall.

§ 14.54 Unavailability of Bureau agents.

Whenever Bureau agents are not available, within a reasonable time, to inspect and clear imported wildlife at a designated port or other port at which wildlife may be imported pursuant to the regulations of this part, any Customs officer may inspect and clear such wildlife subject to recall, and, in the case of in-transit shipments, may do so at either the port of entry or the port of destination.

§ 14.55 Exceptions to clearance requirements.

Except for endangered wildlife, the clearance procedures of § 14.53 shall not be required for importation of the following wildlife:

(a) Shellfish and fishery products as defined in § 14.21;

(b) Fish taken by fishermen on the high seas, or within the territorial seas or fishery zones of any country;

(c) Marine mammals lawfully taken on the high seas by U.S. residents and imported directly into the United States.

Subpart F—Declaration for Importation of Wildlife

§ 14.61 Declaration requirement.

Except as otherwise provided by the regulations of this subpart, a completed Declaration for Importation of Fish or Wildlife (form 3-177) shall be filed by the importer of his broker with the District Director of Customs at the Customs port of entry where clearance under § 14.52 occurs or where release from detention by Customs officers pursuant to 19 U.S.C. 1499 occurs. The Declaration for Importation of Fish or Wildlife shall include the following information:

(1) Name and address of the importer;

(2) Name and address of the consignor or shipper;

(3) Name of broker, if any;

(4) Name of the carrier, if any;

(5) Permit number under which the wildlife is imported, if any;

(6) Common name, scientific name, country of origin, and number of each species or subspecies imported;

(7) Form in which imported, i.e., live, fully mounted, trophy, hide, manufactured product, freshly killed, etc.; and

(8) Certification in the following language: "I hereby certify that the information submitted for the importation of wildlife is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001."

§ 14.62 Exceptions to declaration requirement.

(a) Except for endangered or injurious wildlife, a Declaration for Importation of Fish or Wildlife (form 3-177) shall not be required to be filed for importation of the following wildlife:

(1) Fish taken by sport fishermen on the high seas or within the territorial seas or the fishery zones of any country;

(2) Fish, taken by sport fishermen in Canada or Mexico;

(3) Shellfish or fishery products imported for commercial purposes as defined in § 14.21;

(4) Game mammals, or birds from Canada or Mexico on which a Declaration for Free Entry of Game Mammals or Birds Killed by United States Residents (Customs form 3315) has been filed;

(5) Wildlife products or manufactured articles which are not intended for sale and are worn as clothing or contained in accompanying personal baggage, except that a declaration will be required for raw or dressed furs and green, salted,

or crusted hides or skins; and game or game trophies where the exception in paragraph (4) of this section does not apply; and

(6) Wildlife products or manufactured articles which are not intended for sale and are a part of a shipment of the household effects of persons moving their residence to the United States, except that a declaration will be required for raw or dressed furs, and green, salted, or crusted hides or skins.

(b) In regard to marine mammals (see Parts 18 and 216) lawfully taken on the high seas by U.S. residents and imported directly into the United States, the Declaration for Importation of Fish or Wildlife (Form 3-177) may be filed at any Customs port of entry.

Subpart G—Export of Wildlife to Mexico

§ 14.71 Permit to export game mammals to the United Mexican States.

Persons exporting to the United Mexican States, antelope, mountain sheep, deer, bear, peccary, squirrel, rabbit, or hare, or the dead body or parts thereof, whether or not included in a manufactured product or a processed food product, shall be required to present to the U.S. Customs official at the port of exit, on request, a certificate of a warden, agent, or other official of the State game department of the State of origin. Such certificate shall list the game animals by species and number, or other appropriate specific description, and certify they were taken or acquired and are being exported in compliance with the statutes and regulations of the State of origin.

Subpart H—Marking Requirements for Certain Shipments

§ 14.81 Marking package or container.

Except as otherwise provided in this subpart, no person shall ship, transport, carry, bring or convey any wildlife in interstate or foreign commerce unless the package or container in which such wildlife is contained has the name and address of the shipper and the consignee and an accurate statement of the contents by species and numbers of each species of wildlife therein contained clearly and conspicuously marked on the outside thereof.

§ 14.82 Exceptions to the marking requirement.

(a) Commercial shellfish or fishery products.—The requirements of § 14.81 do not apply to packages or containers holding shellfish or fishery products imported for commercial purposes as defined in § 14.21.

(b) Mink, chinchilla, silver fox, blue fox, rabbit, and nutria.—The requirements of § 14.81 do not apply to packages or other containers holding mink, chinchilla, silver fox, blue fox, rabbit, and nutria that have been bred and born in captivity. Provided, That a separate signed statement certifying the animals were bred and born in captivity accompanies the shipping document.

(c) Furs, hides, and skins.—Interstate commerce.—The requirements of § 14.81

do not apply to packages or containers holding furs, hides, and skins shipped interstate: Provided, That the names and addresses of the shipper and consignee are clearly and conspicuously marked on the outside thereof.

(d) Symbol markings.—The requirements of § 14.81 do not apply to packages or containers shipped, transported, carried, brought or conveyed in interstate or foreign commerce where such packages are clearly marked with a symbol in accordance with the terms of a valid permit issued pursuant to § 14.83.

§ 14.83 Symbol marking permit.

The Director may, upon receipt of an application which demonstrates to his satisfaction that the marking or other identification required by § 14.81 would create a significant possibility of the theft of the package or its contents, issue a permit authorizing the use of an identification symbol in lieu of the marking required by § 14.81.

(a) Application procedures.—Applications for symbol marking permits shall be submitted to the appropriate Special Agent in Charge (see § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a) of this subchapter, plus the following additional information:

(1) Common and scientific names, and estimated numbers of wildlife to be shipped;

(2) Form in which imported or exported, as "raw skins," "fur garments," etc.;

(3) Type of packaging, method of shipment, and carrier or carriers, if known;

(4) Country or countries of origin for imports, and country or countries of destination for exports;

(5) Port or ports of importation and export;

(6) Estimated frequency of shipments;

(7) Detailed statements of the reasons why the marking required by § 14.81 would create a significant possibility of theft of the package or its contents;

(8) Description of an evidence showing actual thefts, if any, incurred by applicant which can be ascribed to marking requirements of § 14.81, including dates, description of goods, place, if known, value, including affidavits, invoices, correspondence, and insurance claims relative thereto to conclusively show actual losses by applicant; and

(9) At the option of the applicant, a suggested symbol which is desired with the understanding that such suggested symbol may or may not be assigned at the discretion of the Director.

(b) Additional permit conditions.—In addition to the general conditions set forth in part 13 of this subchapter B, permits to use symbol marking shall be subject to the following conditions:

(1) When using the symbol in lieu of another marking required in § 14.81, the entire symbol must be clearly and conspicuously marked on the outside of every package and the symbol, together with other identifying numbers or characters, must also appear on all shipping documents relating to such packages or con-

tainers and on all documents required by §§ 14.41 and 14.61.

(2) The permittee shall, from the effective date of the permit, maintain complete and accurate records of all wildlife furs which are shipped, transported, carried, brought or conveyed in interstate or in foreign commerce and which are identified by means of such symbol. The records shall include the number, species or subspecies, description of the package or container, method of shipment, time and place of shipment, including the air waybill or bill of lading number, and general description of the items. Such records shall be open to inspection, auditing, or copying by any authorized employee of the Bureau at any time during regular business hours.

(c) *Tenure of permits.*—The tenure of permits to use symbol marking shall be from the date of issue to June 30 of the first full year following the year of issue.

PART 15—FEATHER IMPORT QUOTAS

Subpart A—Introduction

Sec. 15.1 Purpose of regulations.

15.2 Scope of regulations.

Subpart B—Import Quotas and Permit Requirement

15.11 Import quotas established.

15.12 Permit requirements.

Subpart C—Application for and Allocation of Quotas

15.21 Application for quota allocation and permit.

15.22 Filing dates for applications.

15.23 Allocation of calendar year quotas.

15.24 Reallocation of unused calendar year quotas.

15.25 Issuance of permits.

15.26 Tenure of importation permits.

AUTHORITY: Tariff Classification Act of 1962, sec. 102, 76 Stat. 73-74, 19 U.S.C. 1202, "Schedule 1, Part 15D, Headnote 2(d), Tariff Schedules of the United States."

Subpart A—Introduction

§ 15.1 Purpose of regulations.

The regulations contained in this part establish annual quotas on importation of skins bearing feathers of the mandarin duck, and five species of pheasants. These regulations also govern applications for and issuance of permits for the entry of such birdskins and establish the method which will be used to allocate and reallocate any unused portions of the annual quotas among the several applicants.

§ 15.2 Scope of regulations.

(a) The regulations of this part apply only to the feathers or skins of those species of birds named in § 15.11:

(1) Whether raw or processed;

(2) Whether the whole plumage or skin or any part of either;

(3) Whether or not attached to a whole bird or any part thereof; and

(4) Whether or not forming part of another article.

(b) The regulations of this part 15 do not apply:

(1) To any importation for scientific or educational purposes;

(2) To the importation of fully manufactured artificial files used for fishing.

(3) To the importation of game birds killed by United States hunters abroad, and imported by such persons for non-commercial purposes.

(4) To the importation of live birds; and

(5) To the importation of any of the following birds (other than any such bird which, whether or not raised in captivity, is a wild bird): chickens (including hens and roosters), turkeys, guinea fowl, geese, ducks, pigeons, ostriches, rheas, English ring-necked pheasants, and pea fowl.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of this Subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife (see also Part 13 of this subchapter).

Subpart B—Import Quotas and Permit Requirement

§ 15.11 Import quotas established.

During any calendar year, beginning January 1 and ending December 31, the following quotas are established for the entry of skins bearing feathers. For the purpose of these quotas any part of a skin which has been severed shall be considered a whole skin.

(a) For use in the manufacture of artificial files used for fishing:

Grey jungle fowl (*Gallus sonnerati*) none

(quota eliminated)

*Mandarin duck (*Aix galericulata*) 1,000

*Former scientific name: *Dendrocygna galericulata*.

(b) For use in the manufacture of artificial files used for fishing or for millinery purposes:

Lady Amherst pheasant

(*Chrysolophus amherstiae*)

Golden pheasant (*Chrysolophus pictus*)

Silver pheasant (*Lophura nycthemera*)

Bever's pheasant (*Syrnium reevesi*)

Blue-eared pheasant (*Crossoptilon crossoptilon*)

Brown-eared pheasant (*Crossoptilon munda-*

auricum) none

(quota eliminated)

§ 15.12 Permit requirement.

Except as otherwise provided in this section, no person shall import, enter, or cause to be imported or entered, feathers, skins, or skins bearing feathers of any species listed in § 15.11 without a permit issued pursuant to this part: *Provided*, That any person may import without a permit, for storage in warehouse under customs bond, skins bearing feathers of species for which a quota is provided in the preceding § 15.11. When so imported and stored, such skins shall not be removed from the warehouse or entered into the United States for use without a permit issued pursuant to this part.

No person shall import for warehouse storage or other purpose skins bearing feathers of any species on which the quota has been eliminated.

Subpart C—Application for and Allocation of Quotas

§ 15.21 Application for quota allocation and permit.

All persons desiring to share in the allocation of annual import quotas and to obtain a permit to enter skins bearing feathers shall submit an application to the Director during the period set forth by § 15.22. Each such application shall contain the general information and certification required by § 13.13(a) of this subchapter plus the following additional information:

(a) Quantity of each species of bird-skin or part thereof for which an importation permit is requested;

(b) Port at which entry will be made, or in the case of warehouse storage under bond, port at which importation was made and location and amount of bird-skins presently in storage;

(c) Statement of the purpose (use) for which the skins bearing feathers are sought to be imported or entered; and

(d) Statement as to whether application is being made for an initial allocation of a calendar year quota, or for reallocation of an unused portion of a calendar year quota.

§ 15.22 Filing dates for applications.

Each application for a quota allocation and permit must be postmarked during the dates set forth in paragraph (a) and (b) of this section in order to be considered.

(a) Applicants desiring to participate in the allocation of calendar year quotas shall submit applications from September 1 through September 30 of the year preceding the calendar year for which quota allocations are to be made.

(b) Applicants desiring to participate in the reallocation of such portions of the established annual quotas as may become available for reallocation, shall submit applications from July 1 through July 31 of the calendar year during which the unused portion of the quota becomes available for reallocation.

§ 15.23 Allocation of calendar year quotas.

As promptly as possible after the closing date for filing, all applications timely filed will be considered and tentative quotas allocated by the method set forth in paragraphs (a) through (e) of this section. For the purposes of this section, the species of pheasants for which quotas have been provided shall be grouped together and considered as one species.

(a) The number of eligible applicants for skins of mandarin duck and pheasants, respectively, shall be divided into the quotas of skins available for the ensuing calendar year for the respective species, to determine the number of skins of each species the several applicants

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would be entitled to import on an equal basis.

(b) Any applicant for an allocation in an amount equal to or less than the average quantity established for all applicants pursuant to paragraph (a) of this section is entitled to receive an allocation of the quantity for which he applied.

(c) After the allocations are made under paragraph (b) of this section, all remaining unallocated quantities of skins of the respective species shall be allocated equally among those applicants who applied for more than the average quantities determined under paragraph (a) of this section. However, no applicant shall be allocated a quantity of skins in excess of the number applied for.

(d) Each applicant shall then be furnished a tabulation by registered or certified mail, return receipt requested, of the quantities of each species requested and the quantities proposed to be allocated to each applicant. Each applicant must then report by letter addressed to the Director, postmarked not later than 30 days after date of receipt of the notice of proposed allocations, that he accepts the proposed allocation. The letter must contain satisfactory proof, such as a copy of a currently confirmed order, that orders have been placed for the importing of his allocation of bird skins and must be accompanied by the prescribed fee in the form of a postal money order or a check made payable to the Bureau of Sport Fisheries and Wildlife. Applicants failing to respond to the notice of proposed allocations or failing to furnish the prescribed fee shall be deemed to have withdrawn their applications. Applicants who submit the required showing and fee by other than registered or certified mail, do so at their own risk.

(e) Any quantities of birdskins of the respective species which become available for allocation through the failure of applicants to submit the proper showing as required in paragraph (d) of this section, shall promptly be allocated among those applicants whose requests were not satisfied in full, using the methods prescribed in paragraphs (a) through (c) of this section to determine the additional quantity of skins allowable to each such applicant.

§ 15.24 Reallocation of unused calendar year quotas.

Any portion of the calendar year quotas which may become available for reallocation through surrender or non-use, in whole or in part, of permits expiring on June 30 of any year, shall be reallocated as promptly as possible after the closing date for filing among applicants who have submitted proper applications in accordance with § 15.21. Such reallocations shall be made by the method prescribed in § 15.23 (a) through (c). If the quantities of the respective species of birdskins are insufficient to permit reallocation among all applicants by such method, preference shall be given to

those applications bearing the earliest postmark.

§ 15.25 Issuance of permits.

As soon as practicable after the annual quota allocations or reallocations have been determined, the quotas allocated to successful applicants shall be evidenced by permits issued to the applicant with copies forwarded to the respective District Directors of Customs at the ports of entry specified in the applications. Such permits shall authorize the importation and entry for limited use, of the quantities of birdskins allocated to each applicant. Until such time as it shall be found necessary to reduce the import quota established for pheasants, permits will authorize the entry of a stated number in the aggregate of those species of pheasant for which a quota is provided.

§ 15.26 Tenure of importation permits.

(a) Permits covering the calendar year quota allocations are issued as of January 1 and remain in effect through June 30 of the year of issue. No extension of time shall be granted on such permits and any portion of the quota allocations which become available through surrender or nonuse, in whole or in part, of a permit expiring on June 30, shall be reallocated among applicants who submit proper applications.

(b) Permits covering the reallocations made pursuant to § 15.24 shall be issued as promptly as possible after July 31 and remain in effect through December 31 of the year of issue. No extension of time shall be granted on such permits, and any portion of the quotas so reallocated which are not imported through surrender or nonuse of reallocation permits, in whole or in part, on or before December 31 of the year of issue, shall lapse and no further allocation thereof shall be made.

PART 16—INJURIOUS WILDLIFE

Subpart A—Introduction

- Sec.
16.1 Purpose of regulations.
16.2 Scope of regulations.
16.3 General restrictions.

Subpart B—Importation or Shipment of Injurious Wildlife

- 16.11 Importation of live wild mammals.
16.12 Importation of live wild birds or their eggs.
16.13 Importation of live or dead fish, mollusks, and crustaceans, or their eggs.
16.14 Importation of live amphibians or their eggs.
16.15 Importation of live reptiles or their eggs.

Subpart C—Permits

- 16.21 [Reserved]
16.22 Injurious wildlife permits.

Subpart D—Additional Exemptions

- 16.31 [Reserved]
16.32 Importation by Federal agencies.
16.33 Importation of natural history specimens.

AUTHORITY: Lacey Act, 74 Stat. 754 (18 U.S.C. 42).

Subpart A—Introduction

§ 16.1 Purpose of regulations.

The regulations contained in this part implement the Lacey Act (18 U.S.C. 42).

§ 16.2 Scope of regulations.

The provisions of this Part are in addition to, and are not in lieu of, other regulations of this Subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife (see also Part 13).

§ 16.3 General restrictions.

Any importation or transportation of live wildlife or eggs thereof, or dead fish or eggs or salmonids of the fish family Salmonidae into the United States or its territories or possessions is deemed to be injurious or potentially injurious to the health and welfare of human beings, to the interest of forestry, agriculture, and horticulture, and to the welfare and survival of the wildlife or wildlife resources of the United States; and any such importation into or the transportation of live wildlife or eggs thereof between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever, is prohibited except for certain purposes and under certain conditions as hereinafter provided in this part: *Provided*, That the provisions of this section shall not apply to pitilaine birds (see also 16.32 and 16.33 for other exemptions).

Subpart B—Importation or Shipment of Injurious Wildlife

§ 16.11 Importation of live wild mammals.

(a) The importation, transportation, or acquisition is prohibited of live specimens of (1) any species of so-called "flying fox" or fruit bat of the genus *Pteropus*; (2) any species of mongoose or meerkat of the genera *Attilax*, *Cynictis*, *Helogale*, *Herpestes*, *Ichneumia*, *Mungos*, and *Suricata*; (3) any species of European rabbit of the genus *Oryctolagus*; (4) any species of Indian wild dog, red dog, or dhole of the genus *Cuon*; and (5) any species of multimammate rat or mouse of the genus *Mastomys*: *Provided*, That the Director shall issue permits authorizing the importation, transportation, and possession of such mammals under the terms and conditions set forth in § 16.22.

(b) Upon the filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61, all other species of live wild mammals may be imported, transported, and possessed in captivity, without a permit, for scientific, medical, educational, exhibition, or propagating purposes, but no such live wild mammals or any progeny thereof may be released into the wild except by the State wildlife conservation agency having jurisdiction over the area of release or by persons having prior written permission for

release from such agency: *Provided*, That the provisions of this paragraph shall not apply to live game mammals from Mexico, the importation of which is governed by regulations under Part 14 of this chapter.

§ 16.12 Importation of live wild birds or their eggs.

(a) The importation, transportation, or acquisition is prohibited of any live specimen or egg of (1) the species of so-called "pink starling" or "rosy parrot" *Sturnus roseus*; (2) the species of dioc (including the subspecies black-fronted, red-billed, or Sudan dioc) *Quelea quelea*; (3) any species of Java sparrow, *Fadda oryzivora*; (4) the species of red-whiskered bul-bul, *Pycnonotus jocosus*: *Provided*, That the Director shall issue permits authorizing the importation, transportation, and possession of such live birds under the terms and conditions set forth in § 16.22.

(b) Upon the filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61, all species of live wild game birds may be imported, transported, and possessed in captivity, without a permit, for propagating or scientific collection purposes, but no such live wild game birds or any progeny thereof may be released into the wild except by the State wildlife conservation agency having jurisdiction over the area of release or by persons having prior written permission for release from such agency.

(c) Upon the filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61, all species of live, wild nongame birds (other than those listed in paragraph (a) of this section) may be imported, transported, and possessed in captivity, without a permit, for scientific, medical, educational, exhibition, or propagating purposes, but no such live, wild nongame birds or any progeny thereof may be released into the wild except by or under the direction of State wildlife conservation agencies when such agencies have received prior written permission from the Director for such release: *Provided*, That the provisions of this paragraph shall not apply to live bald and golden eagles or to live migratory birds, the importation of which is governed by regulations under Parts 22 and 21 of this chapter, respectively, or to birds of the Family *Psittacidae* (parrots, macaws, cockatoos, parakeets, lorikeets, lovebirds, etc.), the importation and transportation of which is governed by U.S. Public Health Service regulations under 42 CFR 71 and 72.

(d) The importation of the eggs of wild nongame birds is prohibited except as permitted under § 16.23.

§ 16.13 Importation of live or dead fish, mollusks, and crustaceans, or their eggs.

(a) (1) The importation, transportation, or acquisition is prohibited of any live fish or viable eggs of the family *Clariidae*: *Provided*, That the Director shall issue permits authorizing the importation, transportation, and possession of such live fish or viable eggs under the terms and conditions set forth in § 16.22.

(2) Except as provided in subparagraph (1) of this paragraph, and except for the salmonids of the fish family *Salmonidae*, as provided in paragraph (b) of this section, all species of live or dead fish, mollusks, and crustaceans, or parts thereof, or their eggs, may be imported, transported, and possessed in captivity without a permit, for scientific, medical, educational, sale, exhibition, or propagational purposes upon the filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61. No such live fish, mollusks, crustaceans, or any progeny or eggs thereof, may be released into the wild except by the State wildlife conservation agency having jurisdiction over the area of release or by persons having prior written permission from such agency.

(b) (1) Notwithstanding authority granted Federal agencies in § 16.22, all live or dead fish or eggs of salmonids of the fish family *Salmonidae* are prohibited entry into the United States for any purpose unless such importations are by direct shipment, accompanied by a certification that the importation is free of the protozoan *Myxosoma cerebralis*, the causative agent of so-called "whirling disease," and the virus causing viral hemorrhagic septicemia or "Egged disease." The certification shall be signed in the country of origin by a designated official acceptable to the Secretary of the Interior as being qualified in fish pathology, or in the United States by a qualified fish pathologist designated for this purpose by the Secretary of the Interior.

(2) The certificate required by this section shall consist of a statement in the English language, printed or typewritten, stating that this shipment of fish or eggs is free from these two diseases by the methods outlined in Fish Disease Leaflet 9, and will contain (i) the date and port of export in the country of origin and the anticipated United States date of arrival and port of entry, (ii) surface or air carrier and flight number, or vessel name or number, (iii) bill of lading number or airway bill number, and (iv) the handwritten signature, in ink, of the authorized certifying officer, and may be substantially in the following form:

I, _____, approved by the Secretary of the U.S. Department of the Interior, on _____ as a certifying officer, on _____ as required by Title 50, CFR 13.7(b), do hereby certify, using the methodology described in Fish Disease Leaflet (FDL-9, July 1966), that this shipment of _____ of dead or live fish or fish eggs to be shipped under _____ is free of the

(Bill of lading number, or airway bill number)

protozoan *Myxosoma cerebralis*, the causative agent of so-called "whirling disease," and the virus causing viral hemorrhagic septicemia or "Egged disease."

The shipment is scheduled to depart _____ on _____ via _____ (City and Country) _____ with anticipated _____ (Name of carrier) _____ U.S.A. on _____ (City)

(Date)

(Signature in ink of certifying officer)

(Date)

(c) Nothing in this part shall restrict the importation and transportation of the fish family *Salmonidae* when such fish or eggs have been processed by canning, pickling, smoking, or otherwise prepared in a manner whereby all spores of the protozoan *Myxosoma cerebralis*, the causative agent of so-called "whirling disease," and the virus causing viral hemorrhagic septicemia or so-called "Egged disease," have been killed. Salmon landed in North America and brought into the United States for processing or sale, or any salmonid caught in the wild in North America under a sport or a commercial fishing license shall be exempt from the requirements for certification and from the filing of the Declaration for Importation of Wildlife.

§ 16.14 Importation of live amphibians or their eggs.

Upon the filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61, all species of live amphibians or their eggs may be imported, transported, and possessed in captivity, without a permit, for scientific, medical, educational, exhibition, or propagating purposes, but no such live amphibians or any progeny or eggs thereof may be released into the wild except by the State wildlife conservation agency having jurisdiction over the area of release or by persons having prior written permission for release from such agency.

§ 16.15 Importation of live reptiles or their eggs.

Upon the filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61, all species of live reptiles or their eggs may be imported, transported, and possessed in captivity, without a permit, for scientific, medical, educational, exhibition, or propagating purposes, but no such live reptiles or any progeny or eggs thereof may be released into the wild except by the State wildlife conservation agency having jurisdiction over the area of release or by persons having prior written permission for release from such agency.

§ 16.16 Importation of live reptiles or their eggs.

Upon the filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61, all species of live reptiles or their eggs may be imported, transported, and possessed in captivity, with-

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out a permit, for scientific, medical, educational, exhibition, or propagating purposes, but no such live reptiles or any progeny or eggs thereof may be released into the wild except by the State wildlife conservation agency having jurisdiction over the area of release or by persons having prior written permission for release from such agency.

Subpart C—Permits

§ 16.21 [Reserved]

§ 16.22 Injurious wildlife permits.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the importation into or shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States of injurious wildlife (See subpart B of this part) for zoological, educational, medical, or scientific purposes.

(a) *Application procedure.* Applications for permits to import or ship injurious wildlife for such purposes shall be submitted to the appropriate Special Agent in Charge (See § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) The number of specimens and the common and scientific names (genus and species) of each species of live wildlife proposed to be imported or otherwise acquired, transported, and possessed;

(2) The purpose of such importation, or other acquisition, transportation, and possession;

(3) The address of the premises where such live wildlife will be kept in captivity;

(4) The name and address of the consignor or other person from whom such wildlife will be acquired; and

(5) A statement of applicant's qualifications and previous experience in caring for and handling captive wildlife.

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, permits to import or ship injurious wildlife for zoological, educational, medical, or scientific purposes shall be subject to the following conditions:

(1) All live wildlife acquired under permit and all progeny thereof, must be confined in the approved facilities on the premises authorized in the permit.

(2) No live wildlife, acquired under permit, or any eggs or progeny thereof, may be sold, donated, traded, loaned, or transferred to any other person unless such person has a permit issued by the Director under § 16.22 authorizing him to acquire and possess such wildlife or the eggs or progeny thereof.

(3) Permittees shall submit a report of all live wildlife acquired under authority of a permit to the Director within 10 days following the date of such acquisition.

(4) Permittees must notify the Director by letter within 10 days following the death and by telephone or telegraph within 24 hours following the escape of any wildlife or their progeny possessed

under authority of a permit, unless specifically exempted from either requirement by special terms of his permit.

(c) *Issuance criteria.* The Director shall consider the following in determining whether to issue a permit to import or ship injurious wildlife for zoological, educational, medical, or scientific purposes:

(1) Whether the wildlife is being imported or otherwise acquired for a bona fide scientific, medical, educational, or zoological exhibition purpose;

(2) Whether the facilities for holding the wildlife in captivity have been inspected and approved, and consist of a basic cage or structure of a design and material adequate to prevent escape which is maintained inside a building or other facility of such structure that the wildlife could not escape from the building or other facility after escaping from the cage or structure maintained therein;

(3) Whether the applicant is a responsible person who is aware of the potential dangers to public interests posed by such wildlife, and who by reason of his knowledge, experience, and facilities reasonably can be expected to provide adequate protection for such public interests; and

(4) If such wildlife is to be imported or otherwise acquired for zoological or aquarium exhibition purposes, whether such exhibition or display will be open to the public during regular appropriate hours.

Subpart D—Additional Exemptions

§ 16.31 [Reserved]

§ 16.32 Importation by Federal agencies.

Nothing in this part shall restrict the importation and transportation, without a permit, of any live wildlife by Federal agencies solely for their own use, upon the filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61. *Provided*, That the provisions of this section shall not apply to bald and golden eagles or their eggs, or to migratory birds or their eggs, the importations of which are governed by regulations under Parts 22 and 21 of this chapter, respectively.

§ 16.33 Importation of natural-history specimens.

Nothing in this part shall restrict the importation and transportation, without a permit, of dead natural-history specimens of wildlife or their eggs for museum or scientific collection purposes: *Provided*, That the provisions of this section shall not apply to dead migratory birds, the importation of which is governed by regulations under Parts 20 and 21 of this chapter; to dead game mammals from Mexico, the importation of which is governed by regulations under Part 14 of this chapter; or to dead bald and golden eagles or their eggs, the importation of which is governed by regulations under Part 22 of this chapter.

PART 17—ENDANGERED WILDLIFE

Subpart A—Introduction

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RULES AND REGULATIONS

Common name	Scientific name	Where found
Mullet	<i>Pogonias cromis</i>	Admiralty Islands: Manus Island.
Fish		
Alia Bait	<i>Silurus asotus</i>	Turkey.
Ayudo	<i>Hemirhamphus intermedius</i>	Japan.
Bloodred, Mexican	<i>Protola porphyria</i>	Mexico.
Catfish	<i>Pangasius catfish</i>	Thailand.
Catfish, Giant	<i>Pangasius gigas</i>	Do.
Cave	<i>Acrossocheilus laevis</i>	Turkey.
Nakari	<i>Crossocheilus laevis</i>	Japan.
Tanaka, Miyako	<i>Tanaka tanaka</i>	Do.
Amphipod		
Frog, Hargen Island	<i>Leiopelma hamiltoni</i>	New Zealand.
Frog, Israel painted	<i>Discopeltus nigriventris</i>	Israel.
Reptiles		
Ba, Jamaica	<i>Euprepsaurus carolinensis</i>	Jamaica.
Caiman (see Yacari)		
Crocodile, Cuban	<i>Crocodilus rhombifer</i>	Cuba.
Crocodile, Morelet's	<i>Crocodilus moreletii</i>	Mexico, British Honduras, Guatemala.
Crocodile, Nile	<i>Crocodilus niloticus</i>	Africa.
Crocodile, Orinoco	<i>Crocodilus intermedius</i>	Orinoco River, northern South America.
Gavial	<i>Gavialis gangeticus</i>	Pakistan, India, Burma, Bangladesh.
Gecko, Day	<i>Phelsuma guttata</i>	Mauritius.
Gecko, Round Island day	<i>Phelsuma punctulata</i>	Do.
Iguana, Anguilla ground	<i>Cyclura nigriventris</i>	Virgin Islands: Anguilla Island.
Island, Brown (see Iguana)	<i>Cyclura nigriventris</i>	Island: Galapagos Islands.
Terrapin, River (see Turtle)	<i>Pseudemys floridana</i>	Burma, India, Indonesia, Malaysia, Bangladesh.
Tortoise, Galapagos	<i>Testudo darwini</i>	Island: Galapagos Islands.
Tortoise, Madagascar reduced	<i>Testudo radiata</i>	Madagascar.
Tortoise, Short-necked or swamp	<i>Testudo capensis</i>	South Africa.
Tuatara	<i>Sphenodon punctatus</i>	New Zealand.
Turtle, Aquatic box	<i>Trachemys scripta</i>	Mexico.
Turtle, Atlantic Rides	<i>Lepidochelys olivacea</i>	Do.
Turtle, Hawksbill	<i>Eretmochelys imbricata</i>	Tropical seas.
Turtle, Leatherback	<i>Dermochelys coriacea</i>	Tropical seas and temperate seas.
Turtle, South American River	<i>Pseudemys septentrionalis</i>	Orinoco and Amazon River Basin, northern South America.
Turtle, South American River	<i>Pseudemys septentrionalis</i>	Do.
Yacari (Caiman)	<i>Caiman yacari</i>	Bolivia, Argentina, Peru, Brazil.
Birds		
Albatross, Short-tailed	<i>Diomedea exulans</i>	Japan.
Baldpate	<i>Colinus virginianus</i>	United States, Mexico.
Bristlebill, Western	<i>Dasyornis bairdii</i>	Australia.
Bulbul, Mauritius olive-backed	<i>Hyphantornis olivaceus</i>	Mauritius.
Bustard, San Miguel	<i>Perdix perdiculus</i>	China.
Bustard, Great Indian	<i>Chloris erythrorhynchos</i>	India, Pakistan.
Cabot	<i>Berytus caboti</i>	Bermuda.
Cander, Andean	<i>Vultur gryphus</i>	Columbia to Chile, Argentina.
Crane, Hooded	<i>Grus monacha</i>	Japan, U.S.S.R.
Crane, Japanese	<i>Grus japonensis</i>	Japan, China, Korea, U.S.S.R.
Crane, Siberian white	<i>Grus leucurus</i>	Siberia in India.
Crane, Whooping	<i>Grus americana</i>	Canada, United States.
Curassow, Red-billed	<i>Oreopsittacus indus</i>	Brazil.
Curassow, Trinidad white-headed	<i>Pipilo pipilo</i>	Trinidad.
Curlew, Eskimo	<i>Numenius borealis</i>	Canada to Argentina.
Dove, Cinnamon-bellied	<i>Streptopelia dussumieri</i>	New Caledonia.
Dove, Grenada	<i>Streptopelia dussumieri</i>	West Indies: Grenada.
Dove, Palm ground	<i>Streptopelia dussumieri</i>	Palm Islands.
Duck, White-winged wood	<i>Querquedula discolor</i>	India, Thailand, Malaya, Burma, Indonesia (including Java).
Eagle, Monkey-eating	<i>Pithecophaga jefferyi</i>	Philippines.
Eagle, Spanish imperial	<i>Agelaius holosericeus</i>	Spain, Morocco, Algeria.
Egret, Chinese	<i>Ardea sinensis</i>	China, Korea.
Falcon, American peregrine	<i>Falco peregrinus anatum</i>	Canada, United States, Mexico.
Falcon, Arctic	<i>Falco peregrinus tundrius</i>	Canada, United States, Mexico.
Falcon, Palm	<i>Falco peregrinus</i>	Palm Islands.
Flycatcher, Faint's	<i>Empidonax fainii</i>	West Indies: Grenada.
Flycatcher, Icy-blue	<i>Empidonax cyanus</i>	Seychelles.
Flycatcher, Tahiti	<i>Empidonax cyanus</i>	Tahiti.
Fody, Seychelles	<i>Fody fody</i>	Seychelles.
Gannet, African	<i>Sula leucogaster</i>	Japan, United States.
Gannet, Christmas Island	<i>Sula leucogaster</i>	Indian Ocean, Christmas Island.
Grackle, Band-tailed	<i>Cathartes aura</i>	Mexico.
Grass-wren, Eyras	<i>Calamanthus fuliginosus</i>	Australia.
Grebe, Arctic	<i>Podiceps podiceps</i>	Guatemala.
Guan, Horned	<i>Oreophaps deraniensis</i>	Guatemala, Mexico.
Gull, Ash-throated	<i>Larus argentatus</i>	Mediterranean.
Hawk, Ash-throated island sparrow	<i>Accipiter fuscus</i>	Common Islands.
Hawk, Galapagos	<i>Accipiter fuscus</i>	Island: Galapagos Islands.
Honeyeater, Hutton's	<i>Myzomela huttoni</i>	Australia.
Ibis, Japanese crested	<i>Nipponia nippon</i>	Japan, Korea, U.S.S.R., China.
Kestrel	<i>Falco tinnunculus</i>	New Caledonia.
Kestrel, Mauritius	<i>Falco tinnunculus</i>	New Zealand.
Kestrel, Seychelles	<i>Falco tinnunculus</i>	Mascarene Islands: Mauritius.
Kite, Cuba black-bellied	<i>Chondrocygus melanotos</i>	Cuba.
Kite, Grenada black-bellied	<i>Chondrocygus melanotos</i>	West Indies: Grenada.
Kokoi	<i>Colinus corymbus</i>	New Zealand.
Magpie-robin, Seychelles	<i>Coppychus seychellensis</i>	Seychelles.
Mallard	<i>Anas platyrhynchos</i>	Indonesia, Ceylon.
Mallard, LaVerne's	<i>Anas platyrhynchos</i>	Ceylon.
Mallard (see Phasianus)		
Mourning Dove	<i>Streptopelia turtur</i>	Palm Islands, Mariana Islands.
Ostrich, Arabian	<i>Struthio camelus</i>	Morocco, Saudi Arabia.
Ostrich, West African	<i>Struthio camelus</i>	Spanish Sahara.
Owl, African scops	<i>Otus scops</i>	Comore Islands.
Owl, Seychelles	<i>Otus scops</i>	Seychelles.
Owl, Palau	<i>Otus scops</i>	Palm Islands.
Owl, Mrs. Marden's	<i>Otus scops</i>	Kenya.
Parakeet, Paradise	<i>Parrotia pulcherrima</i>	Australia.
Parakeet, Fort's	<i>Parrotia pulcherrima</i>	New Zealand.
Parakeet, Mauritius ring-necked	<i>Parrotia pulcherrima</i>	Mauritius.

RULES AND REGULATIONS

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Wirds

Birds:

- Akepa, Hawaii (akepa): *Lozops coactina coactina*.
- Akepa, Hawaii (akepule): *Lozops coactina ochracea*.
- Akiakola, Kauai: *Hemignathus procerus*.
- Akiakola: *Hemignathus kiiensis*.
- Unidentified, masked: *Colinus virginianus ridgw.*

Condor, California: *Gymnogyps californi-*

Crow, Hawaiian: *Fulica americana nizi*.

Crook, Mississippi sandhill: *Grus canadensis pulla*.

Crow, whooping: *Grus americana*.

Crow, Hawaiian (alala): *Corvus tropicalis*.

Creeper, Molokai (kakawhaite): *Lozops maculosa*.

Creeper, Oahu (alauwaho): *Lozops maculosa maculosa*.

Curlew, Eskimo: *Numenius borealis*.

Duck, Hawaiian (kai): *Anas wyvilliana*.

Duck, Laysan: *Anas wyvilliana*.

Duck, Mexican: *Anas diazi*.

Eagle, Southern bald: *Haliaeetus leucorhaphus leucorhaphus*.

Falcon, American peregrine: *Falco peregrinus*.

Mammals

Mammals
Bat, Hawaiian hoary: *Lasiurus cinereus* serotinus.
Bat, Indiana: *Lyotis sodalis*.
Cougar, Eastern: *Felis concolor* cougar.
Deer, Columbian white-tailed: *Odocoileus virginianus leucurus*.
Deer, Kentucky: *Odocoileus virginianus clarkii*.
Ferret, black-footed: *Mustela nigripes*.
Fox, San Joaquin kit: *Vulpes macrotis* mufles.
Goat, Florida (sea cow): *Trichechus manatus latirostris*.
Mouse, salt marsh harvest: *Reithrodontomys*.
Panther, Florida: *Felis concolor coryi*.
Prairie dog, Utah: *Cynomys ludovicianus*.
Pronghorn, Sonoran: *Antilocapra americana*.
Rat, Morro Bay kangaroo: *Dipodomys heermanni morrocanus*.
Squirrel, Eastern: *Peninsula flos*: *Sciurus* *niger* *cinereus*.
Wolf, Delmarva timber: *Canis lupus lycaon*.
Wolf, Northern Rocky Mountain: *Canis lupus* *remotus*.
Wolf, west, *Canis rufus*.

Fishes
 Bonytail, Pahranagat: *Gila robusta* Jordan.
 Chub, humpback: *Gila cypha*.
 Chub, Mohave: *Siphates laietatus*.
 Cigar, longjaw: *Macropodus alpinus*.
 Cui-ui: *Chamistes cujus*.
 Dace, Kendall Warm Springs: *Aethiops ocellus* thermalis.
 Dace, Moapa: *A. bifasciatus*.
 Darter, fountain: *Etheostoma fonticola*.
 Darter, Maryland: *Etheostoma sellare*.
 Darter, Okaloosa: *Etheostoma okaloosa*.
 Darter, watercress: *Etheostoma caeruleum*.
 Gambusia, Big Bend: *Gambusia gairdneri*.
 Gambusia, Clear Creek: *Gambusia heterochir*.
 Gambusia, Pecos: *Gambusia nobilis*.
 Pupfish, Pahmurg: *Emmetichthys latos*.
 Pike, blue: *Stizostedion vitreum* gilaensis.
 Pupfish, Comanche Springs: *Cyprinodon elegans*.
 Pupfish, Devil's Hole: *Cyprinodon stibolabi*.
 Pupfish, Owen River: *Cyprinodon radiois*.
 Pupfish, Tecopa: *Cyprinodon nevadensis calidae*.
 Pupfish, Warm Springs: *Cyprinodon nevadensis pectoralis*.
 Squawfish, Colorado River: *Ptychocheilus lucius*.
 Stickleback, unarmored three spine, *Gasterosteus aculeatus* willamoum.
 Sturgeon, shortnose: *Acipenser brevirostrum*.
 Topminnow, Gila: *Foeciliopsis occidentalis*.
 Trout, Arizana (Apache): *Salmo* sp.
 Trout, Gila: *Salmo gila*.
 Trout, greenback cutthroat: *Salmo clarki* *tomax*.
 Trout, Lahontan cutthroat: *Salmo clarki* *henshawi*.
 Trout, Palute cutthroat: *Salmo clarki* *sestus*.
 Woundfin, *Pisgophorus argenteus*.
Reptiles and amphibians:
 Alligator, American: *Alligator mississippiensis*.
 Boa, Puerto Rican: *Epicrates inornatus*.
 Lizard, blunt-nosed leopard: *Crotaphytus wislizeni*.
 Salamander, desert diadem: *Batrachoseps aridus*.
 Salamander, Santa Cruz long-toed: *Ambystoma macrodactylum* erocum.
 Salamander, Texas blind: *Typhlomolge rathbuni*.
 Snake, San Francisco garter: *Thamnophis sirtalis*.
 Snake, Houston: *Bufo huastecus*.

(a) The lists of endangered foreign wildlife (§ 17.11) and endangered native wildlife (§ 17.12) may be revised from time to time as additional data become available which show, to the Secretary's satisfaction, that a species or subspecies should be added to or removed from either list.

(b) The Director shall receive and maintain data regarding endangered species and subspecies of wildlife and at least once every 5 years, will conduct a thorough review of the lists of endangered wildlife. Any revisions of the lists which are proposed by the Secretary as the result of such review or otherwise will be published in the FEDERAL REGISTER, which notice shall give interested persons not less than 30 days to submit written comments and suggestions.

(c) At any time any interested person may submit a request for a review of any particular listed or nonlisted species or subspecies. Such requests must be dated and in writing, and should be submitted to the Director. The request must contain the following information:

(1) Name and address of the person making the request:

(2) Association, organization, or business, if any, represented by the person making the request:

(3) Reasons why the person making the request, or the person he represents, should be considered to be an "interested person":

(4) Designation of the particular species or subspecies in question by common and scientific name:

(5) Narrative explanation of the request for review and justification for a change in the status of the species or subspecies as aforesaid in question;

(6) Scientific, commercial, or other data believed to support the request; and

(7) Signature of the person making the request.

If it is determined that substantial evidence has been presented which warrants a review, a finding to that effect

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shall be published in the *FEDERAL REGISTER*. Such notice shall give all interested persons an opportunity to submit information on the status of the species or subspecies under review in such form of manner as may be specified.

Subpart C—Endangered Wildlife Importation Permits

§ 17.21 General permit requirement.

No person shall import from any foreign country and species or subspecies of wildlife which the Secretary has determined to be threatened with worldwide extinction, as evidenced by its inclusion on the list of endangered foreign wildlife (§ 17.11) without a valid permit issued pursuant to this subpart C.

§ 17.22 Economic hardship permits.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing importation of endangered foreign wildlife to prevent undue economic hardship.

(a) *Application procedure.*—Applications for permits to import endangered foreign wildlife to prevent undue economic hardship shall be submitted by letter of application to the Director. Each such application must contain the general information and certification required by § 17.12(a) of this subchapter plus the following additional information:

(1) Common and scientific names of the species or subspecies, number, and description (e.g., tanned hides), of the wildlife to be covered in the permit;

(2) Purpose of the importation;

(3) A full statement of the facts, circumstances and reasons why failure to grant a permit under this section would lead to undue economic hardship, together with all supporting documents, including certified copies of all relevant contracts, correspondence, financial commitments, and current and historical financial data which show the dollar amount of anticipated loss or economic hardship;

(4) A full statement of the applicant's involvement with the importation of the same or similar species or subspecies of wildlife during the calendar year immediately preceding the date the proposal to list such species or subspecies as endangered was published in the *FEDERAL REGISTER* and the same information for the period between the date the proposed listing was published in the *FEDERAL REGISTER* and the date the actual determination that the species or subspecies was endangered. This statement should include certified copies of all relevant contract, correspondence, and financial data pertaining to such importations;

(5) The economic and legal alternatives available to the applicant;

(6) Method of shipment;

(7) If live wildlife is involved, a detailed description of the type, size, and construction of the container; arrangements for feeding, watering, and otherwise caring for the wildlife in transit;

and the arrangements for caring for the wildlife on importation into the United States must be included;

(8) Date the importation is expected to occur; and

(9) Designated port of entry through which the importation will be made.

(b) *Additional permit conditions.*—In addition to the general conditions set forth in part 13 of this subchapter B, permits to import endangered wildlife to prevent undue economic hardship shall be subject to the following conditions:

(1) In addition to any reporting requirements set forth in the permit, a report of the importations made under authority of such permit shall be submitted in writing to the Director within 10 days following such importation.

(2) The death or escape of any living wildlife imported under the authority of such permit shall be reported to the Bureau's Office of Endangered Species and International Activities (phone 202-343-5687) immediately. The carcass of any such wildlife which die or are killed should be retained in such a manner as not to impair its use as a scientific specimen.

(c) *Issuance criteria.*—The Director shall consider the following in determining whether to issue a permit to import endangered foreign wildlife to prevent undue economic hardship:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild populations of the wildlife;

(2) The severity of the economic hardship that likely would result should the permit not be issued;

(3) Evidence that the applicant had entered into a valid, binding contract to import into the United States the wildlife in question and that such contract had been concluded prior to the date on which the wildlife was listed as endangered pursuant to § 17.11;

(4) Whether the contract referred to in paragraph (c)(3) of this section had been entered into during the period between publication in the *FEDERAL REGISTER* of the proposal to list such species as endangered and the date of actual determination that the species or subspecies was endangered or during a period when the applicant would otherwise likely have known the wildlife in question would be determined to be endangered;

(5) Whether it appears the applicant can reasonably effect the importation within 1 year from the date on which the wildlife in question was listed as endangered in § 17.11; and

(6) The economic, legal or other alternatives or relief available to the applicant.

(d) *Tenure of permits.*—The tenure of permits to import endangered foreign wildlife to prevent undue economic hardship shall be designated on the face of the permit, but in no case shall extend beyond 1 year following the addition of that species or subspecies to the list of endangered foreign wildlife in § 17.11.

§ 17.23 Zoological, educational, scientific, or propagation permits.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the importation of endangered foreign wildlife for zoological, scientific, or educational purposes, or for the propagation of such wildlife in captivity.

(a) *Application procedures.*—Application for permits to import endangered foreign wildlife for zoological, educational, scientific, or propagational purposes shall be submitted by letter of application to the Director. Each such application must contain the general information and certification required by § 17.12(a) of this subchapter plus the following additional information:

(1) Common and scientific names of the species or subspecies, number, age, and sex of the wildlife to be covered in the permit;

(2) Copy of the contract or other agreement under which such wildlife is to be imported, showing the country of origin, name and address of the seller or consignor, date of the contract, number and weight (if available), and description of the wildlife;

(3) A full statement of justification for the permit, including details of the project or other plans for utilization of the wildlife in relation to zoological, educational, scientific, or propagational purposes as appropriate and the planned disposition of the wildlife upon termination of the project;

(4) A description and the address of the institution or other facility where the wildlife will be used or maintained;

(5) A statement that at the time of application the wildlife to be imported is still in the wild, was born in captivity, or has been removed from the wild;

(6) A résumé of the applicant's attempts to obtain the wildlife to be imported from sources which would not cause the death or removal of additional animals from the wild, if appropriate; and

(7) If live wildlife is to be imported, include:

(i) A complete description, including photographs or diagrams, of the area and facilities in which the wildlife will be housed;

(ii) A brief résumé of the technical expertise available, including any experience the applicant or his personnel have had in propagating the species or closely related species to be imported;

(iii) A statement of willingness to participate in a cooperative breeding program and maintain or contribute data to a studbook; and

(iv) A detail description of the type, size, and construction of the container; arrangements for feeding, watering, and otherwise caring for the wildlife in transit; and the arrangements for caring for the wildlife on importation into the United States.

(b) *Additional permit condition.*—In addition to the general conditions set

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forth in part 13 of this subchapter B, permits to import endangered foreign wildlife for scientific, educational, or zoological purposes or for the purpose of propagation of such wildlife in captivity shall be subject to the following conditions:

(1) In addition to any reporting requirements set forth in the permit, a report of the importation made under authority of any such permit shall be submitted in writing to the Director. Such report must be postmarked or actually delivered no later than 10 days following each such importation.

(2) The death or escape of any living wildlife imported under the authority of such permit shall be reported to the Bureau's Office of Endangered Species and International Activities immediately. The carcass of any such wildlife which die or are killed should be retained in such a manner as not to impair its use as a scientific specimen.

(c) *Issuance criteria.*—The Director shall consider, among other criteria, the following in determining whether to issue a permit to import endangered foreign wildlife for scientific, educational, or zoological purposes or for the purpose of propagation of such wildlife in captivity:

(1) The direct or indirect effect which issuing such a permit would be likely to have upon the wild populations of the wildlife.

(2) Whether the purpose for which the permit is being requested would likely reduce the severity of the threat of extinction facing the subject species or subspecies.

(3) Opinions or views of scientists or other persons or organizations knowledgeable of the wildlife to be imported or of other matters germane to the application;

(4) Whether the expertise, facilities or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application; and

(5) Whether the purpose for which the permit is being requested is adequate to justify the removal of the wildlife from the wild or otherwise change its status.

(d) *Tenure of permits.*—The tenure of permits to import endangered foreign wildlife for scientific, educational, or zoological purposes or for the purpose of propagation of such wildlife in captivity shall be designated on the face of the permit.

PART 19—AIRBORNE HUNTING

Subpart A—Introduction

Sec.

19.1 Purpose of regulations.

19.2 Scope of regulations.

19.3 Relation to other laws.

19.4 Definitions.

Subpart B—Prohibitions

19.11 General prohibition.

19.12 Exceptions to general prohibition.

Subpart C—Federal Permits

Sec.

19.21 Limitation on Federal permits.

Subpart D—State Permits and Annual Report Requirements

19.31 State permits.

19.32 Annual reporting requirements.

ARTIFICIAL: Fish and Wildlife Act of 1956, 85 Stat. 480, as amended, 86 Stat. 805 (16 U.S.C. 742a-1).

Subpart A—Introduction

§ 19.1 Purpose of regulations.

The regulations contained in this part provide rules relative to the prohibition against shooting or harassing of wildlife from any aircraft, provide the requirements for the contents and filing of annual reports by the States regarding permits issued for such shooting or harassing, and provide regulations necessary for effective enforcement of the Fish and Wildlife Act of 1956 as amended (16 U.S.C. 742a-1).

§ 19.2 Scope of regulations.

The regulations contained in this part apply to all persons within the territorial jurisdiction of the United States, to all United States citizens whether within the territorial jurisdiction of the United States or on the high seas or on board aircraft in flight over the high seas, and to all persons on board aircraft belonging in whole or in part to any United States citizen, firm, or partnership, or corporation created by or under the laws of the United States, or any State, territory or possession thereof.

§ 19.3 Relation to other laws.

The exemptions to general prohibitions of the Fish and Wildlife Act of 1956, that permit airborne hunting in certain circumstances (See Subpart B of this part) do not supersede, or authorize the violation of, other laws designed for the conservation or protection of wildlife, including those laws prohibiting the shooting or harassing of bald and golden eagles, polar bears and other marine mammals, migratory birds, and other wildlife, except to the extent that airborne hunting is authorized by regulations or permits issued under authority of those laws. [See e.g., § 21.41 of this Subchapter]

§ 19.4 Definitions.

In addition to definitions contained in Part 10 of this subchapter, and unless the context otherwise requires, in this Part 19:

"Harass" means to disturb, worry, molest, rally, concentrate, harry, chase, drive, herd or torment.

Subpart B—Prohibitions

§ 19.11 General prohibition.

(a) Except as otherwise authorized by the Fish and Wildlife Act of 1956 as amended, no person shall:

(1) While airborne in any aircraft shoot or attempt to shoot for the purpose of capturing or killing any wildlife;

(2) Use an aircraft to harass any wildlife; or

(3) Knowingly participate in using an aircraft whether in the aircraft or on the ground for any purpose referred to in paragraph (a) (1) or (2);

(b) The acts prohibited in this section include, but are not limited to, any person who—

(1) Pilots or assists in the operation of an aircraft from which another person shoots or shoots at wildlife while airborne; or

(2) While on the ground takes or attempts to take any wildlife by means, aid, or use of an aircraft.

§ 19.12 Exceptions to general prohibitions.

The prohibitions of the preceding section shall not apply to any person who—

(1) Is acting within the scope of his official duties as an employee or authorized agent of a 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; or

(2) Is acting within the limitations of a permit referred to in § 19.21 or 19.31 of this part.

Subpart C—Federal Permits

§ 19.21 Limitation on Federal permits.

No Federal permits will be issued to authorize any person to hunt, shoot, or harass any wildlife from an aircraft, except for Federal permits to scare or herd migratory birds referred to in § 21.41 of this subchapter.

Subpart D—State Permits and Annual Report Requirements

§ 19.31 State permits.

(a) Except as provided in § 19.3, States may issue permits to persons to engage in airborne hunting or harassing of wildlife for purposes of administering or protecting land, water, wildlife, livestock, domestic animals, human life or crops. States may not issue permits for the purpose of sport hunting.

(b) Upon issuance of a permit by a State to a person pursuant to this section, the issuing authority will provide immediate notification to the Special Agent in Charge having jurisdiction according to § 10.22.

§ 19.32 Annual reporting requirements.

(a) Any State issuing permits to persons to engage in airborne hunting or harassing of wildlife or any State whose employees or agents participate in airborne hunting or harassing of wildlife for purposes of administering or protecting land, water, wildlife, livestock, domestic animals, human life or crops, shall file with the Director, an annual report on or before July 1 for the preceding calendar year ending December 31.

(b) The annual report required by this section shall contain the following information as to each such permit issued:

(1) The name and address of each person to whom a permit was issued.

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(2) Permit number and inclusive dates during which permit was valid.

(3) The aircraft number of the aircraft used and the location where such aircraft was based.

(4) Common name and number of the wildlife for which authorization to take was given and a description of the area from which the wildlife were authorized to be taken.

(5) The purpose for which the permit was issued, specifically identifying whether the permit was issued to protect land, water, wildlife, livestock, domestic animals, crops, or human life.

(6) The common name and number of wildlife taken by permittees and State employees or agents.

(c) A compilation of all annual reports required by this section shall be made by the Director and furnished to any State filing such annual report.

PART 21—MIGRATORY BIRD PERMITS

Subpart A—Introduction

Sec. 21.1 Purpose of regulations.

21.2 Scope of regulations.

Subpart B—General Requirements And Exceptions

21.11 General permit requirements.

21.12 General exception to permit requirements.

21.13 Permit exceptions for captive-reared mallard ducks.

21.14 Permit exceptions for captive-reared migratory waterfowl other than mallard ducks.

Subpart C—Specific Permit Provisions

21.21 Import and export permits.

21.22 Banding or marking permits.

21.23 Scientific collecting permits.

21.24 Taxidermist permits.

21.25 Waterfowl sale and disposal permits.

21.26 Special aviculturist permit.

21.27 Special purpose permits.

21.28 Falconry permits.

Subpart D—Control of Depredating Birds

21.41 Depredation permits.

21.42 Authority to issue depredating orders to permit the killing of migratory game birds.

21.43 Depredation order for blackbirds, cowbirds, grackles, crows and magpies.

21.44 Depredation order for designated species of depredating birds in California.

21.45 Depredation order for depredating purple gallinules in Louisiana.

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effective date of Federal protection under the Migratory Bird Treaty Act (16 U.S.C. 703-711) may be possessed or transported without a Federal permit, but may not be imported, exported, purchased, sold, bartered, or offered for purchase, sale, trade, or barter, and all shipments of such birds must be marked as provided by 18 U.S.C. 44 and 14.61 of this subchapter: *Provided*, That no exemption from any statute or regulation shall accrue to any offspring of such birds.

(b) This Part 21, except for § 21.22 (banding or marking permits), does not apply to the bald eagle (*Haliaeetus leucocephalus*) or the golden eagle (*Aquila chrysaetos*) for which regulations are provided in part 22 of this subchapter.

(c) The provisions of this Part are in addition to, and are not in lieu of other regulations of this Subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife (see also Part 13.)

Subpart B—General Requirements and Exceptions

§ 21.11 General permit requirements.

No person shall take, possess, transport, sell, purchase, barter, or offer for sale, purchase or barter, export or import any migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and part 13, or as permitted by regulations in this part or part 20 (the hunting regulations).

§ 21.12 General exception to permit requirements.

The following exceptions to the permit requirement are allowed.

(a) Employees of the Department of the Interior authorized to enforce the provisions of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703-711), may, without a permit, take or otherwise acquire, hold in custody, transport, and dispose of migratory birds or their parts, nests, or eggs as necessary in performing their official duties.

(b) State game departments, municipal game farms or parks, and public museums, public zoological parks, and public scientific or educational institutions may acquire by gift or purchase, possess, transport, and by gift or sale dispose of lawfully acquired migratory birds or their progeny, parts, nests, or eggs without a permit: *Provided*, That such birds may be acquired only from persons authorized by this paragraph or by a permit issued pursuant to this part to possess and dispose of such birds, or from Federal or State game authorities by the gift of seized, condemned, or sick or injured birds. Any such birds, acquired without a permit, and any progeny therefrom may be disposed of only to persons authorized by this paragraph to acquire such birds without a permit. Any person exercising a privilege granted by this paragraph must keep accurate records of such operations showing the species and number of birds acquired, possessed, and

disposed of; the names and addresses of the persons from whom such birds were acquired or to whom such birds were donated or sold; and the dates of such transactions. These records shall be maintained on a calendar year basis and shall be retained for a period of 5 years following the end of the calendar year covered by the records.

§ 21.13 Permit exceptions for captive-reared mallard ducks.

Captive-reared and properly marked mallard ducks, alive or dead, or their eggs may be acquired, possessed, sold, traded, donated, transported, exported (but not imported), and disposed of by any person without a permit, subject to the following conditions, restrictions, and requirements:

(a) Nothing in this section shall be construed to permit the taking of live mallard ducks or their eggs from the wild.

(b) All mallard ducks possessed in captivity, without a permit, shall have been physically marked by removal of the hind toe from the right foot prior to 4 weeks of age and all such ducks hatched, raised, and retained in captivity thereafter shall be so marked prior to reaching 4 weeks of age.

(c) When so marked, such live birds may be disposed of to, or acquired from, any person and possessed and transported in any number at any time or place: *Provided*, That all such birds shall be physically marked prior to sale or disposal regardless of whether or not they have attained 4 weeks of age.

(d) When so marked, such live birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of mallard ducks from the wild: *Provided*, That such birds may be killed by shooting, in any number, at any time, within the confines of any premises operated as a shooting preserve under State license, permit, or authorization; or they may be shot, in any number, at any time or place, by any person for bona fide dog training or field trial purposes: *Provided further*, That the provisions of the hunting regulations (part 20 of this subchapter) and the Migratory Bird Hunting Stamp Act (duck stamp requirement) shall not apply to shooting preserve operations, as provided for in this paragraph, or to bona fide dog training or field trial operations.

(e) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot must remain attached to each carcass: *Provided*, That persons, who operate game farms or shooting preserves under a State license, permit, or authorization for such activities, may remove the marked foot when either the number of his State license, permit, or authorization has first been legibly stamped in ink on the back of each carcass or on the container in which each carcass is maintained, or each carcass is identified by a State band on leg or wing pursuant to

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requirements of his State license, permit, or authorization. When properly marked, such carcasses may be disposed of, or acquired from, any person and possessed and transported in any number at any time or place.

§ 21.14 Permit exceptions for captive-reared migratory waterfowl other than mallard ducks.

Any person may, without a permit, lawfully acquire captive-reared and properly marked migratory waterfowl of all species other than mallard ducks, alive or dead, or their eggs, and possess and transport such birds or eggs and any progeny or eggs therefrom solely for his own use subject to the following conditions and restrictions:

(a) Such birds, alive or dead, or their eggs may be lawfully acquired only from holders of valid waterfowl sale and disposal permits except that properly marked carcasses of such birds may also be lawfully acquired as provided under paragraph (c) of this section.

(b) All progeny of such birds or eggs hatched, raised, and retained in captivity must be physically marked by removal of the hind toe from the right foot prior to reaching 4 weeks of age.

(c) No such birds or eggs or any progeny or eggs thereof may be disposed of by any means, alive or dead, to any other person unless a waterfowl sale and disposal permit has first been secured authorizing such disposal. Provided, That bona fide clubs, hotels, restaurants, boarding houses, and dealers in meat and game may serve or sell to their customers the carcasses of any such birds which they have acquired from the holder of a valid waterfowl sale and disposal permit.

(d) Lawfully possessed and properly marked birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of like species from the wild. (See pt. 20 of this subchapter.)

(e) At all times during possession, transportation, and storage until the raw carcasses of such bird are finally processed immediately prior to cooking, smoking, or canning, the marked foot must remain attached to each carcass unless such carcasses were otherwise properly marked and the foot removed prior to acquisition.

(f) When any such birds, alive or dead, or their eggs are acquired from a waterfowl sale and disposal permittee, the permittee shall furnish a copy of form 3-186, notice of waterfowl sale or transfer, to be retained on file by the buyer during his possession of such birds or eggs or progeny or eggs thereof.

Subpart C—Specific Permit Provisions

§ 21.21 Import and export permits.

(a) **Permit requirement.**—(1) A permit from the U.S. Department of Agriculture is required before any live migratory birds or eggs of the family Anatidae (wild ducks, geese, brant, and swans) may be imported. The permit required by this paragraph may be obtained by letter

of application addressed to USDA—ARS—ANH, Import-Export Animals and Products, Hyattsville, Md. 20782.

(2) An importation permit is required before any live birds, other than waterfowl or their eggs, or dead migratory birds, or their parts, nests, or eggs may be imported. Excepted from the permit required by this paragraph are: (1) Live birds of the family Anatidae, the importation of which is regulated by the preceding paragraph; and (2) migratory birds taken pursuant to the migratory bird hunting regulations, part 20 of this subchapter.

(3) A permit is required before any migratory birds, or their parts, nests, or eggs may be exported. Provided that captive-reared mallards may be exported without a permit as provided in § 21.13.

(b) **Application procedures.**—Applications for permits to import or export migratory birds shall be submitted to the appropriate Special Agent in Charge (see § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) Whether importation or exportation is requested;

(2) Species and numbers of migratory birds or their parts, nests, or eggs to be imported or exported;

(3) Name and address of the person from whom such birds are being imported or to whom they are being exported;

(4) Purpose for which importation or exportation is being made;

(5) Estimated date of arrival or departure of shipment, and the port of entry or exit through which the shipment will be imported or exported; and

(6) Federal and State permit numbers and type of permits authorizing possession, acquisition, or disposition of such birds, their parts, nests, or eggs where such a permit is required.

(c) **Additional permit conditions.**—In addition to the general conditions set forth in Part 13 of this Subchapter B, import and export permits shall be subject to the following conditions:

In addition to any reporting requirement set forth in the permit, a report of the importations or exportations made under authority of such permit shall be submitted in writing to the Director. Such report must be postmarked or actually delivered no later than 10 days following each such importation or exportation.

(d) **Tenure of permits.**—The tenure of import and export permits shall be designated on the face of the permit.

§ 21.22 Banding or marking permits.

(a) **Permit requirement.** A banding or marking permit is required before any person may capture migratory birds for banding or marking purposes or use official bands issued by the Bureau for banding or marking any migratory bird.

(b) **Application procedures.** Applications for banding or marking permits shall be submitted by letter of application addressed to the Bird Banding Laboratory, Office of Migratory Bird Manage-

ment, Bureau of Sport Fisheries and Wildlife, Laurel, Maryland 20810. Each such application shall contain the general information and certification set forth by § 13.12(a) of this subchapter plus the following additional information:

(1) Species and numbers proposed to be banded or marked;

(2) Purpose of banding or marking;

(3) State or States in which authorization is requested; and

(4) Name and address of the public, scientific, or educational institution to which any specimens will be donated that are salvaged pursuant to paragraphs (c)(3) and (4) of this section.

(c) **Additional permit conditions.** In addition to the general conditions set forth in Part 13 of this Subchapter B, banding or marking permits shall be subject to the following conditions:

(1) The banding of migratory birds shall only be by official numbered leg bands issued by the Bureau. The use of any other band, clip, dye, or other method of marking is prohibited unless specifically authorized in the permit.

(2) All traps or nets used to capture migratory birds for banding or marking purposes shall have attached thereto a tag or label clearly showing the name and address of the permittee and his permit number, or the area in which such traps or nets are located must be posted with notice of banding operations posters (form 3-1185, available upon request from the Bird Banding Laboratory, Office of Migratory Bird Management, Bureau of Sport Fisheries and Wildlife, Laurel, Md. 20810) which shall bear the name and address of the permittee and the number of his permit.

(3) The holder of a banding or marking permit may salvage, for the purpose of donating to a public scientific or educational institution, birds killed or found dead as a result of the permittee's normal banding operations, and casualties from other causes. All dead birds salvaged under authority of a migratory bird banding or marking permit must be donated and transferred to a public scientific or educational institution at least every 6 months or within 60 days of the time such permit expires or is revoked, unless the permittee has been issued a special permit authorizing possession for a longer period of time.

(4) Permittees must keep accurate records of their operations and file reports as set forth in the North American Bird Banding Manual, or supplements thereto, in accordance with instructions contained therein.

(d) **Tenure of permits.**—Banding or marking permits are valid for a period of 2 years from the date of issue, unless otherwise stated on the face of the permit.

§ 21.23 Scientific collecting permits.

(a) **Permit requirement.** A scientific collecting permit is required before any person may take, transport, or possess migratory birds, their parts, nests, or eggs for scientific research or educational purposes.

(b) **Application procedures.** Applications for scientific collecting permits

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shall be submitted to the appropriate Special Agent in Charge (See: § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12 (a) of this subchapter plus the following additional information:

- (1) Species and numbers of migratory birds or their parts, nests, or eggs to be taken or acquired when it is possible to determine same in advance;
- (2) Location or locations where such scientific collecting is proposed;
- (3) Statement of the purpose and justification for granting such a permit, including an outline of any research project involved;
- (4) Name and address of the public, scientific, or educational institution to which all specimens ultimately will be donated; and
- (5) If a State permit is required by State law, a statement as to whether or not the applicant possesses such State permit, giving its number and expiration date.

(c) **Additional permit conditions.** In addition to the general conditions set forth in Part 13 of this Subchapter B, scientific collecting permits shall be subject to the following conditions:

- (1) All specimens taken and possessed under authority of a scientific collecting permit must be donated and transferred to the public scientific, or educational institution designated in the permit application within 60 days following the date such permit expires or is revoked, unless the permittee has been issued a special purpose permit (See § 21.27) authorizing possession for a longer period of time.
- (2) Unless otherwise provided on the permit, all migratory game birds taken pursuant to a scientific collecting permit during the open hunting season for such birds must be in conformance with part 20 of this subchapter;
- (3) Unless specifically stated on the permit, a scientific collecting permit does not authorize the taking of live migratory birds from the wild.
- (4) In addition to any reporting requirement set forth in the permit, a report of the scientific collecting activities conducted under authority of such permit shall be submitted to the issuing officer on or before January 10 of each calendar year following the year of issue unless a different date is stated in the permit.
- (d) **Tenure of permit.** The tenure of scientific collecting permits shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue unless a different period of time is prescribed in the permit.

§ 21.24 **Taxidermist permits.**

(a) **Permit requirement.**—A taxidermist permit is required before any person may perform taxidermy services on migratory birds or their parts, nests, or eggs for any person other than himself.

(b) **Application procedures.**—Application for taxidermist permits shall be submitted to the appropriate Special Agent in Charge (See: § 13.11(b) of this subchapter). Each such application must

contain the general information and certification set forth by § 13.12(a) of this subchapter plus the following additional information:

- (1) The address of premises where taxidermist services will be provided;
- (2) A statement of the applicant's qualifications and experience as a taxidermist; and
- (3) If a State permit is required by State law, a statement as to whether or not the applicant possesses such State permit, giving its number and expiration date.

(c) **Permit authorizations.**—A permit authorizes a taxidermist to:

- (1) Receive, transport, hold in custody or possession, mount or otherwise prepare, migratory birds, and their parts, nests, or eggs, and return them to another;
- (2) Sell properly marked, captive reared migratory waterfowl which he has lawfully acquired and mounted. Such mounted birds may be placed on consignment for sale and may be possessed by such consignee for the purpose of sale.

(d) **Additional permit conditions.**—In addition to the general conditions set forth in part 13 of this subchapter B, taxidermist permits shall be subject to the following conditions:

- (1) Permittees must keep accurate records of operations, on a calendar year basis, showing the names and addresses of persons from and to whom migratory birds or their parts, nests, or eggs were received or delivered, the number and species of such, and the date of receipt and delivery. In addition to the other records required by this paragraph, the permittee must maintain in his files, the original of the completed form 3-186, Notice of Waterfowl Sale or Transfer, confirming his acquisition of captive reared, properly marked migratory waterfowl from the holder of a current waterfowl sale and disposal permit.
- (2) Notwithstanding the provisions of paragraph (c) of this section, the receipt, possession, and storage by a taxidermist of any migratory game birds taken by another by hunting is not authorized unless they are tagged as required by § 20.36 of this subchapter. The required tags may be removed during the taxidermy operations but must be retained by the taxidermist with the other records required to be kept and must be reattached to the mounted specimen after mounting. The tag must then remain attached until the mounted specimen is delivered to the owner.

(e) **Tenure of permit.**—The tenure of taxidermist permits or renewals thereof shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue.

§ 21.25 **Waterfowl sale and disposal permits.**

(a) **Permit requirement.** A waterfowl sale and disposal permit is required before any person may lawfully sell, trade, donate, or otherwise dispose of, to another person, any species of captive-reared and properly marked migratory waterfowl or their eggs, except that such a permit is not required for such sales or

disposals of captive-reared and properly marked mallard ducks or their eggs.

(b) **Application procedures.** Applications for waterfowl sale and disposal permits shall be submitted to the appropriate Special Agent in Charge (see: § 13.12(a) of this subchapter plus the following additional information:

- (1) A description of the area where waterfowl are to be kept;
- (2) Species and numbers of waterfowl now in possession and a statement showing from whom these were obtained;
- (3) A statement as to whether or not all such waterfowl are marked as required by the provisions of this Part 21; and
- (4) If a State permit is required by State law, a statement as to whether or not the applicant possesses such State permit, giving its number and expiration date.

(c) **Additional permit conditions.** In addition to the general conditions set forth in Part 13 of this Subchapter B, waterfowl sale and disposal permits shall be subject to the following conditions:

- (1) Permittees may not take migratory waterfowl or their eggs from the wild, and may not acquire such birds or their eggs from any person not authorized by a valid permit issued pursuant to this part to dispose of such birds or their eggs.
- (2) All live migratory waterfowl possessed in captivity under authority of a valid waterfowl sale and disposal permit shall have been, prior to 4 weeks of age, physically marked by removal of the hind toe from the right foot. All offspring of such birds hatched, raised and retained in captivity shall be so marked prior to attaining 4 weeks of age. The preceding does not apply to captive adult geese, swans, and brant which were marked previous to March 1, 1967, by a "V" notch in the web of one foot, nor to such birds held in captivity at public zoological parks, and public scientific or educational institutions.

(3) Such properly marked birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all the applicable hunting regulations governing the taking of like species from the wild.

(4) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot must remain attached to each carcass.

Provided, That permittees who are also authorized to sell game under a State license, permit, or authorization may remove the marked foot from the raw carcasses if the number of his State license, permit, or authorization has first been legibly stamped in ink on the back of each carcass or on the wrapping or container in which each carcass is maintained, or each carcass is identified by a State band on leg or wing pursuant to requirements of his State license, permit, or authorization.

(5) Such properly marked birds, alive or dead, or their eggs may be disposed of in any number, at any time or place, to any person: *Provided*, That all such

birds shall be physically marked prior to sale or disposal regardless of whether or not they have attained 4 weeks of age, and *Provided further*, That on each date that any such birds or their eggs are transferred to another person, the permittee must complete a form 3-186, Notice of Waterfowl Sale or Transfer. (Bureau will provide supplies of form.) The permittee will furnish the original of completed form 3-186 to the person acquiring the birds or eggs; retain one copy in his files as a record of his operations; and, on or before the last day of each month, mail three copies of each form completed during that month to the office of the Bureau of Sport Fisheries and Wildlife which issued his permit.

(d) *Tenure of permits.*—The tenure of waterfowl sale and disposal permits or renewals thereof shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue.

§ 21.26 Special aviculturist permit.

(a) *Permit requirement.*—A special aviculturist permit is required before any person may acquire, propagate, possess, exhibit, or dispose of by exchange, sale, or gift to another person captive-reared migratory waterfowl not physically marked by removal of the hind toe from the right foot.

(b) *Application procedures.*—Applications for special aviculturist permits shall be submitted to the appropriate Special Agent in Charge (see § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following information:

(1) A description of the area where such waterfowl are to be kept;

(2) Statement of number and species of non-toe-clipped waterfowl permittee now possesses, and the number of each species he requests to be authorized to possess;

(3) Statement of how, or when and from whom any non-marked waterfowl presently in possession were acquired;

(4) Statement of justification and need for such permit; and

(5) If a State permit is required by State law, a statement as to whether or not the applicant possesses such State permit, giving its number and expiration date.

(c) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, special aviculturist permits shall be subject to the following conditions:

(1) Permittees may not take migratory waterfowl or their eggs from the wild.

(2) Permittees may not dispose of migratory waterfowl which are not marked by physical removal of the hind toe from the right foot prior to 4 weeks of age to any person who does not hold a valid special aviculturist permit, nor acquire such unmarked waterfowl from any person who is not the holder of a valid special aviculturist permit.

(3) On each date that any such unmarked birds or their eggs are transferred to another special aviculturist permittee, the permittee transferring the birds or their eggs must complete a form 3-186, Notice of Waterfowl Sale or Transfer. The permittee will furnish the original of completed form 3-186 to the permittee acquiring the birds or eggs; retain one copy in his files as a record of his operations; and, on or before the last day of each month, mail three copies of each form completed during that month to the issuing official. The permittee shall clearly indicate on such form 3-186 that the waterfowl sold or transferred were "unmarked" and shall place his special aviculturist permit number on the form, as well as the permit number of the transferee, and shall not report such sales under authority of any other Federal permit. The Bureau will provide form 3-186 to permittees upon request.

(4) Permittees shall keep records in conformance with the provisions of § 13.46 of this subchapter. Such records shall be kept separately from records of activities under any other Federal permit held by the permittee.

(5) Within 30 days following December 31 of each calendar year, permittee must file a report, negative or otherwise, on a form furnished for that purpose. This form will require each permittee to record information concerning his transactions during the year, and will include but may not be limited to, the number of each species of non-toe-clipped waterfowl and waterfowl eggs on hand at the beginning of the period covered by the report, the name, address, and aviculturist permit number of each permittee from whom he acquired and to whom he transferred any non-toe-clipped waterfowl or waterfowl eggs, and the number of each species of non-toe-clipped waterfowl and waterfowl eggs left on hand as of December 31 of the year covered in the report.

(d) *Tenure of permit.*—The tenure of special aviculturist permits shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue unless a different period of time is prescribed in the permit.

§ 21.27 Special purpose permits.

Subject to the discretion and policies of the Bureau, permits may be issued for migratory bird activities outside the scope of the standard form permits of this part, upon a sufficient showing of benefit to the migratory bird resource, important research reasons, humane, or other compelling justification.

(a) *Permit requirement.*—A special purpose permit is required before any person may lawfully take, salvage, otherwise acquire, transport, or possess migratory birds, their parts, nests, or eggs for any purpose not covered by the standard form permits of this part.

(b) *Application procedures.*—Applications for special purpose permits shall be submitted to the appropriate Special Agent in Charge (see § 13.11(b) of this subchapter). Each such application must

contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) A detailed statement describing the project or activity which requires issuance of a permit, purpose of such project or activity, and a delineation of the area in which it will be conducted. (Copies of supporting documents, research proposals, and any necessary State permits should accompany the application);

(2) Numbers and species of migratory birds involved where same can reasonably be determined in advance; and

(3) Statement of disposition which will be made of migratory birds involved in the permit activity.

(c) *Additional permit conditions.*—In addition to the general conditions set forth in Part 13 of this Subchapter B, special purpose permits shall be subject to the following conditions:

(1) Permittees shall file with the issuing officer an annual report of operations not later than January 31 of each year for the preceding calendar year or any portion thereof during which the permit was in force, describing in detail operations under the permit, number and species of migratory birds acquired, disposed of, and an inventory of those on hand as of December 31.

(2) Permittees shall make such other reports as may be requested by the issuing officer.

(d) *Tenure of permits.*—The tenure of special purpose permits shall be limited to the dates which appear on its face, but in no case shall be longer than the second full calendar year ending December 31 following the date of issue.

§ 21.28 Falconry permits.

(a) *Definitions.* In addition to definitions contained in part 10 of this subchapter, and unless the context otherwise requires, in this section:

"Falconry" means the sport of taking quarry by means of trained raptors.

"Raptor" means any migratory bird of the family Accipitridae (excluding bald and golden eagles), Falconidae, and Strigidae.

(b) *Interim rules.* Until final regulations are promulgated providing for permits, any person may, without a Federal permit, take, possess, and transport, but not sell, barter, purchase, import or export, live raptors for falconry purposes only in accordance with laws and regulations of the State where such act occurs: *Provided*, That no person may take in any one calendar year more than three raptors, and *Provided further*, That no person may take any raptor on the endangered native wildlife list (50 CFR 17.12) nor may any State issue a permit which will allow the taking of any such endangered raptor without prior written approval from the Director.

Subpart D—Control of Depredating Birds

§ 21.41 Depredation permits.

(a) *Permit requirement.* A depredation permit is required before any person may scare, herd, or kill migratory birds for depredation control purposes.

(b) *Applicant procedures.* Applications for depredation permits shall be submitted to the appropriate Special Agent in Charge (see § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) A description of the area where depredations are occurring;

(2) The nature of the crops or other interests being injured;

(3) The extent of such injury; and

(4) The particular species of migratory birds committing the injury.

(c) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, depredation permits shall be subject to the following conditions:

(1) Permittees may not kill migratory birds unless specifically authorized on the permit.

(2) Unless otherwise specifically authorized, when permittees are authorized to kill migratory birds they may do so only with a shotgun not larger than No. 10 gauge fired from the shoulder, and only on or over the threatened area or area described on the permit.

(3) Permittees may not use blinds, pits, or other means of concealment, decoys, duck calls, or other devices to lure or entice birds within gun range.

(4) All migratory birds killed shall be retrieved by the permittee and turned over to a Bureau representative or his designee for disposition to charitable or other worthy institutions for use as food, or otherwise disposed of as provided by law.

(5) Only persons named on the permit are authorized to act as agents of the permittee under authority of the permit.

(d) *Tenure of permits.* The tenure of depredation permits shall be limited to the dates which appear on its face, but in no case shall be longer than one year.

§ 21.42 Authority to issue depredating orders to permit the killing of migratory game birds.

Upon the receipt of evidence clearly showing that migratory game birds have accumulated in such numbers in a particular area as to cause or about to cause serious damage to agricultural, horticultural, and fish cultural interests, the Director is authorized to issue by publication in the *FEDERAL REGISTER* a depredation order to permit the killing of such birds under the following conditions:

(a) That such birds may only be killed by shooting with a shotgun not larger than No. 10 gauge fired from the shoulder, and only on or over the threatened area or areas;

(b) That shooting shall be limited to such time as may be fixed by the Director on the basis of all circumstances involved. If prior to termination of the period fixed for such shooting, the Director receives information that there no longer exists a serious threat to the area or areas involved, he shall without delay cause to be published in the *FEDERAL REGISTER* an order of revocation;

(c) That such migratory birds as are killed under the provisions of any depredation order may be used for food or

donated to public museums or public scientific and educational institutions for exhibition, scientific, or educational purposes, but shall not be sold, offered for sale, bartered, or shipped for purpose of sale or barter, or be wantonly wasted or destroyed; *Provided*, That any migratory game birds which cannot be so utilized shall be disposed of as prescribed by the Director;

(d) That any order issued pursuant to this section shall not authorize the killing of the designated species of depredating birds contrary to any State laws or regulations. The order shall specify that it is issued as an emergency measure designed to relieve depredations only and shall not be construed as opening, reopening, or extending any open hunting season contrary to any regulations promulgated pursuant to section 3 of the Migratory Bird Treaty Act.

§ 21.43 Depredation order for blackbirds, cowbirds, grackles, crows and magpies.

A Federal permit shall not be required to control yellow-headed red-winged, bi-colored red-winged, tri-colored red-winged, and Brewer's blackbirds, cowbirds, all grackles, crows, and magpies, when found committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance. *Provided*:

(a) That none of the birds killed pursuant to this section, nor their plumage, shall be sold or offered for sale, but may be possessed, transported, and otherwise disposed of or utilized.

(b) That any person exercising any of the privileges granted by this section shall permit at all reasonable times including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require, concerning said operations.

(c) That nothing in this section shall be construed to authorize the killing of such birds contrary to any State laws or regulations; and that none of the privileges granted under this section shall be exercised unless the person possesses whatever permit as may be required for such activities by the State concerned.

§ 21.44 Depredation order for designated species of depredating birds in California.

In any county in California in which meadowlarks, horned larks, golden-crowned, white-crowned, and other crowned sparrows, goldfinches, house finches, acorn woodpeckers, Lewis woodpeckers, and flickers are, under extraordinary conditions, seriously injurious to agricultural or other interests, the Commissioner of Agriculture may, without a permit, kill or cause to be killed under his general supervision such of

the above migratory birds as may be necessary to safeguard any agricultural or horticultural crop in the county:

Provided:

(a) That such migratory birds shall be killed only when necessary to protect agricultural or horticultural crops from depredation; that none of the above migratory birds killed, or the parts thereof, or the plumage of such birds, shall be sold or removed from the area where killed; but that all such dead migratory birds shall be buried or otherwise destroyed within this area, except that any specimens needed for scientific purposes, as determined by the State or the Director shall not be destroyed.

(b) That any Commissioner of Agriculture exercising the privileges granted by this section shall keep records of the persons authorized by the Commissioner to kill such migratory birds, and the estimated number of such birds killed pursuant to the exercise of his authority, and the Commissioner shall submit a report thereof to the Director on or before December 31 of each year or whenever the Director so requests.

§ 21.45 Depredation order for depredating purple gallinules in Louisiana.

Landowners, sharecroppers, tenants, or their employees or agents, actually engaged in the production of rice in Louisiana, may, without a permit, shoot purple gallinules (*Poronornis martinica*) when found committing or about to commit serious depredations to growing rice crops on the premises owned or occupied by such persons: *Provided*:

(a) That purple gallinules may only be killed pursuant to this section between May 1 and August 15 in any year.

(b) That purple gallinules killed pursuant to this section shall not be transported or sold or offered for sale except that, such transportation within the area, as may be necessary to bury or otherwise destroy the carcasses of such birds is permitted: *Provided*, That the Director or the State agricultural department, college, or other public institution may requisition such purple gallinules killed as may be needed for scientific investigations: *Provided further*, That any purple gallinules killed under authority of this section may also be donated to charitable institutions for food purposes.

(c) That any person exercising any of the privileges granted by this section shall permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require, concerning said operations.

(d) That nothing in this section shall be construed to authorize the killing of such migratory birds contrary to any State laws or regulations; and that none of the privileges granted under this section shall be exercised unless the person possesses whatever permit as may be re-

quired for such activities by the State of Louisiana.

(e) That any person authorized by this section to exercise the privileges granted therein shall maintain records of the number of birds killed on the premises and shall submit a report thereon, on or before December 31 of each year, to the Director.

PART 22—EAGLE PERMITS

Subpart A—Introduction

- Sec.
22.1 Purpose of regulations.
22.2 Scope of regulations.
22.3 Definitions.

Subpart B—General Requirements

- 22.11 General permit requirements.
22.12 Disposition of eagles by the Bureau.

Subpart C—Eagle Permits

- 22.21 Permits for scientific or exhibition purposes.
22.22 Permits for Indian religious purposes.
22.23 Permits for taking depreeding eagles.
22.24 Permits for falconry purposes. [Reserved]

Subpart D—Depredation Control Orders on Golden Eagles

- 22.31 Golden eagle depredations control order on request of Governor of a State.
22.32 Conditions and limitations on taking under depredation control order.

AUTHORITY: Bald Eagle Protection Act, sec. 2, 94 Stat. 251, as amended 76 Stat. 1246 and 66 Stat. 1065, 16 U.S.C. 669a.

Subpart A—Introduction

§ 22.1 Purpose of regulations.

The regulations contained in this part govern the taking, possession, and transportation of bald and golden eagles for scientific, educational, and depredations control purposes and for the religious purposes of Indian tribes. The import, export, purchase, sale, or barter of bald or golden eagles, their parts, nests, or eggs is not permitted by any regulation of this subchapter B.

§ 22.2 Scope of regulations.

(a) Bald eagles, alive or dead, or their parts, nests, or eggs lawfully acquired prior to June 8, 1940, and golden eagles, alive or dead, or their parts, nests, or eggs lawfully acquired prior to October 24, 1962, may be possessed, or transported without a Federal permit, but may not be imported, exported, purchased, sold, traded, bartered, or offered for purchase, sale, trade or barter; and all shipments containing such birds, parts, nests, or eggs must be marked as provided by 18 U.S.C. 44 and § 14.81 of this Subchapter; Provided, That no exemption from any statute or regulation shall accrue to any offspring of such birds.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of this subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife. (see also Part 13 of this subchapter)

§ 22.3 Definitions.

In addition to definitions contained in Part 10 of this subchapter, and unless

the context otherwise requires, in this Part 22:

"Take" includes also pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb.

Subpart B—General Requirements

§ 22.11 General permit requirements.

No person shall take, possess, or transport any bald eagle (*Haliaeetus leucocephalus*) or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and Part 13 and under § 22.22 (banding or marking permits), or under a depredation order issued under Subpart D of this part.

§ 22.12 General restrictions.

No person shall sell, purchase, barter, trade, or offer for sale, purchase, barter, or trade, export or import, at any time or in any manner, any bald eagle (*Haliaeetus leucocephalus*), or any golden eagle (*Aquila chrysaetos*) or the parts, nests, or eggs of such birds, and no permit will be issued to authorize such acts.

§ 22.13 Disposition of eagles by the Bureau.

Any bald eagles or golden eagles or their parts, nest, or eggs seized for any violation under this part and forfeited to the Government, or otherwise acquired by the Bureau, may be placed on loan to public museums, public scientific or educational institutions, or public zoological parks, and suitable parts or plumage of such birds may be donated to individual Indians authorized by permit to possess such items for religious purposes.

Subpart C—Eagle Permits

§ 22.21 Permits for scientific or exhibition purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing taking, possession, or transportation of bald eagles or golden eagles, or their parts, nests, or eggs for the scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks.

(a) Application procedure. Applications for permits to take, possess, or transport bald or golden eagles, their parts, nests or eggs for scientific or exhibition purposes shall be submitted to the appropriate Special Agent in Charge (See: § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following information:

- (1) Species of eagle and number of such birds, nests, or eggs proposed to be taken, possessed, or transported;
- (2) Specific locality in which taking is proposed, if any;
- (3) Method taking proposed, if any;
- (4) If not taken, the source of eagles and other circumstances surrounding the proposed acquisition or transportation;
- (5) Name and address of the public museum, public scientific societies, or public zoological park for which they are intended.

(6) Complete explanation and justification of request, nature of project or study, number of specimens now at institution, reason these are inadequate, and other appropriate explanations.

(b) Additional permit conditions. In addition to the general conditions set forth in Part 13 of this Subchapter B, permits to take, possess, or transport bald or golden eagles for scientific or exhibition purposes, shall be subject to the following condition: In addition to any reporting requirement set forth in the permit, the permittee shall submit a report of activities conducted under the permit to the Special Agent in Charge within 30 days after expiration of the permit.

(c) Issuance criteria. The Director shall conduct an investigation and not issue a permit to take, possess, or transport bald or golden eagles for scientific or exhibition purposes unless he has determined that such taking, possession, or transportation is compatible with the preservation of the bald or golden eagle. In making such determination, the Director shall consider, among other criteria, the following:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild populations of bald and golden eagles;

(2) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application;

(3) Whether the justification of the purpose for which the permit is being requested is adequate to justify the removal of the eagle from the wild or otherwise change its status; and

(4) Whether the applicant has demonstrated that the permit is being requested for bona fide scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks.

(d) Tenure of permits. The tenure of permits to take bald or golden eagles for scientific or exhibition purposes shall be that shown on the face of the permit.

§ 22.22 Permits for Indian religious purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the taking, possession, and transportation of bald or golden eagles, or their parts, nests, or eggs for the religious use of Indians.

(a) Application procedure. Applications for permits to take, possess, or transport bald or golden eagles, their parts, nests, or eggs for the religious use of Indians shall be submitted to the appropriate Special Agent in Charge (See: § 13.11(b) of this subchapter). Only applications from individual Indians will be accepted. Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

- (1) Species and number of eagles or feathers proposed to be taken, or acquired by gift or inheritance.

(2) State and local area where the taking is proposed to be done, or from whom acquired.

(3) Name of tribe with which applicant is associated.

(4) Name of tribal religious ceremony(ies) for which required.

(5) Applicant must attach a certification from the Bureau of Indian Affairs that the applicant is an Indian.

(6) Applicant must attach a certification from a duly authorized official of the religious group that the applicant is authorized to participate in such ceremonies.

(b) *Additional permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B, permits to take, possess, and transport bald or golden eagles, their parts, nests or eggs, for the religious use of Indians shall be subject to the following conditions:

(1) Bald or golden eagles or their parts possessed under permits issued pursuant to this section are not transferable, except such birds or their parts may be handed down from generation to generation, or from one Indian to another in accordance with tribal or religious customs; and

(2) Permittees shall make such reports or submit inventories of eagle feathers or parts on hand as may be requested by the Special Agent in Charge.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take, possess, and transport bald or golden eagles, their parts, nests or eggs, for the religious use of Indians unless he has determined that such taking, possession, and transportation is compatible with the preservation of the bald or golden eagle. In making such determination, the Director shall consider, among other criteria, the following:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild populations of bald or golden eagles; and

(2) Whether the applicant is an Indian who is authorized to participate in bona fide tribal religious ceremonies.

(d) *Tenure of permits.* Any permit issued pursuant to this section under which the applicant is authorized to take eagles shall be valid during the period specified on the face thereof which shall in no case be longer than 1 year from date of issue. Any permit issued pursuant to this part which authorizes the permittee to transport and possess eagles or their parts shall be valid for the life of the permittee unless sooner revoked.

§ 22.23 Permits to take depredating eagles.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the taking of depredating bald or golden eagles.

(a) *Application procedure.* Applications for permits to take depredating bald or golden eagles shall be submitted

to the appropriate Special Agent in Charge (Sec. § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) Species and number of eagles proposed to be taken;

(2) Location and description of property where taking is proposed;

(3) Inclusive dates for which permit is requested;

(4) Method of taking proposed;

(5) Kind and number of livestock or domestic animals owned by applicant;

(6) Kind and amount of alleged damage; and

(7) Name, address, age, and business relationship with applicant of any person the applicant proposes to act for him as his agent in the taking of such eagles.

(b) *Additional permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B, permits to take depredating bald or golden eagles shall be subject to the following conditions:

(1) Bald or golden eagles may be taken under permit by firearms, traps, or other suitable means except by poison or from aircraft;

(2) The taking of eagles under permit may be done only by the permittee or his agents named in the permit;

(3) Any eagle taken under authority of such permit will be promptly turned over to a Bureau agent or other game law enforcement officer designated in the permit; and

(4) In addition to any reporting requirement set forth in the permit, the permittee shall submit a report of activities conducted under the permit to the Special Agent in Charge within 10 days following completion of the taking operations or the expiration of the permit whichever occurs first.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take depredating bald or golden eagles unless he has determined that such taking is compatible with the preservation of the bald or golden eagle. In making such determination the Director shall consider the following:

(1) The direct or indirect effect which issuing such permit would be likely to have upon the wild population of bald or golden eagles;

(2) Whether there is evidence to show that bald or golden eagles have in fact become seriously injurious to wildlife or to agriculture or other interests in the particular locality to be covered by the permit, and the injury complained of is substantial; and

(3) Whether the only way to abate the damage caused by the bald or golden eagle is to take some or all of the offending birds.

(d) *Tenure of permits.* The tenure of any permit to take bald or golden eagles for depredation control purposes shall be that shown on the face thereof, and

shall in no case be longer than 90 days from date of issue.

§ 22.24 Permits for falconry purposes. [Reserved]

Subpart D—Depredation Control Orders on Golden Eagles

§ 22.31 Golden eagle depredations control order on request of Governor of a State.

(a) Whenever the Governor of any State requests permission to take golden eagles to seasonally protect domesticated flocks and herds in such State, the Director shall make an investigation and if he determines that such taking is necessary to and will seasonally protect domesticated flocks and herds in such States he shall authorize such taking in whatever part or parts of the State and for such periods as he determines necessary to protect such interests.

(b) Requests from the Governor of a State to take golden eagles to seasonally protect domesticated flocks and herds must be submitted in writing to the Director listing the periods of time during which the taking of such birds is recommended, and including a map of the State indicating the boundaries of the proposed area of taking. Such requests should include a statement of the facts and the source of such facts that in the Governor's opinion justifies the request. After a decision by the Director, the Governor will be advised in writing concerning the request and a notice will be published in the FEDERAL REGISTER.

§ 22.32 Conditions and limitations on taking under depredation control order.

(a) Whenever the taking of golden eagles without a permit is authorized for the seasonal protection of livestock, such birds may be taken by firearms, traps, or other suitable means except by poison or from aircraft.

(b) Any person exercising any of the privileges granted by this Subpart D must permit all reasonable times, including during actual operations, any Bureau agent, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require concerning such operations.

(c) The authority to take golden eagles under a depredations control order issued pursuant to this Subpart D only authorizes the taking of golden eagles when necessary to seasonally protect domesticated flocks and herds, and all such birds taken must be reported and turned over to a local Bureau Agent.

The changes in these regulations made by the original notice of proposed rule-making (38 FR 10208), and the changes adopted in this rulemaking are virtually all editorial or structural changes. The only substantive changes involve a relaxation and clarification of certain pro-

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cedures and statements of Agency policy in making determinations on permit applications. Considering the extremely long period during which the public has had actual notice of these changes, and considering the importance of making these rules effective as soon as possible for public convenience, it has been determined that there is good cause to make this rulemaking effective upon publication pursuant to 5 U.S.C. 553.

Effective date: These regulations become effective on January 4, 1974.

CURTIS BOWLEY,
*Acting Assistant Secretary
for Fish and Wildlife and Parks.*

DECEMBER 27, 1973.

[FIR Doc.74-255 Filed 1-3-74; 8:45 am]

QUESTION NO. 16

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
U.S. FISH AND WILDLIFE SERVICE
UNITED STATES DEPARTMENT OF THE INTERIOR
AND THE
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
UNITED STATES DEPARTMENT OF COMMERCE
REGARDING
JURISDICTIONAL RESPONSIBILITIES AND LISTING PROCEDURES
UNDER THE ENDANGERED SPECIES ACT OF 1973

WHEREAS, under the Endangered Species Act of 1973, (16 U.S.C. §§1531-43) (the "Act"), the Secretary of the Interior and the Secretary of Commerce share, among other things, the responsibility to determine species of fauna and flora to be endangered species and threatened species;

WHEREAS, the Secretary of the Interior and the Secretary of Commerce have delegated those responsibilities to the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, respectively;

WHEREAS, the Reorganization Plan No. 4 of 1970, which under the Act, governs the responsibilities of each Secretary, does not adequately set forth those species of fauna and flora under the jurisdiction of the Secretary of the Interior and those under the jurisdiction of the Secretary of Commerce;

WHEREAS, the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, wish to establish procedures for the implementation of the Act and for the amendment of the United States Lists of Endangered Species and Threatened Species;

WHEREAS, the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, consider it desirable to define their respective jurisdictions with respect to the Act;

NOW THEREFORE, the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, hereby agree as follows with respect to their responsibilities for species of fauna subject to the Act and for the addition of species of fauna to the United States Lists of Endangered Species and Threatened Species, and for other revisions of those Lists:

1. (a) The Director, National Marine Fisheries Service, shall have jurisdiction over and shall determine whether species in the following classes, orders, or groups of animals shall be added to the lists of endangered species and threatened species or changed in status from threatened to endangered:

All species of the order Cetacea; all species of the order Pinnipedia, other than walruses; all commercially harvested species of the phylum Mollusca and the class Crustacea which spend all of their lifetimes in estuarine waters; and all other nonmammalian species (except members of the classes Aves, Amphibia, and Reptilia), which either (i) reside the major portion of their lifetimes in marine waters; or (ii) are species which spend part of their lifetimes in estuarine waters, if the major portion of the remaining time (the time which is not spent in estuarine waters) is spent in marine waters.

For the purposes of this Memorandum of Understanding: (i) "commercially harvested species" is defined to mean species which are commercially harvested from the estuary at the time this Memorandum is signed; and (ii) "lists of endangered species and threatened species" is defined to mean the endangered species and threatened species listed pursuant to section 4 of the Act.

(b) The proposed determination of the Director, National Marine Fisheries Service, that such a species should be added to the lists of endangered species and threatened species or changed in status from threatened to endangered, and the corresponding proposed listing by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal

Register, signed by both Directors. Comments on the proposed listing shall be directed to the Director, National Marine Fisheries Service, who shall conduct all appropriate or required status reviews, consultations, and notifications, and who may, in his discretion, hold any appropriate hearings. The final determination of the Director, National Marine Fisheries Service, that such a species should be added to the lists of endangered species or threatened species or changed in status from threatened to endangered, and the corresponding listing by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register, signed by both Directors.

(c) Both Directors must jointly agree whether such a species shall be removed from the lists of endangered species and threatened species or changed in status from endangered to threatened.

(d) The proposed action by the Directors with respect to whether such a species should be removed from the lists of endangered species and threatened species or changed in status from endangered to threatened, and the corresponding proposed revision of those lists by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register, signed by both Directors. Comments on the proposed revision of those lists shall be directed to both

Directors, unless otherwise agreed in writing by the Directors. If both Directors desire hearings on the proposed revision, joint hearings shall be held, unless otherwise agreed in writing by the Directors. The Director, National Marine Fisheries Service, shall conduct all appropriate or required status reviews, consultations, and notifications. The final action by the Directors with respect to whether such a species should be removed from the lists of endangered and threatened species or changed in status from endangered to threatened, and the corresponding revision of those lists by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register, signed by both Directors.

2. The Director, U.S. Fish and Wildlife Service, shall have jurisdiction over, and shall determine whether species in the following classes, orders, or groups of animals shall be added to or removed from the lists of endangered species and threatened species or changed in status from either category to the other, and shall list such species in his discretion.

All members of the classes Mammalia (except members of the order Cetacea, and members of the order Pinnipedia, other than Walruses), Aves, Reptilia (except marine turtles of the families Cheloniidae and Dermochelidae), Amphibia, and all other species (except species of the orders Cetacea and Pinnipedia, other than Walruses) which either (i) spend the major portion of their lifetimes on land and/or in fresh water; or (ii) are species

which spend part of their lifetimes in estuarine waters, if the major portion of the remaining time (the time which is not spent in estuarine waters) is spent on land and/or in fresh water.

3. (a) The Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, shall have joint jurisdiction over, and shall jointly determine whether species of fauna not specifically assigned in paragraphs 1 and 2 above shall be added to or removed from the lists of endangered species and threatened species or changed in status from one category to the other. In the case of addition, removal, or change in status of one of these species, the procedure set forth in paragraph 3(b) shall be followed with all of the appropriate actions to be done jointly, with the concurrence of both Directors, including any notices of review, proposed determinations, notifications, hearings, consultations, receipt of comments, and final determinations; provided, that, the Directors may agree in writing that hearings and the receipt of comments may be the responsibility of either Director.

(b) The proposed joint determination by the Director, National Marine Fisheries Service, and the Director, U.S. Fish and Wildlife Service, and the corresponding proposed revision of the lists by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register,

signed by both Directors. Where both Directors concur in the determination that a final revision of the lists should be made, the final determination by the Directors and the corresponding final revision of the lists by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register, signed by both Directors.

4. Final allocation of responsibilities under the Endangered Species Act of 1973, with respect to marine turtles of the families Cheloniidae and Dermochelidae must be resolved at some future time. For this reason, it is agreed that until this particular issue is resolved, all actions respecting such turtles will be undertaken jointly, using the same joint actions, requirements, and procedures contained in paragraph 3(b).

5. In emergency situations, regulations promulgated with respect to listing pursuant to the provisions of section (4)(f)(2)(B)(ii) of the Act shall be undertaken using the jurisdictional assignments and the joint procedures, to the extent appropriate, described in paragraphs 1, 2, 3, and 4.

6. Neither agency will unilaterally act on the listing of any plant species until the jurisdictional issue, with respect to plants, is resolved.

7. Each Director agrees that he and his staff will, at all stages, consult with and consider the recommendations of the other Director and his staff with respect to all actions proposed to be taken under the authority of the Memorandum of Understanding.

8. This Memorandum of Understanding has been executed in order to permit an orderly, efficient administration of the Act and should not be construed to govern the activities of either Secretary with respect to any other program administered by them.

This Memorandum of Understanding will become effective when signed by the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service. Either of the aforementioned Directors may cancel this Memorandum of Understanding upon thirty days written notice to the other Director.

Robert B. Phoenix
Director, NMFS

Special

L. C. Greenwalt
Director, USFWS

AUG 28 1974

AUG 28 1974

Date

Date

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 19 1974

Dear Madam Chairman:

Your Committee has requested the views of this Department on H.R. 15893 and H.R. 16079, similar bills "To amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972."

H.R. 15893 would amend section 9(b) of the Endangered Species Act of 1973 (16 U.S.C. 1533; 87 Stat. 894) to exempt from the prohibited acts commercial activities involving parts and products of endangered fish and wildlife taken prior to December 28, 1973. This provision would allow the parts or products of endangered species held in the course of a commercial activity on the date of enactment of the Endangered Species Act of 1973 to be imported, exported, transported, offered for sale or sold in interstate or foreign commerce.

H.R. 16079 would amend section 9 of the Endangered Species Act of 1973 by adding a new subsection (h) to exempt from the prohibited acts identified in clause (E) and (F) of section 9(a)(1) of the Act marine mammals or their products "taken and, if imported before December 21, 1972." This provision would allow species of marine mammals which are or may be listed as endangered or their products, held in the course of a commercial activity and, if imported before the effective date of the Marine Mammal Protection Act of 1972, to be transported and sold in interstate or foreign commerce.

The problem addressed by these bills is of great concern to this Department. Since enactment of the 1973 Endangered Species Act, we have become aware of situations where individuals legally possessed, prior to enactment parts or products of endangered species for the purpose of sale or for other activity of a commercial nature. A similar situation exists with respect to live animals. For example, prior to enactment of the 1973 Endangered Species Act, zoos and circuses and various other types of live animal dealers regularly engaged in the sale and interstate transport of surplus or unwanted animals which were Federally listed as endangered. The Endangered Species Act of 1969 did not prohibit such commercial activity, but prohibited only the importation of species listed as endangered. With passage of the 1973 Act, such commercial activity was prohibited.

This Department fully supported this prohibition so as to reduce the demand for certain animals whose continued existence was, and is, in jeopardy. However, we recognize that such a prohibition has also created economic hardship on many individuals who were engaged in legitimate commercial activities prior to passage of the 1973 Act. It is our judgment that the commercial demand for endangered animals should be reduced, and the United States should take the lead by reducing the demand of its citizens. However, we believe that a gradual reduction of this demand would create less severe economic hardship for many legitimate commercial enterprises.

As we testified at the hearing on these bills before your subcommittee on Fisheries and Wildlife Conservation and the Environment, we do not believe that the amendments to the Endangered Species Act proposed by H.R. 15893 and H.R. 16043 would resolve the problems with respect to live animals nor would they provide for such a gradual reduction of the demand. At that hearing, we recommended that the Committee defer action on these bills until we had an opportunity to confer with representatives of the Department of Commerce with a view to proposing more comprehensive amendments to alleviate these problems. Accordingly, we recommend that the following amendments to the Act be adopted in lieu of either H.R. 15893 or H.R. 16043:

1. Section 10(b) should be amended to add a new subparagraph(4) to read as follows:

"(4) The Secretary may grant, under such terms and conditions as he may prescribe, exemptions to the prohibitions on exportation in section 9(a)(1)(A), and to the prohibitions in sections 9(a)(1)(E) and (F) to persons for stocks or inventories of parts or products of endangered species lawfully held within the United States on December 28, 1973, provided that such exemptions shall not extend to any parts or products acquired after December 28, 1973, and further provided that no such exemption shall extend beyond three years from the date of enactment of this amendment, except that this subsection shall not apply to persons lawfully holding parts or products of marine mammals, as the word is defined in the Marine Mammal Protection Act of 1972, for which enforcement lies with the Secretary of Commerce. He may grant, under such terms and conditions as he may prescribe, exemptions to the prohibitions in sections 9(a)(1)(A), (E), and (F) for species so defined. For parts or products of species, the Secretary may grant exemptions to the prohibitions in Sections 9(a)(1)(A), (E), and (F) under such terms and conditions as he may prescribe. Notwithstanding the

provisions of Section 4(r)(2)(A), regulations published by the Secretary of Commerce in connection with this exemption will be effective as of the date of publication."

2. Section 10(b) should be further amended to add a subparagraph (5) to read as follows:

"(5) The Secretary may grant, under such terms and conditions as he may prescribe, exemptions to the prohibitions in section 9(a)(1)(A), (E) and (F) to persons subject to the jurisdiction of the United States for live endangered species of fish and wildlife lawfully held in captivity on December 28, 1973."

3. Section 4 should be amended to add a new subsection (g) to read as follows:

"(g) The Secretary may list, by regulation, captive-bred, self-sustaining endangered species within the United States and may allow exemptions from the prohibitions of Section 9 for such species. Whenever the Secretary lists a species pursuant to this subsection, he shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species."

Amendment No. 1 would add a new type of economic hardship exemption to those already found in Section 10(b). It would allow an exemption only to certain of the prohibitions, namely those dealing with exportation and interstate commerce, and then only for parts or products of endangered species held within the United States on December 28, 1973. The exemption has a maximum time period of three years from the date of the amendment. We believe that three years is sufficient time for most holders of stocks to dispose of them, without being so long as to effectively recreate a market for the products of endangered species. At the end of the three year period, Congress will be able to review the situation.

The Secretary is given authority to set the terms and conditions of such exemptions. These are expected to include standards of proof of the exempt status of parts and products, requirements for inventories or bonded warehouse procedures where appropriate, requirements for the inspection of books and records, and appropriate reporting and inspection requirements.

The final exception to proposed amendment No. 1 is intended to grant the Secretary of Commerce authority to deal with the specific problem of large stocks of sperm whale products, such as scrimshaw and ambergris. Some wholesale dealers have inventories of such products that may require more than three years to distribute. Terms and conditions of exemptions for marine mammal parts and products will include registration of inventories with the Secretary, keeping of complete sales records, filing of such reports as the Secretary may require, and provisions for duly authorized representatives of the Secretary to have access to the inventories and records of those holding inventories. Full use will be made of the rebuttable presumption authorized in Section 9(b) of the Act.

Amendment No. 2 would create a further economic hardship exemption. This exemption is applicable to live endangered fish and wildlife for certain otherwise prohibited actions, namely import, export, sale and interstate commerce.

The purpose of this exemption is to allow those persons within the United States who owned live endangered fish or wildlife on December 28, 1973, to continue to utilize that wildlife in the course of a commercial activity which involves interstate or international travel. It would primarily benefit those who use such fish or wildlife in traveling circuses or exhibitions, or commercial zoos transferring animals. The exemption will expire naturally at the end of the useful life of the fish or wildlife.

This exemption, like the one described above under new Section 10 (b)(4) will ameliorate the effect of the new prohibitions of this Act, for those who could not qualify for the exemption in Section 9(b). At the same time, the Secretary would have sufficient discretion to prevent a drain on the wild population of the endangered fish and wildlife, through the stimulation of a market, either directly or indirectly.

Amendment No. 3 would authorize the Secretary to designate for exemption from certain prohibitions captive-bred live endangered fish and wildlife, provided that the population of captive animals of that species is self-sustaining. Whenever the Secretary designates species as captive-bred self-sustaining, he must issue such regulations, which may include permit or licensing requirements, as are necessary to provide for the conservation of the species. This authority is similar to the authority under Section 4(d) for threatened species.

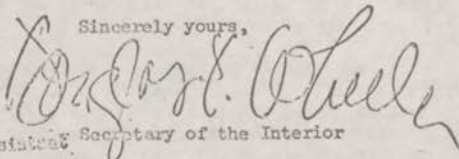
In addition to the above amendments we would suggest that Section 11(e)(3) of the Act be amended by adding the following words after the words "Such persons may," and before the words "execute and serve any arrest warrant,":

"make arrests without a warrant for any violation of this Act if they have reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and"

This amendment would correct an apparent oversight in the Act, by inserting authorization for enforcement personnel to arrest, without a warrant, persons committing violations in their presence or view. This authority was in the Endangered Species Conservation Act of 1969, is found in all other wildlife legislation, and was in the bills which were the basis of this Act. It appears to have been inadvertently omitted in the drafting process. It is a traditional law enforcement authority, and we believe it is necessary to the proper enforcement of this Act, with its broad scope of prohibitions.

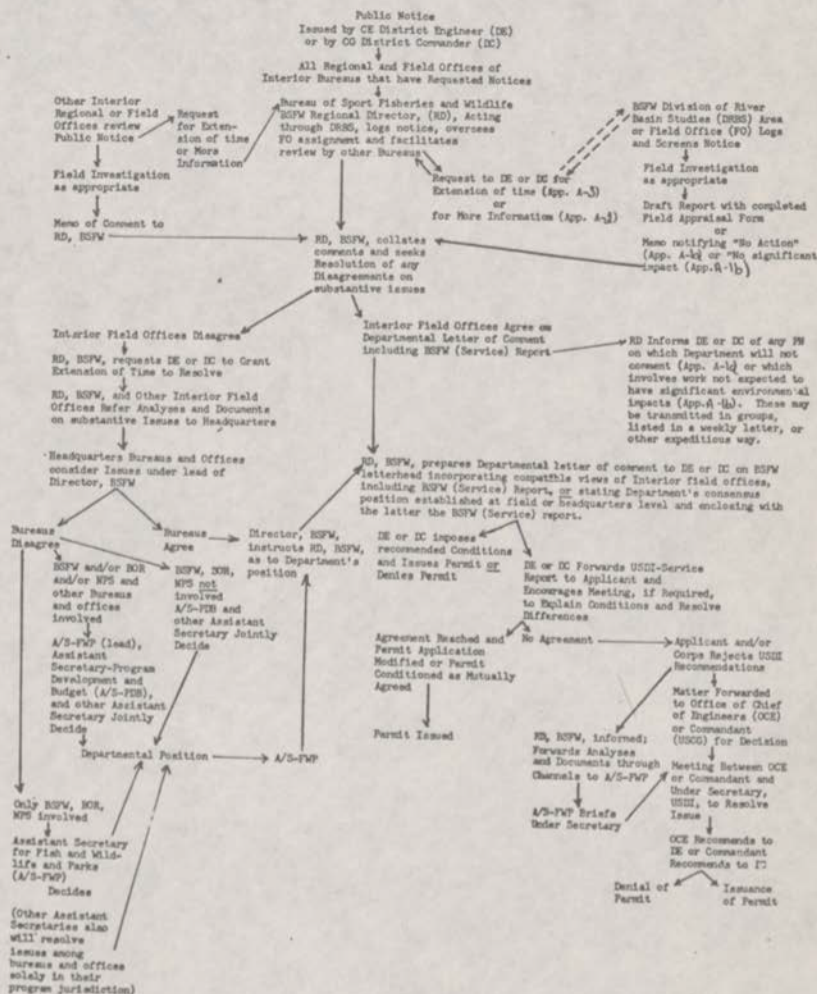
The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

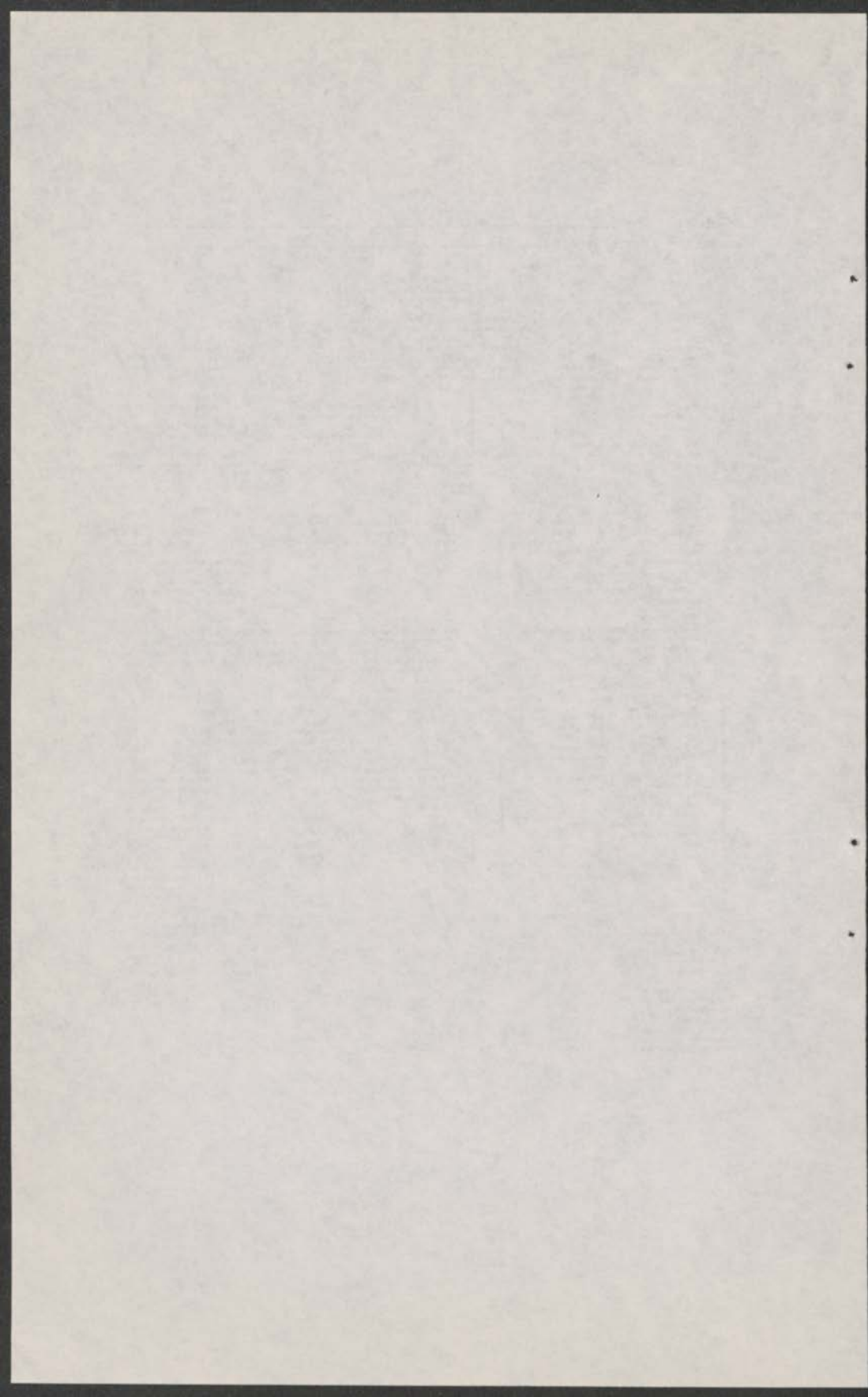
Sincerely yours,



Deputy Assistant Secretary of the Interior

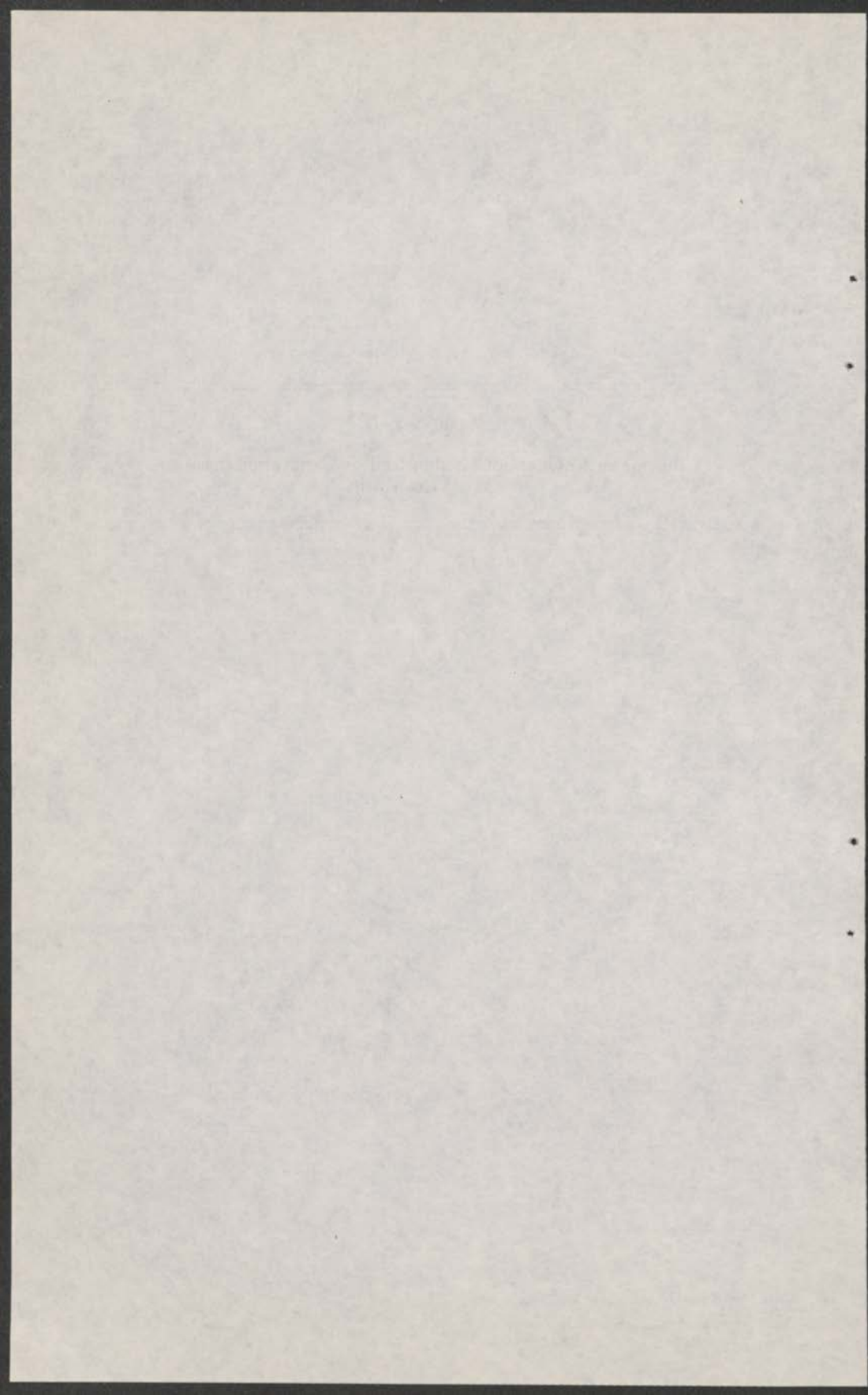
Honorable Leonor K. Sullivan
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D.C. 20515





APPENDIX II

Responses to Questions Submitted by Senator Hansen to
Mr. Greenwalt



SEPTEMBER 27, 1974.

LYNN GREENWALT,
Acting Director, U.S. Fish and Wildlife Service, Department of the Interior,
Washington, D.C.

DEAR MR. GREENWALT: Thank you for appearing before the Senate Interior Committee. Enclosed are those questions which I agreed to defer asking at that time and instead to send to you in writing.

I realize these have been somewhat delayed but I would like to request that a reply be made before the meeting on October 1, between Secretary Morton and representatives of the Wyoming Woolgrowers is held. I must apologize for making this request. If it is not possible to do so, I am certain these questions will be raised at the meeting.

I would like to thank you in advance for your response.

With kind regards,

Sincerely,

CLIFFORD P. HANSEN,
U.S. Senator.

Enclosure.

QUESTIONS FOR LYNN GREENWALT FROM SENATOR HANSEN, SEPTEMBER 27, 1974

1. Does the U.S. Fish and Wildlife Service supply strychnine out of Pocatello, Idaho supply depot? If so, will you supply 1080? If not, what's the difference?
 2. What scientific facts were used to justify the Executive Order? How does the allegation that the environmental damage was caused by toxicants square with the Berryman affidavits and the Environmental Impact Statement that was being processed through the Department of the Interior in 1971?
 3. The states were told that trapping, denning and shooting would control losses. Now we are told that these plus the M-44 will control losses. What proof do you have that trapping, denning and shooting plus the M-44 will control losses?
 4. Is it the position of the Department of the Interior and other Federal Agencies to give the States the responsibility of predator control without giving the States the authority to use the methods that are necessary for that control?
 5. Was the total control effort for coyotes in 1961 the same as it was in 1970-74?
- If "yes" will you supply information to substantiate your statement for Wyoming with a quantitative amount of input for control.
- If "no," did it increase or decrease in total effort?
- What happened to losses during that time?

PROPOSED QUESTIONS FOR MR. LYNN GREENWALT, SEPTEMBER 26, 1974

1. Have the research efforts of the Interior and Agriculture Departments produced any significant breakthroughs in predator control?
2. Is the Interior Department seeking to register the M-44 under the FIFRA Act and, in the interim, has an extension to the temporary permit, for use under the Executive Order emergency program been sought?
3. What is the current commitment of the Interior Department to predator control? Does it wish to retain jurisdiction under the Act of 1931 or is it still interested in transferring primary responsibility to the States?
4. Would the Interior Department be willing to turn over predator control jurisdiction to the Department of Agriculture?
5. Would you kindly provide current statistics reflecting the effectiveness of the emergency order M-44 program?
6. Could you detail how you will ensure future decisions of the Wildlife Service will be based on strictly professional input and not purely political considerations?
7. Could you describe in detail the results of any significant recent studies concerning coyote and eagle predation upon domestic livestock?

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

Hon. CLIFFORD P. HANSEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HANSEN: The enclosed information is provided in response to questions raised in your letter of September 27, 1974.

I appreciate your interest in the predator control program and hope this information will be of use to you.

Sincerely yours,

LYNN A. GREENWALT,
Special Assistant to the Director.

Enclosure.

SEPTEMBER 26, 1974, LIST OF QUESTIONS

Question No. 1.—Have the research efforts of the Interior and Agriculture Departments produced any significant breakthroughs in predator control?

Response. No significant breakthroughs in controlling predator losses have been uncovered by the Department of the Interior or the Department of Agriculture in their predator research programs. The path is long and difficult and no single control method is likely to produce a cure-all for the problems.

Significant progress has been made in three major areas of predator research:

A. In damage assessment, detailed field autopsy studies at Twin Falls, Idaho, and Raleigh, Wyoming, are coming up with confirmed predator losses ranging from one to four percent on flocks of sheep on open range over the last two years in areas of intensive control. This loss is primarily to coyotes. Eagle depredations are spotty, both geographically and seasonally.

Measurements of confirmed predator losses in the absence of coyote control on two ranches in Montana and New Mexico show predator losses of 24 and 14 percent respectively.

B. In predator ecology we are now completing the third year of work to determine predator abundance in the western States. These indices showed significant decreases in three States and increases in five States in 1973. This survey, together with information on sheep distribution, provides valuable information to management on population trends of coyotes and in determining the impact of control on predator abundance.

Generally, in intensive livestock production areas, which are areas of intensive predator control, the indices tend to be lower, inferring that control is holding coyote populations at lower, though still fluctuating, levels.

C. Finally, in the development of new control techniques, we are concentrating research efforts on non-lethal methods, but results of coyote behavior studies to date indicate that this approach does not offer the promise that many have hoped for.

To back this up, we are pressing research on selective lethal techniques designed to take offending animals. The toxic collar that stops killer coyotes at the point of attack is an example. Development of control techniques, scientific data collection, and registration require time.

Question No. 2.—Is the Interior Department seeking to register the M-44 under the FIFRA Act and, in the interim, has an extension to the temporary permit for use under the Executive Order emergency program been sought?

Response. The Department of the Interior first applied for registration of the M-44 cyanide device in February 1970. The Environmental Protection Agency denied registration pending additional data. The Department is presently gathering efficacy data on the M-44 device through its present program under an experimental use permit issued by the Environmental Protection Agency. These data will be used to support application for registration. An extension of the experimental use permit is being requested.

Question No. 3.—What is the current commitment of the Interior Department to predator control? Does it wish to retain jurisdiction under the Act of 1931 or is it still interested in transferring primary responsibility to the States?

Response. In keeping with the intent of the Executive Order, the Fish and Wildlife Service has undertaken an intensified research effort to learn more about the extent of predator losses and the best ways to abate such losses.

In recognition of the need to prevent a disruption in necessary damage control service while legislation is being considered, the Service has initiated a control program using non-poisonous methods with special emphasis on reducing damage in critical areas. The Service and the Department are committed to this effort, and have no intention of turning responsibility over to any other Federal agency or to the States, though we are interested in arrangements with States to conduct the operational program under cooperative arrangements.

In 1972 and again in 1973 the Administration proposed legislation to redirect the Federal animal damage control program. The key to the proposed legislation was to have the States, which are primarily responsible for management of

resident wildlife, conduct the operational control programs, and to provide cost sharing Federal funds in support of these programs. Policy and guidance would be provided by the Service.

The Service is continuing its predator control program under the 1931 Act and is negotiating with the States to carry out operational programs on the basis of cooperative agreements. New animal damage control legislation may be desirable in order to enable the Department to develop an effective cooperative program with the States. It is our intention to introduce new legislation after we have developed experience with Federal-State cooperative programs. The new legislation will be based on proven operational and contractual procedures.

Question No. 4.—Would the Interior Department be willing to turn over predator control jurisdiction to the Department of Agriculture?

Response. We consider the control of predators to be a wildlife problem. The management—enhancement and control—of wildlife is a responsibility of the Department of the Interior. While certain wildlife prey on livestock, it does not necessarily follow that the prevention of such predation should be the responsibility of the Department of Agriculture. Predation frequently occurs against other wildlife as well as domestic animals. Since the Department of Agriculture's concern is for livestock and other domestic animals, unnecessary duplication of a Federal program would occur as another agency would control predation against wildlife—with the same predators involved.

It is possible to work closely with livestock interests to deal with wild animals which conflict with domestic animals. This has been a function of the Department of the Interior for many years and the fundamental responsibility for wild animal management should remain there.

Question No. 5.—Would you kindly provide current statistics reflecting the effectiveness of the emergency order M-44 program?

Response. Cumulative data for approval to use the M-44 device through September 21, 1974, are as follows:

SUMMARY OF M-44 APPROVED BY SERVICE

[As of Sept. 21, 1974]

Region: State	Counties	Areas	Acres	Maximum number of M-44's approved	Livestock involved	
					Number	Type
Region 1:						
California.....	1	1	7,200	20	200	Sheep.
Oregon.....	5	21	7,189	231	2,957	Sheep and goats.
Nevada.....	2	5	59,700	180	7,921	Sheep.
Idaho.....	1	1	3,000	20	1,400	Do.
Subtotal.....	9	28	77,089	451	12,478	
Region 2:						
Arizona.....	3	19	39,580	412	3,754	Do.
New Mexico.....	7	18	122,844	635	8,747	Do.
Texas.....	35	132	1,191,679	2,419	112,301	Sheep and Goats.
Subtotal.....	43	169	1,354,103	3,466	124,802	
Region 6:						
Montana.....	20	31	222,084	893	22,825	Sheep.
Utah.....	12	22	97,128	475	23,218	Do.
Wyoming.....	6	23	208,320	1,090	30,812	Do.
Subtotal.....	38	76	527,532	2,458	76,855	
Grand total.....	90	273	1,958,724	6,375	214,135	

Although summer weather conditions seriously limit M-44 effectiveness, 213 coyotes were taken by this device during this time period. We do not consider the number of coyotes taken to be a true measure of the success of the program. The use of the M-44 was successful in stopping losses in only a small percentage of the 273 emergency situations. Texas reported the best results—depredations ceased on 49 of the 88 emergency areas reported. This degree of success was not approached in any of the other States. One calf was taken accidentally in New Mexico, and no human accidents have resulted from this program. Testing of

M-44's during other seasons of the year needs to be completed to give a clearer picture of its value as a tool for resolving depredation problems where mechanical methods have not been effective.

Question No. 6.—Could you detail how you will ensure future decisions of the Wildlife Service will be based on strictly professional input and not purely political considerations?

Response. The U.S. Fish and Wildlife Service is a scientific organization with a mission of protection and enhancement of fish and wildlife resources. It is not a political organization, and recommendations or decisions emanating from it are not politically based. However, the Service must on occasion carry out decisions which are political in nature. The Service is not an independent entity, and thus must sometimes carry out directives from higher organizational levels within the Department or the Executive Branch which are not based on purely scientific evidence.

Question No. 7.—Could you describe in detail the results of any significant recent studies concerning coyote and eagle predation upon domestic livestock?

Response. The Service does not have a formal study addressing eagle depredations on livestock, but they are considered incidental to measurements of predator losses.

In June of this year a report of eagles killing lambs on a ranch in Montana was brought to the attention of our staff at the Denver Wildlife Research Center. In order to gain detailed information on the nature of the problem, and to verify the eagle kills, an existing contract with the University of Montana concerning coyote losses was amended to include eagles. During a three-week period, starting in mid-June, a total of 44 eagle kills to lambs was verified on this ranch. In this particular incident there was a concentration of 45 eagles. Normal eagle food was extremely low in the area in which the kills occurred. This is the first verified kill of this magnitude. The eagles have since dispersed.

With regard to coyotes, significant studies are described in response to question one, September 26, 1974, List of Questions.

SEPTEMBER 27, 1974, LIST OF QUESTIONS

Question No. 1.—Does the U.S. Fish and Wildlife Service supply strychnine out of Pocatello, Idaho supply depot? If so, will you supply 1080? If not, what's the difference?

Response. The U.S. Fish and Wildlife Service does supply strychnine grain baits for control of some rodents. This is restricted to geographical areas where comparable baits are not available from commercial sources.

We do not supply 1080 grain baits for rodent control.

The Executive Order prohibits the use of chemical toxicants that have potential secondary hazards in predatory as well as non-predatory animal damage control. The Department has taken the position that 1080, when used for rodent control, does pose a secondary poisoning hazard.

Potential for secondary poisoning effects from normal uses of Pocatello Supply Depot formulated strychnine grain baits are related to remnant amounts of the toxicant not degraded in the gastrointestinal tract prior to death of the target individual, and are not associated with other body parts. Since baits are treated at the lowest concentration effective against the target animal, the possibility of "secondary poisoning effects" occurring under field conditions is remote.

Question No. 2.—What scientific facts were used to justify the Executive Order?

How does the allegation that the environmental damage was caused by toxicants square with the Berryman affidavits and the Environmental Impact Statement that was being processed through the Department of the Interior in 1971?

Response. In hearings conducted by the House of Representatives, Committee on Merchant Marine and Fisheries, Subcommittee on Fisheries and Wildlife Conservation and the Environment, March 19, 1973, Assistant Secretary of the Department of the Interior for Fish and Wildlife and Parks made the following statement:

"In 1964, because of public concern, the concern of Congress, and increasing concern in the Department of the Interior over this Federal program, the then Secretary of the Interior, Stewart Udall, directed his Wildlife Management Advisory Board to investigate the program. Their report—commonly referred

to as the Leopold Report—made recommendations for certain program changes which became the basis for major redirection of Federal animal damage control activities.

"However, with increasing environmental awareness, there was continuing concern over the use of poisons for predator control. The public and executive concern culminated in the establishment of a task force of seven scientists by Dr. Stanley A. Cain. Commissioned by the Secretary of the Interior, Rogers Morton and the Chairman of the Council on Environmental Quality, Russell Train, the task force undertook a review of predator control activities. Their report, published in January 1972, contained a number of significant findings, conclusions and recommendations. It formed the basis for executive action which began immediately upon release of the report."

Question No. 3.—The States were told that trapping, denning and shooting would control losses. Now we are told that these, plus the M-44's, will control losses. What proof do you have that trapping, denning and shooting, plus the M-44's, will control losses?

Response. The implication in the issuance of Executive Order 11643 was that mechanical methods could effectively control losses to predators in most instances. Provisions for the use of chemical methods were incorporated in the order for cases where mechanical tools were inadequate. In the past two years the Service has demonstrated that the increased use of and refinements in available mechanical methods are effective in controlling depredation in most cases, and that there are some situations where mechanical methods are not effective. We believe the M-44 device will increase our capabilities for resolving the conflict in a substantial number of these cases.

Whether the supplemental use of the M-44 device will provide the required level of protection has yet to be determined. It is still too early to evaluate the effectiveness of the M-44 device. Emergency use of this tool has involved the hot, dry summer months when this tool is least effective. We are requesting an extension on the experimental use permit issued by the Environmental Protection Agency to include seasons when they are most effective and when other available mechanical methods are adversely affected by weather conditions.

Question No. 4.—Is it the position of the Department of the Interior and other Federal agencies to give the States the responsibility of predator control without giving the States the authority to use the methods that are necessary for that control?

Response. No—it definitely is not. It is the position of the Department that predator damage control programs be designed to meet the legitimate needs of the livestock industries with a minimum impact on non-target species. This is in line with the dual responsibilities inherent in the management of wildlife resources. The Department is attempting to transfer the operational responsibility of animal damage control of resident wildlife to the States with the assurance that these criteria will be met to the satisfaction of the Secretary of the Interior. It is not our intent that State programs would be denied the use of animal damage control methods which would otherwise be available to Federal programs.

We are attempting to gather additional efficacy data on the M-44 device which will support the registration of this control tool and make it available for use in approved State programs for resolving conflicts when and where evidence indicates that such is needed to supplement other available control methods.

Question No. 5.—Was the total control effort for coyotes in 1961 the same as it was in 1970-74?

If "yes," will you supply information to substantiate your statement for Wyoming with a quantitative amount of input for control.

If "no," did it increase or decrease in total effort?

What happened to losses during that time?

Response. The total effort on animal damage control in the State of Wyoming during the period of 1961 through 1973 decreased in manpower (44.5 to 40 man-years, respectively) and increased in funding (\$269,783 to \$550,000, respectively). Since the Leopold Report (1964), a change in the philosophy of coyote damage control was enforced, which directed more efforts in the areas where depredation damage was occurring, and less in the surrounding areas to reduce coyote drift into the problem areas. Also, recommendations contained in the Cain Report (1972) were instrumental in effecting the termination of the use of chemical

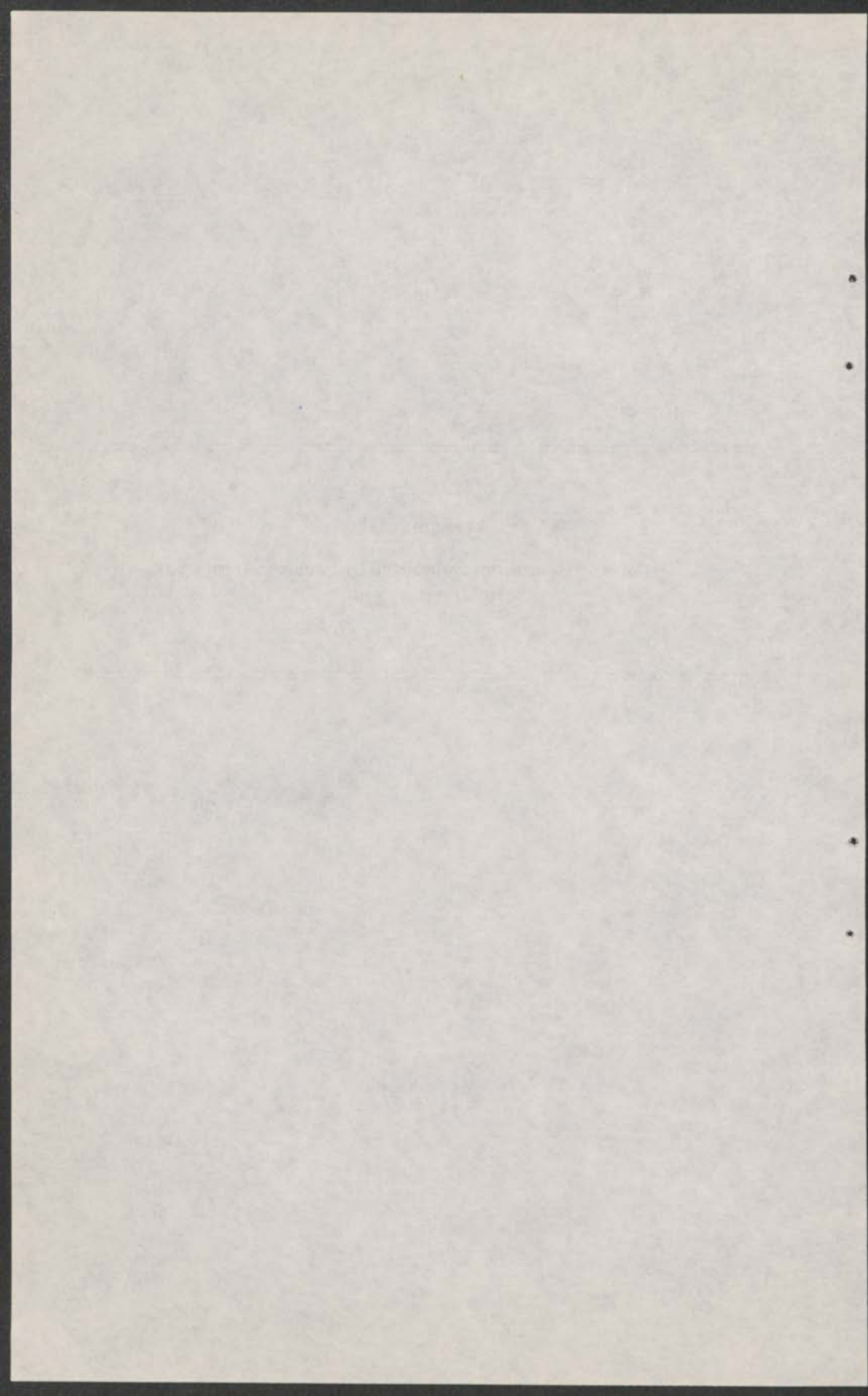
toxicants for controlling damage caused by predatory animals, except in specific emergency situations as described in Executive Order 11643.

In an effort to determine whether coyote damage could be controlled by mechanical methods, the U.S. Fish and Wildlife Service intensified its animal damage control efforts during the critical calving and lambing periods, primarily through the increased use of aircraft in the problem areas. From data gathered during the special spring and summer efforts of 1972 and 1973, it was concluded that there were specific situations where mechanical methods alone were not effective in some situations. As a result, the Department took action to develop a streamlined procedure for quickly identifying and approving the emergency use of M-44's where non-chemical control methods were found to be ineffective. As of September 21, 1974, 23 requests for the emergency use of up to 1,090 M-44's were approved in the State of Wyoming, involving 6 counties, 208,320 acres, and 30,812 sheep.

Generally stated, the Service's animal damage control efforts since 1961 have evolved from a preventive damage control approach to reacting to specific damage conflicts when and where they occur. The Service is presently conducting damage assessment studies in Wyoming to accurately determine losses to predators. Objective information as compiled by the Service is not conclusive on this question.

APPENDIX III

Responses to Questions Submitted by Senator Magnuson
to Mr. Greenwalt





United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

SEP 27 1974

Warren G. Magnuson, Chairman
Committee on Commerce
United States Senate
Washington, D.C. 20510

Dear Mr. Magnuson:

The enclosed information is provided in response to specific questions raised in your letter of September 20, 1974.

I hope this information will be useful to you and the Committee.

Sincerely yours,

Lynn A. Greenwalt
Director

Enclosures

Question No. 1

As you know, \$1.1 million were added by the Congress to the President's request for fiscal year 1974 for the operations and maintenance of national wildlife refuges and other refuge purposes. In addition, the President's budget itself contained an increase of some \$928,000 over the fiscal year 1973 budget. Other additional funds presumably were made available to the refuge system in fiscal year 1974 as a result of supplemental appropriations to cover the so-called "Pay Act" increases in employees' pay, probably some \$1 million. To sum up, the refuge system should have received in excess of \$3 million more in fiscal year 1974 than in fiscal year 1973. Did the refuge system indeed receive this increase?

Is it true that a good portion went to establish a new regional office in Denver?

Do you plan to fight for greater financial support of the National Wildlife Refuge System?

Response

It is true that the apparent increase for administering the refuge system in FY 1974 was about \$3 million. However, there was a \$605,000 wageboard supplemental in FY 1973 which was not carried over into the FY 1974 base; thus, the FY 1974 increase was negated to this extent. The actual increase appropriated for refuges was more like \$2.4 million.

Of this amount, about \$2.2 million was budgeted for direct field station use and the remainder was budgeted for higher costs of telecommunications, postage and other support services.

It is not true that a good portion went to establish a new regional office in Denver. Initial funding to support that portion of the Denver office that is designed to plan and supervise refuge operations was derived from transfers of funds from the Portland, Minneapolis and Albuquerque regional offices.

As for fighting for greater financial support of the National Wildlife Refuge System, this is certainly an objective of the Service, and one of my personal concerns. This is reflected in the FY 1975 budget request which earmarked 22 percent of the \$10,886,000 program increases in resource management for operating and maintaining refuges. In addition, we have recommended substantial increases in the FY 1976 budget for refuge operation and maintenance.

The Fish and Wildlife Service must respond to a broad spectrum of high priority demands. Among these are the endangered species program pursuant to the Endangered Species Act of 1973, the marine mammals program pursuant to the Marine Mammal Protection Act of 1972 as well as habitat preservation and management. The need for strengthening the refuge system must be viewed within the context of these and other competing needs as well as within the context of general fiscal restraints.

Obviously, I cannot advocate the support of one Service program to the exclusion of others having high priority. It is my aim to maintain a proper balance and to seek proper recognition and support of all the Service's important efforts.

Question No. 2

As you know, there has been some criticism of the U.S. Fish and Wildlife Service for the delays in implementing the provisions of the Endangered Species Act of 1973. For example, the United States and over 80 other nations were signatories to the Convention of International Trade and Endangered Species of Flora and Fauna signed in Washington in March 1973. A number of critically endangered cats, such as the Clouded Leopard, the Marble Cat, and many others, were identified in appendices to the Convention as being endangered. Although protection will ultimately be given those animals when the Convention becomes effective, they are not on the endangered species list now.

Furthermore, in January 1973 Secretary Morton announced that three large species of kangaroo were "threatened with worldwide extinction" and yet, no action has been taken to place these animals on the endangered species list. The Office of Endangered Species within the U.S. Fish and Wildlife Service has recommended that over 60 species of mollusks and crustaceans be added to the list, but no action has been taken.

Why has movement been so slow?

May we have your assurance that you will make every reasonable effort to speed up the program?

Response

Discrepancies in the Federal endangered species list and the appendices to the Convention of International Trade in Endangered Species of Wild Fauna and Flora exist because the criteria specified in the Convention are somewhat different than those in the Federal law. The Service is presently in the process of comparing the Federal list to the appendices and evaluating the status of species where there are discrepancies. We will offer amendments to the appendices if necessary when the Convention is in effect internationally. Likewise, this comparison may reveal species which should be added to the Federal list, removed or reclassified. The Service will initiate appropriate actions if warranted.

With regard to the cats, a review of their status is presently underway. We are presently prepared to take action in the kangaroo situation. In addition to the activities summarized in the enclosed "Fact Sheet--Kangaroos", Service specialists have just completed extensive field investigations. Recommendations on the status of the kangaroos are being prepared for formal proposal in the Federal Register soon. Action on the mollusks and crustaceans is progressing and Federal Register publication is planned shortly. Delays have occurred because of the need to fully evaluate the legal and environmental connotations of such listing.

The Endangered Species Act of 1973 requires certain activities be undertaken to assure that decisions on listing a species as endangered or threatened are based on the best scientific and commercial data available. Such listing can be accomplished only after all interested persons and organizations, appropriate State and foreign governments and interested Federal agencies are consulted. The governor of each State in which a species is known to occur must be notified of contemplated action and allowed at least three months to submit recommendations. Detailed justifications must be developed and specific rulemaking processes followed in the publication of notifications, data and decisions in the Federal Register. Obviously, with such requirements, the listing, delisting and reclassification of species can take considerable time to accomplish.

The Endangered Species Act of 1973, like any comprehensive law which creates a new program or changes an existing program significantly requires a period of education and adjustment. The highly sophisticated interrelationships called for in the Act have necessitated lengthy interpretive sessions with Federal and State agencies as well as other organizations and groups. Implementation at the Federal as well as the State level has been hampered by inadequate funds and manpower.

Implementation of the program will certainly be facilitated now that the Department's FY 1975 appropriation has been enacted. Our initial efforts

since the Act was passed have been to develop a firm base of understanding within Federal and State agencies, to prepare the best possible regulations, develop an efficient and effective permit system, and thereby assure that this new and far-reaching conservation program has the best possible foundation.

Question No. 3

One of the most unhealthy trends in Federal programs in recent years has been the vast expansion of Washington and regional offices relative to field stations where obviously most of the work in any agency like the U.S. Fish and Wildlife Service takes place.

How many people does the Service employ and what is the breakdown between the Washington office, regional offices, and field stations? Has the percentage distribution changed in recent years?

It is our understanding that the Washington office of the U.S. Fish and Wildlife Service overspent its share of the Service's appropriations for fiscal year 1974 by some \$2 million. Is this correct? How do you propose to make up the deficit? Do you intend to divert funds from field stations?

If confirmed, do you plan to devote greater support of your resources to field stations than has been in the past?

Response

As of July 1, 1974, the Service had 4,155 permanent full-time employees and 1,401 "other" (part-time, temporary and intermittent employees) on board for a total of 5,556 total paid employees. The breakdown was as follows:

	<u>Full-time Permanent</u>	<u>All Other</u>
Headquarters	318	46
Regional Level	709	110
Field Operations	<u>3,128</u>	<u>1,245</u>
Total	4,155	1,401

Percentage-wise, over the past several years there has been an increase in the number of employees at the field operations level.

It is not correct that the Washington Office overspent its share of the Service's Resource Management Appropriation and the National Wildlife Refuge Funds for FY 1974 by \$2 million. Furthermore, a deficit never existed and no funds were diverted from field stations.

Prior to the beginning of FY 1974, a decision was made to convert to a management by program concept. This required a complete restructuring of the budgeting and accounting system, including computer reprogramming. As a result, for much of the fiscal year, many of the computer printouts reflecting financial management information were going through a testing and refining process. Based on what we now know to be inaccurate

computer returns, additional allotments were made late in the fiscal year to the regional offices, resulting in inadequate funding at the Washington Office level. As soon as this discrepancy was identified, the regional offices were notified and their funding levels reduced in amounts sufficient to correct the situation. However, the regional offices had, to varying levels, obligated the funds. It was therefore necessary for them to cancel some of these obligations.

After all fiscal year-end adjustments and reconciliations were accomplished, the Service had an unobligated balance of \$810,000 in the Resource Management Appropriation. In addition there remained, as of June 30, 1974, an unobligated balance available for obligation of \$4,065,000 in the National Wildlife Refuge Fund. We were required to carry an unobligated balance of \$4,003,000. We exceeded this requirement by \$62,000.

In regard to devoting greater support of our resources to field stations, action already is underway, as represented by the fiscal year 1975 appropriations and fiscal year 1976 budget plans to strengthen field station capabilities. New and expanded law enforcement offices are being established, refuge rehabilitation and habitat management is proceeding at a rate not possible in prior years, and research laboratory staffs are increasing within Service-wide manpower constraints.

The major increase in the fiscal year 1975 budget was for biological services, which expands our capabilities for environmental protection

of fish and wildlife and their habitats. These funds will be assigned to existing research laboratories, technical assistance, ecological service field stations (formerly river basin studies), and to procurement of professional scientific services by contract.

As a former field manager myself for many years, I am aware of the importance of providing staffs and funding adequate to get the job done on the ground. By the same standard, however, I am well aware of the frustrations encountered by field workers who lack proper administrative support, program direction, or staff assistance of the kind offered only by regional or central headquarters offices. It is my intent to do my best to assure that both are provided in proper measure so that the Service can do the best possible job.

Question No. 4

Legislation introduced in the House this past summer would establish the "National Wildlife Refuge System Organic Act". Under this bill, the refuge system would be set up as a separate entity. The Fish and Wildlife Service then would consist of two Bureaus: the Bureau of National Wildlife Refuges and the Bureau of Sport Fisheries and Wildlife. Do you think there is need to provide comprehensive policy direction for the refuge system under a new organizational system, as this legislation envisions, or can this be provided for adequately under the present administrative system?

Response

H.R. 15856, the National Wildlife Refuge System Organic Act of 1972, would provide new policy direction for the System, classify refuges according to program purposes, authorize the study of potential refuge sites in urban areas, establish 86 million acres of land in Alaska as part of the System, require Congressional approval before any lands in the System are disposed of, and create a Bureau of National Wildlife Refuges. The new Bureau of National Wildlife Refuges would be responsible for administration of the National Wildlife Refuge System and all programs and facilities involved in wildlife habitat research. Laws, programs and activities "relating to rare, endangered and threatened species of wildlife" would be administered by the new Bureau of Wildlife Refuges. All functions remaining in the Fish and Wildlife Service would be administered by a Bureau of Sport Fisheries and Wildlife.

While we support the objectives of this legislation to give added recognition and status to a unique National network of lands, we do not support a proposal which would result in duplication of function, unnecessarily increase Federal operating costs, and conflict with certain Administration positions. Splitting the Fish and Wildlife Service into two Bureaus, while certainly elevating the organizational status of the present Division of Wildlife Refuges, would necessitate extensive duplication of administrative and support services as well as various other program

activities. One of the Service's major programs is the management and protection of the migratory bird resource. Many of our wildlife refuges were acquired to further the management of this resource. This legislation proposes splitting the management into two Bureaus which appears to be unacceptable. Another example is endangered and threatened species of fish and wildlife are found both on and off National Wildlife Refuge System lands, and programs designed to carry out the Endangered Species Act of 1973 would have to be duplicated in both Bureaus. In addition, certain provisions in H.R. 15856 conflict with the Administration's proposal related to National interest lands in Alaska under the Alaska Native Claims Settlement Act.

Over and above these objections to H.R. 15856 is the fact that adequate authority presently exists under the Fish and Wildlife Act of 1956 and the National Wildlife Refuge System Administration Act to provide for the administration and management of lands in the System.

We are proud of the progress that has been made over the past 10 years to preserve vital habitat for the Nation's fish and wildlife resources. Since 1965, over 1.2 million acres have been added to the System. In 1974 alone 93,000 acres were acquired in fee or easement, for a total of over 31 million acres of land. Obviously, more than just acquisition of land is necessary if we are to assure the perpetuation of this resource. While the objectives of the proposed National Wildlife Refuge

System Organic Act are laudable in their recognition of the importance of habitat management, these objectives are already being reflected by increases in funds for refuge operation and maintenance activities in FY 1975. Substantial increases are being planned for FY 1976 to continue an accelerated habitat management program as well as for ancillary programs.

Question No. 5

Obviously, the U.S. Fish and Wildlife Service has drawn its support in the past primarily from those who relish the chance to get away from it all and have the means and opportunity to enjoy fish and wildlife in rural and even wilderness environments. Historically, the benefits that the U.S. Fish and Wildlife Service has to offer have not been abundantly available to urban residents, particularly the poor and the disadvantaged. Obviously, a preponderance of the population in this country knows very little about the U.S. Fish and Wildlife Service and probably cares not to. The Service is just not relevant or important to a substantial part of our urban population.

How might the U.S. Fish and Wildlife Service become more responsive to the needs of these people?

Response

With regard to the historical role of the U.S. Fish and Wildlife Service, it is true that we have been rurally, or non-urban oriented. This is

only natural since most wildlife occurs in the rural or non-urban environment. It is also true substantially because urban citizens have heretofore exhibited far less interest in wildlife than their rural counterparts. In recent years the entire perspective on wildlife resources has been changing to include the full spectrum of citizenry. We fully intend to accommodate the new interests of the urban people. However, funding and manpower restraints make it unrealistic to expect that the Service will be able to maintain operational programs strictly for the benefit of urban people. The price of real estate in or near major metropolitan areas makes future acquisition of manageable tracts of wildlife habitat difficult. Presently, we have a number of such areas including San Francisco Bay National Wildlife Refuge, Tinicum National Environmental Center, Great Swamp National Wildlife Refuge, Parker River National Wildlife Refuge, Long Island National Wildlife Refuge, Sherburne National Wildlife Refuge, Back Bay National Wildlife Refuge and Wyandotte National Wildlife Refuge. Acquisition of wildlife habitat even in the most rural areas of the country is becoming increasingly difficult because of high land costs. These circumstances lead me to conclude that a Service role in involving urban people in wildlife matters which are not entirely land-based will be more of information and education.

By working through the medium of environmental education, an appreciation of wildlife and its attendant pleasures can be offered to millions of urban people. Through the authorities of such laws as the National

Environmental Policy Act, it is possible to "bring fish and wildlife to every American home."

In July of this year a panel of experts was convened to look into the complex matter of environmental education, its possibilities and its ramifications. A report on the panel's findings is due early in October.

This past year the Service upgraded the caliber and scope of its public information program. As a result, the staff will be in better position to advise and influence policy decisions that more directly affect people and to accommodate the needs of the urban constituency through a revitalized system of the more traditional aspects of information dissemination; i.e., radio, television, the print media, and general wildlife oriented informational materials.

The Service will move as decisively and on as broad a front as is feasible under existing legislative authority and within existing economic restraints to bring exposure to and awareness of our wildlife resources to every citizen, regardless of his social status or financial standing.

★
Enclosed is a copy of a recently produced publication oriented primarily to the urban citizenry, "Fifty Birds of Town and City."

★ The information cited is is included in the Committee files.

Question No. 6

As we are all well aware, there has been considerable controversy in the past with respect to who among the Federal agencies shall have primary jurisdiction over five large wildlife ranges in the West. Included are the Kofa and Cabeza Prieta in Arizona, the Charles Sheldon and Desert in Nevada, and Charles M. Russell in Montana.

The jurisdiction of the Service over these areas is shared with the Bureau of Land Management which is responsible for handling certain grazing and mining entry matters. Unfortunately, the dual administration of these areas has not proven satisfactory in the past.

As I understand it, Undersecretary Whitaker proposed earlier this year that primary jurisdiction lie with the U.S. Fish and Wildlife, at least with respect to the Arizona ranges and the Desert Game Range. Do you agree with Undersecretary Whitaker?

What is the current status of the deliberations and when might a final decision be made?

Response

We agree with the position taken by Under Secretary Whitaker in regard to jurisdiction on the Kofa and Cabeza Prieta Game Ranges; the Desert National Wildlife Range has been under the jurisdiction of the Fish and Wildlife Service for several years. We have taken necessary measures

to effect this change. Withdrawal requests were filed with the Bureau of Land Management's State offices and public notification and hearings have been completed. Information obtained as a result of the hearing process is currently being evaluated and we understand that a final recommendation will be developed by the Bureau of Land Management in the near future and submitted to the Secretary. Determinations as to the management of Charles Sheldon and Charles M. Russell Ranges are still being deliberated in the Department at a level above the Service. It is my position that whatever the managing agency, the wildlife and wildlands values of these areas must have first consideration and the areas managed accordingly.

Question No. 7

In reference to the statements about the Department becoming the "biological arm for fish and wildlife resources and the management and preservation of essential habitat", could you explain how this will interface with NOAA's responsibilities in the coastal and estuarine zone and in the marine environment?

Response

The coastal and estuarine areas are of critical importance to the missions of the Fish and Wildlife Service. These areas support diverse and important wildlife populations. Many of the National Wildlife Refuges are located in the coastal zone. The productive food chains of marine and

estuarine environments are essential to the maintenance of populations of many birds, mammals, reptiles and amphibians, including a number of rare and endangered species. Certain species of anadromous fish, for which our agency has responsibility, spend a portion of their life cycles in these areas. So we are concerned with understanding and protecting the total ecosystem values of these areas.

At the same time, we recognize NOAA's responsibilities for management of marine fisheries and certain marine mammals, for coastal zone management, for establishment of marine and estuarine sanctuaries, and for research on ocean pollution and other oceanic phenomena. We have been cooperating actively with NOAA in a number of these programs. For example, we have been assisting NOAA in the formulation of its marine sanctuaries program under Title III of the Marine Protection, Research, and Sanctuaries Act of 1972. We have been working cooperatively in carrying out provisions of the Fish and Wildlife Coordination Act in coastal areas, including development of joint positions on a number of important environmental issues. We also expect to be working closely with NOAA and the States to contribute information and input to the coastal zone management process as the development of State coastal zone management programs proceed.

Our general objective is to assure that our activities and those of NOAA with respect to protection of the coastal environment are complementary

to the extent possible. We recognize that there are some areas of overlapping interest and jurisdiction, but believe that we are making good progress in coordinating our efforts.

Question No. 8

Could you provide the Record with a fuller statement explaining the scope of this planned examination of "total biological systems", with particular emphasis upon any efforts in the marine environment and coastal ecosystem? How is it coordinated with NOAA and EPA?

Response

The principal focus for our examination of total biological systems will be in our newly established Biological Services Program. The growing body of environmental laws now requires biological assessments in greater depth and much earlier in the decision-making process. In addition to the Fish and Wildlife Coordination Act, the National Environmental Policy Act, the Water Resources Development Act and other related laws all require the collection and evaluation of biological data in a timely manner. The Biological Services Program has been initiated to assure early recognition and protection of fish and wildlife values in land and water development decisions and actions by marshalling resources and scientific capability to provide fish and wildlife information promptly to decision makers in resource development and conservation agencies both within and without the Department of the Interior.

In FY 1975 we are to initiate ecological studies relating to the impact of coal and oil shale development; powerplant siting, design and operation; stream channelization and other alterations; geothermal steam development; development and allocation of western water resources; and coastal ecosystems problems. Many of these activities are directly related to the accelerated program of energy research and development under Project Independence. We will also be initiating a National Wetlands Inventory, conducting studies of biological indicators of environmental degradation which can be used in development of monitoring programs, and will be initiating an information transfer program to make the information available to decision makers.

Our coastal ecosystems program is still in the formative stage. However, we are giving initial emphasis to studies of the coastal impact of accelerated Outer Continental Shelf oil and gas development in areas such as the Gulf of Mexico, Southern California, the Gulf of Alaska and the Mid-Atlantic Bight. We are working very closely with NOAA and other agencies concerned to design and conduct studies which will permit prediction or detection of damage to marine and coastal environments stemming from these developments. For the most part, NOAA's studies are being designed to emphasize the offshore areas, with those of the Fish and Wildlife Service focusing on the marshes, estuaries and inshore areas. There are also certain differences in subject matter emphasis. For example, NOAA is responsible for assessing marine fish populations and their

associated food chains, whereas we are assessing the populations and food chain relationships of waterfowl, seabirds and other coastal birds. The overall result we are striving for, however, is a complementary one through which the resources and capabilities of both agencies will be meshed to provide the best possible look at the total ecosystem.

In addition to NOAA and the Fish and Wildlife Service, EPA, the Geological Survey, and the coastal States concerned are participants in this effort, either as active study participants or in an advisory role.

They are all members of the Department of the Interior's Outer Continental Shelf Research Management Advisory Board which is advising the Bureau of Land Management on the type of environmental data and assessments required in connection with its leasing program.

Question No. 9

Mr. Reed's statement indicated that there have been differences with NOAA's National Marine Fisheries Service regarding, and I quote, "areas that involve commercial exploitation." The Commerce Committee was not aware of any lack of protection of marine mammals or endangered species under NOAA's jurisdiction. Would you please explain this statement at this time for the Record?

Response

The clarification you request involves perhaps more an issue of emphasis than of substance. It must be kept in mind that the Fish and Wildlife

Service and the National Marine Fisheries Service have different, and at times potentially conflicting, missions. The mission of the Fish and Wildlife Service is to protect, conserve and enhance fish and wildlife resources with a view toward esthetic and recreational values. Consequently, decisions made by the Fish and Wildlife Service are weighted accordingly. The National Marine Fisheries Service must necessarily consider the commercial implications of their actions and weight their decisions in that regard. In light of these varying missions, it would seem that total agreement between the two Services would be more cause for close questioning than a lack of total agreement, which is only to be expected. Recognition of the fact that total agreement between the two Services is unlikely does not require the conclusion that there are differences present to the extent that they might be characterized as serious disputes. It simply means that if issues which are now in the hands of the National Marine Fisheries Service were instead in the hands of the Fish and Wildlife Service, the resolution of those issues might be slightly different in reflection of the differing purposes of the two Services. This Service has no data which indicate that NOAA is not diligent in its efforts to protect marine mammals and endangered species, and we make no such allegations.

Question No. 10

Could you also provide for the Record any documents spelling out agreements between you and NOAA with regard to delineation of responsibilities under the Endangered Species Act and the Marine Mammal Protection Act?

Response

The Endangered Species Act of 1973 did not delineate agency responsibility for species of fish, wildlife or plants. Therefore, a formal agreement has been signed by both agencies with regard to management and protection of endangered and threatened species under the Act. A copy of that agreement is enclosed.

A formal agreement is presently being negotiated with the Department of Commerce to increase efficiency in enforcement and other related management aspects for the marine mammals under each agency's jurisdiction as delineated in the Marine Mammal Protection Act of 1972. An informal cooperative agreement is presently in effect. Since enactment of the Marine Mammal Protection Act, the two agencies have met on a regular basis to coordinate activities under the Act. All regulations issued pursuant to the Act have been cleared by each agency prior to issuance of any proposed rulemaking in the Federal Register.

Question No. 11

By what statutory authority is the FWS expending its "traditional service activities" as you say on page four of your statement?

Response

For many years the Service has been engaged in biological field work in many resource development areas including evaluating the effects on fish and wildlife of powerplant siting and construction, river dredging,

stream alteration, coastal development and the like. As explained in the response to question eight, the growing body of environmental laws now requires biological assessments on the record, in depth, and early in the decision-making process. In addition to the Fish and Wildlife Coordination Act, the National Environmental Policy Act, the Water Resources Development Act and other related laws, all require the collection and evaluation of biological data in a timely manner. In order to fulfill its mission of providing such biological evaluations, the Service is establishing various ecosystem-related programs to analyze, assess and evaluate environmental impacts on a National scale. This program represents an expansion of traditional Service activities in that existing programs have been realigned to be more responsive to National commitments. In order to accomplish this, the Congress has authorized an increase of \$4.1 million and 124 positions in FY 1975.

Question No. 12

At a time when all of us are concerned about the need to improve the efficiency of the Federal Government and to prevent overlapping and conflicting functions of Federal agencies, how can these new "activities" be justified when we already have NOAA and EPA charged with some of these identical functions?

Response

We are not aware of any activity contemplated under this new program emphasis which will result in overlap or conflict with functions of NOAA, EPA or any other Federal agency. The new biological services effort is a realignment and acceleration of existing programs designed to analyze, assess and evaluate environmental impacts of resource development activities on fish and wildlife on a National scale. We will be working closely with NOAA, EPA and other Federal agencies, State and local conservation agencies, public and private organizations to develop and make available accurate, timely biological data so that resource development agencies will have the information necessary on which to base their decisions. Coordination will be maintained to insure against actual duplication of effort and to promote the transfer of information of interest to resource agencies.

Both EPA and NOAA as well as the Fish and Wildlife Service may each review and comment on the impacts of a proposed development project, analyze various areas of environmental concern, and compile data on a variety of environmental topics. The objectives and approach to a given environmental matter differ with the mission and responsibilities of the agency. The research and development work of one agency may benefit or be of use to the other agency. One agency may develop and provide environmental data to the other agency under contract or other administrative

arrangements. The biological services program will neither impact the objectives of these agencies nor change their approach to environmental matters. However, the results of the Fish and Wildlife Service's new program emphasis very likely may benefit EPA, NOAA and other agencies concerned with environmental matters by making accurate biological data available in a more timely manner which may be relevant to objectives and programs of these agencies.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
U.S. FISH AND WILDLIFE SERVICE
UNITED STATES DEPARTMENT OF THE INTERIOR
AND THE
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
UNITED STATES DEPARTMENT OF COMMERCE
REGARDING
JURISDICTIONAL RESPONSIBILITIES AND LISTING PROCEDURES
UNDER THE ENDANGERED SPECIES ACT OF 1973

WHEREAS, under the Endangered Species Act of 1973, (16 U.S.C. §§1531-43) (the "Act"), the Secretary of the Interior and the Secretary of Commerce share, among other things, the responsibility to determine species of fauna and flora to be endangered species and threatened species;

WHEREAS, the Secretary of the Interior and the Secretary of Commerce have delegated those responsibilities to the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, respectively;

WHEREAS, the Reorganization Plan No. 4 of 1970, which under the Act, governs the responsibilities of each Secretary, does not adequately set forth those species of fauna and flora under the jurisdiction of the Secretary of the Interior and those under the jurisdiction of the Secretary of Commerce;

WHEREAS, the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, wish to establish procedures for the implementation of the Act and for the amendment of the United States Lists of Endangered Species and Threatened Species;

WHEREAS, the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, consider it desirable to define their respective jurisdictions with respect to the Act;

NOW THEREFORE, the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, hereby agree as follows with respect to their responsibilities for species of fauna subject to the Act and for the addition of species of fauna to the United States Lists of Endangered Species and Threatened Species, and for other revisions of those Lists:

1. (a) The Director, National Marine Fisheries Service, shall have jurisdiction over and shall determine whether species in the following classes, orders, or groups of animals shall be added to the lists of endangered species and threatened species or changed in status from threatened to endangered:

All species of the order Cetacea; all species of the order Pinnipedia, other than walruses; all commercially harvested species of the phylum Mollusca and the class Crustacea which spend all of their lifetimes in estuarine waters; and all other nonmammalian species (except members of the classes Aves, Amphibia, and Reptilia), which either (i) reside the major portion of their lifetimes in marine waters; or (ii) are species which spend part of their lifetimes in estuarine waters, if the major portion of the remaining time (the time which is not spent in estuarine waters) is spent in marine waters.

For the purposes of this Memorandum of Understanding: (i) "commercially harvested species" is defined to mean species which are commercially harvested from the estuary at the time this Memorandum is signed; and (ii) "lists of endangered species and threatened species" is defined to mean the endangered species and threatened species listed pursuant to section 4 of the Act.

(b) The proposed determination of the Director, National Marine Fisheries Service, that such a species should be added to the lists of endangered species and threatened species or changed in status from threatened to endangered, and the corresponding proposed listing by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal

Register, signed by both Directors. Comments on the proposed listing shall be directed to the Director, National Marine Fisheries Service, who shall conduct all appropriate or required status reviews, consultations, and notifications, and who may, in his discretion, hold any appropriate hearings. The final determination of the Director, National Marine Fisheries Service, that such a species should be added to the lists of endangered species or threatened species or changed in status from threatened to endangered, and the corresponding listing by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register, signed by both Directors.

(c) Both Directors must jointly agree whether such a species shall be removed from the lists of endangered species and threatened species or changed in status from endangered to threatened.

(d) The proposed action by the Directors with respect to whether such a species should be removed from the lists of endangered species and threatened species or changed in status from endangered to threatened, and the corresponding proposed revision of those lists by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register, signed by both Directors. Comments on the proposed revision of those lists shall be directed to both

Directors, unless otherwise agreed in writing by the Directors. If both Directors desire hearings on the proposed revision, joint hearings shall be held, unless otherwise agreed in writing by the Directors. The Director, National Marine Fisheries Service, shall conduct all appropriate or required status reviews, consultations, and notifications. The final action by the Directors with respect to whether such a species should be removed from the lists of endangered and threatened species or changed in status from endangered to threatened, and the corresponding revision of those lists by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register, signed by both Directors.

2. The Director, U.S. Fish and Wildlife Service, shall have jurisdiction over, and shall determine whether species in the following classes, orders, or groups of animals shall be added to or removed from the lists of endangered species and threatened species or changed in status from either category to the other, and shall list such species in his discretion.

All members of the classes Mammalia (except members of the order Cetacea, and members of the order Pinnepedia, other than Walruses), Aves, Reptilia (except marine turtles of the families Cheloniidae and Dermochelidae), Amphibia, and all other species (except species of the orders Cetacea and Pinnipedia, other than Walruses) which either (i) spend the major portion of their lifetimes on land and/or in fresh water; or (ii) are species

which spend part of their lifetimes in estuarine waters, if the major portion of the remaining time (the time which is not spent in estuarine waters) is spent on land and/or in fresh water.

3. (a) The Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, shall have joint jurisdiction over, and shall jointly determine whether species of fauna not specifically assigned in paragraphs 1 and 2 above shall be added to or removed from the lists of endangered species and threatened species or changed in status from one category to the other. In the case of addition, removal, or change in status of one of these species, the procedure set forth in paragraph 3(b) shall be followed with all of the appropriate actions to be done jointly, with the concurrence of both Directors, including any notices of review, proposed determinations, notifications, hearings, consultations, receipt of comments, and final determinations; provided, that, the Directors may agree in writing that hearings and the receipt of comments may be the responsibility of either Director.

(b) The proposed joint determination by the Director, National Marine Fisheries Service, and the Director, U.S. Fish and Wildlife Service, and the corresponding proposed revision of the lists by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register,

signed by both Directors. Where both Directors concur in the determination that a final revision of the lists should be made, the final determination by the Directors and the corresponding final revision of the lists by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register, signed by both Directors.

4. Final allocation of responsibilities under the Endangered Species Act of 1973, with respect to marine turtles of the families Cheloniidae and Dermochelidae must be resolved at some future time. For this reason, it is agreed that until this particular issue is resolved, all actions respecting such turtles will be undertaken jointly, using the same joint actions, requirements, and procedures contained in paragraph 3(b).

5. In emergency situations, regulations promulgated with respect to listing pursuant to the provisions of section (4)(f)(2)(B)(ii) of the Act shall be undertaken using the jurisdictional assignments and the joint procedures, to the extent appropriate, described in paragraphs 1, 2, 3, and 4.

6. Neither agency will unilaterally act on the listing of any plant species until the jurisdictional issue, with respect to plants, is resolved.

7. Each Director agrees that he and his staff will, at all stages, consult with and consider the recommendations of the other Director and his staff with respect to all actions proposed to be taken under the authority of the Memorandum of Understanding.

8. This Memorandum of Understanding has been executed in order to permit an orderly, efficient administration of the Act and should not be construed to govern the activities of either Secretary with respect to any other program administered by them.

This Memorandum of Understanding will become effective when signed by the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service. Either of the aforementioned Directors may cancel this Memorandum of Understanding upon thirty days written notice to the other Director.

Robert H. Schomberg
Director, NMFS

AUG 28 1974

Date

Special Agent in Charge
Director, USFWS

AUG 28 1974

Date

FACT SHEET -- KANGAROOS

The Department of the Interior became involved in the kangaroo issue on January 23, 1972, when Mrs. Marian Newman, now a research assistant for the Fund for Animals, formally requested the Department to add several "kangaroos" to the list of Endangered Foreign Fish and Wildlife. Under the law then in effect, the Endangered Species Conservation Act of 1969, we were required to review the status of any species or subspecies of vertebrate, mollusk, or crustacean which appeared to be threatened with world-wide extinction due to a variety of reasons including "...over utilization for commercial or sporting purposes...". The law also charged us with the responsibility "...to take measures to prevent any fish or wildlife from becoming threatened with extinction...".

Although the law did not specifically consider mismanagement, the Senate Report which accompanied that legislation pointed out, in reference to foreign animals, that we were "...to be alert to instances of gross mismanagement of wildlife resources, so that we may correct these deficiencies before a given species reaches the actual point of endangerment...".

In response to Mrs. Newman's request, specialists in the Fish and Wildlife Service undertook a review of the data available in an attempt to find out just what the situation was regarding these animals. As required by law,

and in cooperation with our Department of State, they also sought the views of the Australian Government.

On December 8, 1972, Mr. Earl Baysinger, Assistant Chief of our Office of Endangered Species and International Activities, prepared a report summarizing our findings. Among other things this report pointed out:

- that the red, the eastern gray, and the western gray kangaroos (except for the subspecies found on the island of Tasmania) probably were not endangered in the classical sense--that is they are not yet so reduced in numbers that they are on the brink of oblivion as is the case with some other endangered species like the blue whale or the whooping crane;
- however, it was apparent that they are very vulnerable animals--drought, the habitat in which they occur and other conditions make them very easy prey to gunners;
- that they are being killed in very large numbers;
- that most of this killing is commercial in nature and therefore there is no self-regulating mechanism as sometimes is the case with animals taken only for sport purposes;
- that no coordinated, effective means either of assessing the impact of this harvest on the kangaroo populations or of regulating it was in effect;

That proposal generated a great deal of interest and comment from our citizens and those of other countries.

During the period this proposal was open for public comment, representatives of the United States and over eighty other nations met in Washington and negotiated a Convention on International Trade in Endangered Species of Wild Fauna and Flora. Australia was one of the nations involved in these negotiations, and specialists on her delegation were able to discuss the kangaroo situation at length with Department of the Interior staff.

All the information which came to our attention during the comment period was analyzed and summarized in a second report dated April 18, which pointed out that no data were received which refuted our earlier conclusions and again recommended that the three commercial kangaroos be placed on our list of Endangered Foreign Fish and Wildlife.

However, between the time the second report was prepared and before we had an opportunity to act, we received word from Australia that there was to be a high-level meeting of Australian State and Federal Wildlife Conservation officials to address the kangaroo problem. Since the major threat to these animals appeared to be the lack of an effective conservation program, we deferred further action until we could learn the outcome of the meeting in Australia.

-- and that the U. S. market provided a significant stimulus to this commercial harvest.

The report recommended that we publish in the Federal Register a proposal to add several foreign animals--including the three commercially utilized kangaroos--the red, the western gray, and the eastern gray--to our list of Endangered Foreign Fish and Wildlife. It stressed that the threat faced by those three species--and these are the controversial ones--stemmed primarily from a heavy, commercial exploitation and that there was no evidence of an effective, coordinated, enforced regulation of that exploitation which appeared sufficient to insure the continued survival of those animals. To the contrary, there was evidence which indicated that no such regulation was in effect.

In view of this information the January 13, 1973, issue of the Federal Register carried our proposal to add 14 animals to the list of Endangered Foreign Fish and Wildlife and several others to the list of Endangered Native Fish and Wildlife. Among those proposed for the foreign list were the red, the eastern gray and the western gray kangaroos. This action was accompanied by a press release to alert the public, the industry, and other interested parties of our intentions. Since placing an animal on that list would have prohibited the importation of that species or any parts or products from such animals except under permits which were issued only for very specific purposes the law required us to provide an opportunity...usually at least 30 days...for public comment before taking final action.

That meeting took place in May. Among the recommendations which resulted was one which would establish an effective, coordinated Federal/State kangaroo conservation program. We were advised that there appeared to be good prospects for such a program and felt its chance of success would be improved if we deferred action on placing the kangaroos on our list until the Australians had an opportunity to sort these problems out among themselves.

At about the same time, Mr. Murphy, the Australian Minister for Customs and Excise, refused to lift a long-standing ban on the export of kangaroo products. Apparently, there has been a ban on the export of such material for many years, but each year the government had set it aside. Mr. Murphy's courageous action provided a much greater degree of protection to the kangaroo than would have been provided if we had placed them on our list. His action prohibited the export of kangaroo products. Our action simply would have prevented import into this country--the market throughout the rest of the world would have remained.

One has to recognize that the United States unilaterally cannot insure the kangaroos' continued survival--that is something that can be accomplished only by the Australian people and their governments.

In view of those happenings the Department announced our deferral-- and I iterate the word "deferral"--of further action toward placing these kangaroos on our list of Endangered Foreign Fish and Wildlife. We also announced that we were reserving our options to take further action if the export ban

was lifted, if it appeared the status of any of these animals was deteriorating, or if it did not appear that a conservation program would materialize. In fact, we now are growing increasingly concerned over what appears to be a lack of action on the part of the Australians to implement such a program.

As you probably know, The President recently signed the new Endangered Species Act of 1973 into law. This legislation gives us additional authority to conserve threatened or endangered species and will be applicable to the kangaroo situation. It would allow us, for instance, to regulate imports of a threatened species before that species becomes truly endangered.

In light of this new authority, I plan to send a specialist to Australia in early 1974 to meet with persons and organizations involved with the kangaroo. Our final determination on the red and gray species will be made soon after his return.

You can be assured that I take my responsibilities for the conservation of endangered wildlife very seriously. We're going to take whatever actions are available to us to insure that no species--including the kangaroos--is lost.

APPENDIX IV

Under Authority Previously Granted, the Following
Communications Were Ordered Printed

THE WATERWAYS JOURNAL, WEEKLY,
St. Louis, Mo., August 2, 1974.

HON. THOMAS F. EAGLETON,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR EAGLETON: We understand that the Senate has received the nomination of Mr. Lynn Adams Greenwalt to be the Director of the U.S. Fish and Wildlife Service.

Before Mr. Greenwalt is confirmed, we would greatly appreciate it if you, and the Senators who will consider his nomination, will make sure that Mr. Greenwalt understands the intent of Congress, as stated in the National Environmental Protection Act, to give an equal balance of consideration in public works and commerce to the welfare of man as well as fish and wildlife. In the past it has appeared to us that the personnel of the U.S. Bureau of Sports Fisheries and Wildlife have not considered this intent of Congress in some of their activities.

One action which has caused us the most concern are their attempts to stop dredging by the U.S. Army Corps of Engineers in navigation channel construction and maintenance in rivers and harbors, and also the work of private contractors who supply the country with vital building materials, such as sand and gravel.

Regarding dredging, I would appreciate if you would point out to Mr. Greenwalt that the Army Corps of Engineers is currently working on an in-depth study of dredging and dredge spoil disposition to determine just what, if any lasting effects, it has on the environment, including fish and wildlife. This study is being done at the Waterways Experiment Station at Vicksburg, Mississippi.

We would appreciate it if you would also point out to Mr. Greenwalt that the actions of certain personnel in the U.S. Bureau of Sports Fisheries and Wildlife has halted, or at least delayed, the construction of docks and terminals at certain locations on the inland waterways, including St. Louis, and in ocean ports, although the welfare of the American people demand that water-borne commerce has adequate and efficient ports and terminals to handle cargo that is yearly increasing in size.

Personnel of The U.S. Bureau of Sports Fisheries and Wildlife has even made it difficult to establish barge fleeting areas (equivalent to railroad switching yards) which are vital to the conduct or transportation of the inland waterways because, they say, the barges "displace" fish.

We respectfully request that you pass our concerns on to Mr. Greenwalt, and to other members of the Senate who will be considering his nomination.

We greatly appreciate the many favors you have done for us in the past and would be equally appreciative of any action you can take in regard to the above matter.

Respectfully,

JAMES V. SWIFT,
Business Manager.

PUYALLUP TRIBE OF INDIANS,
MEDICINE CREEK TREATY NATION,
Tacoma, Wash., August 21, 1974.

Mr. R. KAHLER MARTINSON,
Regional Director, U.S. Fish and Wildlife Service, Department of the Interior,
Portland, Oreg.

DEAR DIRECTOR MARTINSON: On July 25, Mr. L. Edward Perry forwarded an informational copy of your 'Salmonid Hatchery Feasibility Study—South Puget Sound Area' to the Puyallup Tribal Council. Frankly, some aspects of it are as surprising as its deficiencies are disappointing.

There are several matters, including the hatchery study status, that we choose to discuss with you at this time. Perhaps some of these issues should also be taken up at a meeting between the Puyallup Tribal Council, perhaps with other Tribes represented, and yourself and your staff. An early meeting date would be preferred.

By separate letter we have sent you copy of a statement to the Bureau of Indian Affairs regarding pressing budget needs of the Puyallup Tribe for fisheries management activities and related purposes. We are interested in whether your office may have any funds which might be used to meet some of these program requirements. At this point, it is an inquiry of interest rather than a direct request.

We understand that your Regional Office is securing the approximate \$690,000 in appropriations secured through its add-on, or amended, budget request. A variety of agencies and offices have indicated that these funds will be split between your Fisheries Services Program and the Washington Departments of Fisheries and Game. If this be true, we are confused by it. Departmental communications with us, and briefing papers, indicated that the Northwest Fisheries Program (Tumwater) had earlier this year requested \$550,000 for its "case area" biological and technical services program, plus \$140,000 for its Columbia River related activities.

At a meeting with Indian representatives from a score of Tribes in Portland on May 1, you made reference to the case area amount ("about half-a-million-dollar increase") before going on to state: "We are going to be advocating for the state to get money, too, but * * * that's not part of the budget request we are making." We seriously doubt that different Tribes would have urged OMB and Administration clearance for these funds, and congressional support for their appropriation, if tribal representatives had known that your May 1 statements were false. Were they? Have we again been misled in order that your Office might make good some commitment it has made to these State agencies? We know that the combined tribal needs for funding and assistance services have not diminished since May 1.

We recognize that considerable amounts of federal funds have been used regularly in support of State fisheries management, hatchery production, research, and other operations. Also, we are aware that the Northwest Fisheries Program has provided limited supplemental funding assistance to State activities on occasion. Federal assistance to the State and its agencies can appropriately serve legitimate needs. That would not be the basis for any of our objections.

Unilateral action by federal agencies to withdraw effective services and support to Indian Tribes in favor of sponsoring a blind commitment to State priorities and plans seem inconsistent with the established federal obligations to Indian people—and is contrary to the objectives of the Boldt Decision for bringing about improved cooperation and coordination between the governments of the Tribes themselves and the State. The increased management responsibilities resting with the Tribes requires a larger role in planning and budgeting processes, not that Indians be eliminated from those processes altogether.

If your Office is to function as an "advocate of fish resources," as you have described its attitude, then surely you cannot refuse or fail to recognize the Tribes' role and responsibilities as advocates, managers, and protectors of fish resources. Any attitude that Tribes are nothing more than another "self-interested user group" is wholly unjustified. Any assumption that State agency positions are inherently valid and that tribal motives and views are naturally suspect abandons a posture of objectivity and advocacy, and plainly disregards existing relationships to the fish resources.

We question the appropriateness of dividing up the \$690,000 Boldt Implementation funds with State Fisheries and Game, if the identified needs of plaintiff Indian Tribes are neither addressed nor met. The 1973 Inter-Agency Agreement between your Office and the BIA, under which \$250,000 was contracted to your Bureau from BIA FY-1974 funds, provided for "assistance to the Indian tribes in the protection and development of their fishery resources and to assist the BIA and the Interior Solicitor and the Justice Department in defending the Indians' treaty fishing rights." Obviously, the request and justification for the \$690,000 add-on budget were developed under the terms of that contract.

By January 9, 1973, the U.S. Attorney's Office had outlined the services it expected from your Bureau under the contract, specifically detailing the need to identify and develop a post-trial federal commitment for meeting tribal technical assistance needs. Noting that "the currently very low level of the assets of most of the plaintiff tribes requires an extensive, continuing provision of technical services to the plaintiff tribes," the U.S. attorney emphasized that "post-trial assistance" should "terminate only if a tribe is capable of obtaining such expert assistance."

After the March 29, 1974, Interior departmental briefings in Washington, D.C., where funding needs were outlined for Boldt implementation needs, the Deputy Assistant Secretary for Fish and Wildlife and Parks, Mr. Curtis Bohlen, wrote us on April 26 and declared: "The policy of this Department is to assist the tribes in any way possible in the management and harvest of tribal fish and wildlife resources. * * * we are planning to expand our capability to assist the Puget Sound tribes in qualifying for self-regulation of anadromous fish harvests at off-reservation locations."

It seemed further force was given to the direction and promises, expressed to us and other Indian representatives by Departmental and agency officials, by the April 12 congressional declaration of policy included in the Indian Financing Act of 1974, stating:

"It is hereby declared to be the policy of Congress * * * to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities."

Recent discussions with the Washington congressional delegation in D.C. indicated their solid support for that policy and its application to the consistent effect of the Boldt Decision. Their commitment to the people involved and to the fish resources uniformly followed the declared principles that (1) the Decision should not be subverted, but should be implemented for the good of all; (2) there should be no congressional attempt to override the Boldt ruling at the expense of Indians in favor of non-Indians; and (3) there should be increased tribal-State communications, coordination and cooperation in various facets of management and increased production of fish resources in order that all needs and interests could be met and served. In sum, more fish and less fighting.

We know of no Tribe which has opposed these attitudes and various policy statements. We are aware, however, of growing Indian concern over contradictions and adverse actions developing in federal circles and in the increasing subordination of federal decisions to State designs.

The questions of hatchery construction, operations, funding, and policies—and the nature of your South Puget Sound Area feasibility study—presents an excellent example which points out crucial problems.

The engineering studies and cost estimates can be useful, and most assuredly would have been useful in a complete feasibility study which we, and the several other Tribes also requesting it, had expected would be done. Nowhere do we find any general or specific statements of need or justification, nor any inclusion of information furnished by the Tribes relating to current or projected future fisheries and management plans. We would expect that these and other considerations would themselves be examined in making a determination of feasibility.

Rather than simply permitting the State agencies to write in their own positions and conclusions for this partial study—and those conclusions attracting the major force for consideration in the absence of crucial justifying materials and statements showing Indian and general need for the proposed project—their positions also ought to be examined before making a final statement on feasibility. How valid are their stated positions? Are they valid and of sufficient oppositional merit to justify both non-feasibility and defeat of the proposal? Does a feasibility study stop with their assertion that there should be no additional hatchery management agency in the area, or does it proceed to examine why they have insisted upon a dual and divided system of fish management themselves? How well have they managed hatchery and stocking operations in the study area? What findings lead to what conclusions in examining such considerations in developing a final form judgment on feasibility?

We are not suggesting inclusion of voluminous extraneous matter, but only a fair chance for actual feasibility to be demonstrated or denied. Some considerations cited by the State agencies are of substantial concern to ourselves as well. The "population density barrier" question, and the impact of artificial plants on natural run stocks, were, in fact, issues that the Puyallup Tribe raised in the Game Department's civil lawsuit against the Tribe in Puyallup Remand III when returned from the U.S. Supreme Court. They are issues we shall be carrying in *U.S. v. Washington*, Phase II. The Game Department has been planting steelhead on the Puyallup River for some years, progressively increasing the numbers planted with a resultant progressively decreasing return of both natural run and hatchery reared adults. The answer to the issue is not that the Game Department should continue its programs without examination, and that there should be no federal Indian hatchery in the area, but there should be determination of what the problems are and what are the most appropriate solutions.

That Department's assertion that they can readily supply all smolts needed in the area stands in contradiction to other Puget Sound Marine Water area studies which state future hatchery needs, the present efforts to secure \$7.4 million for increasing production capacity of all existing federal and state hatcheries in Washington, as well as previous efforts by Fisheries and Game to secure Nisqually

Indian Community approval for establishment of both hatchery and rearing facilities on the Nisqually River.

The Indian Tribes of this area are cognizant of the excellent reports previously issued out of the Tumwater Indian Fisheries Services office. Both Indian people and the citizenry of Washington should be greatly appreciative of the lead taken by that office in moving for dramatic changes in public policy regarding the effects of improper logging operations upon fish resources. The cooperative efforts of that Office and the Quinault Tribe in addressing the problem and acting and reporting on it preceded general recognition of the need to do something about it in all areas by nearly a decade. The impetus came from the Quinault projects and the staunch support of U.S. Representative Julia Butler Hansen in insisting that the efforts be federally funded. Thus, we are gravely disappointed that your "feasibility study" in the present instance is so far below the quality and standards we had come to expect from your Bureau.

We do believe that the hatchery engineering information supplied in the study could be the base for a finalized feasibility study and master plan consistent with the objectives of the Indian Tribes of the study area. The time loss in being able to proceed now to seek supportive federal, private, foundation, or other investment funds for developing the desired facilities is probably the major harm of not having been provided a complete feasibility study and implementation plan.

The Puyallup Tribe will be addressing the other affected Tribes, the Medicine Creek Treaty Council, and the Indian Fisheries Commission, about the prospects of our proceeding jointly, in cooperation with the Northwest Fisheries Program office and other resources, for completing the study and a final plan. That would, of course, require some sources of funding. We believe it would constitute, another reason why you should hold tightly onto your \$690,000 add-on funds—at least until the extent of such needs are presented and you are able to meet with all the concerned Tribes.

We sincerely hope that you are responsive to our expression of concerns as presented in this letter. However, since various of the issues of policy and plans are determined in other decision-making areas as well, we consider it necessary to communicate these and related concerns to additional parties and officials. Insofar as the functions of your Office and Programs are involved, we shall send you copies of our related correspondence or complaints.

We shall sincerely appreciate your every consideration in these matters, and look forward to an early response.

Respectfully yours,

RAMONA BENNETT,
Chairwoman, Puyallup Tribal Council.

HANK ADAMS,
Puyallup Fisheries Management Coordinating Consultant.

THE FUND FOR ANIMALS,
Washington, D.C., September 18, 1974.

Mr. JERRY DURKIN,
Mr. MIKE BROWNLEE,
*Immigration and Naturalization Building,
Washington, D.C.*

DEAR MR. DURKIN AND BROWNLEE: I enjoy talking with you and appreciate your considering some serious problems at Interior that might be appropriate to question Mr. Lynn Greenwalt about at his forthcoming confirmation hearings.

Probably the gravest problem at the present time is that concerning the threatened grizzly bear population of the lower 48 states, a situation for which Mr. Greenwalt must take a great deal of the responsibility.

I have enclosed the Interior Department's latest grizzly report, which clearly states that the bear is threatened with extinction in the lower 48 states. Also enclosed is some additional background information which may be helpful.*

Despite the fact that Interior has determined that the grizzly is threatened, neither Interior nor the U.S. Forest Service is lifting a finger to stop this year's hunting season, which takes place for the most part on Federal, Forest Service lands. In fact, according to Forest Service Chief John McGuire, Mr. Greenwalt

*Information referred to was retained to committee files.

has not even advised the Forest Service to close or curtail the season at their recent meeting on the subject.

In Wyoming, the season began on 10 September; in Montana, two areas opened on 15 September; the other 15 hunting areas open on 20 October. Two of the latter areas are within the Yellowstone ecosystem. Montana has issued 919 grizzly bear hunting licenses this year, which is about the number of grizzlies estimated to remain in the entire lower 48 states. Since this may be the last hunting season these bears, the increased hunting interest—the last chance to get a grizzly “trophy”—could help push the species over the brink. Yet, Interior has not yet moved to add the grizzly to its list of endangered and threatened species.

In fact, the Interior Department's whole endangered species program is at a standstill. In January, 1973, Interior Secretary Rogers Morton announced that the three large species of kangaroo were “threatened with worldwide extinction” (statement enclosed), yet no action has been taken to list these animals.

In January, 1974, the green and loggerhead turtles were proposed for the endangered list, yet they have not been listed.

The Office of Endangered Species has recommended that over 60 species of mollusks and crustaceans be proposed for the list, but this has not been done.

Several critically endangered cats, which appear on the list of the Convention on International Trade in Endangered Species of Flora and Fauna, do not appear on our endangered species list. This group includes the following species: the extremely rare clouded leopard (*neofelis nebulosa*), which has been placed in the most endangered category by Great Britain and the State of New York (through its Mason Act). Even the International Fur Trade Federation has recommended a ban on its exploitation because of its scarcity. Another cat denied protection is the marbled cat (*Felis marmorata*), a beautifully patterned Asian cat which Interior admits “has always been regarded as rare” (“Status Report on Cats of the World,” by Dr. John Paradiso, Office of Endangered Species). Other threatened cats not added to the list and mentioned in this study include: the Iriomote Jungle Cat (*Mayailurus iriomotus*) of the Ryukyu Islands (“Leyhausen states that the population is certainly below 300 animals at the moment and in dire need of complete and efficient protection”); the Andean cat (*Felis jacobita*), of South America (“It is apparently much rarer and has a more limited range than the pampas cat, and thus may be more vulnerable”); Temminck's cat (*Felis temminckii*) of Southeast Asia; the black footed cat (*Felis nigripes*) of the African desert (“rare and reduced in range”); the leopard cat (*Felis bengalensis*) of Asia; the flat headed cat (*Felis planiceps*) of Asia; and the jaguarundi (*Felis yagouaroundi*) of South America and the southwestern U.S.

None of these cats has been added to the endangered list, even though they are all listed in the most endangered category by the International Convention, agreed to by the U.S. and over 80 other nations in April, 1973 in Washington.

Nor has Interior taken action to protect such rare species as the Glacier Bear (only about 500 remain in Alaska and Canada), the Indian Elephant, the chimpanzee, and other animals which are rapidly becoming threatened with extinction.

I could go on and on, but I am sure you get the point: Interior is simply not fulfilling its responsibilities under the law to protect rare and endangered species. Before confirming Mr. Greenwalt as Director of the U.S. Fish and Wildlife Service, I hope that you will extract from him a commitment to rectify this situation.

Please let me know if you have any questions or would like additional information.

Thanks agains for your interest.

Sincerely yours,

LEWIS REGENSTEIN.

The first part of the report deals with the general situation of the country and the progress of the work. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and the plans for the future.

The second part of the report deals with the financial situation of the country and the progress of the work. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and the plans for the future.

The third part of the report deals with the social situation of the country and the progress of the work. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and the plans for the future.

The fourth part of the report deals with the economic situation of the country and the progress of the work. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and the plans for the future.

The fifth part of the report deals with the political situation of the country and the progress of the work. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and the plans for the future.

The sixth part of the report deals with the cultural situation of the country and the progress of the work. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and the plans for the future.

EXECUTIVE SESSION

TUESDAY, OCTOBER 1, 1974

The Committee on Interior and Insular Affairs met in open markup session on October 1, 1974, at 10 a.m. in room 3110 Dirksen Senate Office Building to consider bills pending and other matters pending on the agenda. Those present were: Senator Bible, presiding; Senator Metcalf; Senator Johnston; Senator Haskell; Senator Church; Senator Abourezk; Senator Metzenbaum; Senator Fannin; and Senator Bartlett.

The first matter discussed by the committee was the nomination by the President of Lynn A. Greenwalt to be Director of U.S. Fish and Wildlife Service. Senator Metcalf stated that he had chaired the hearings on this nomination, and while there had been no executive session on the nominee's financial statement, he had examined it carefully and was satisfied that there was no conflict of interest. Senator Metcalf moved that the nomination of Mr. Greenwalt be favorably reported to the Senate and Senator Fannin seconded the motion.

There being no objection, the nomination of Lynn A. Greenwalt to be Director of the U.S. Fish and Wildlife Service was unanimously reported to the Senate.

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