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96-H 33 AMENDING THE BLACK BASS AND LACEY ACTS

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HEARING

BEFORE THE

COMMITTEE ON RESOURCE PROTECTION

OF THE

COMMITTEE ON

ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 1882

A BILL TO PROVIDE FOR THE CONTROL OF INTERSTATE AND FOREIGN COMMERCE IN FISH AND WILDLIFE

NOVEMBER 6, 1979

SERIAL NO. 96-H33

Printed for the use of the Committee on Environment and Public Works



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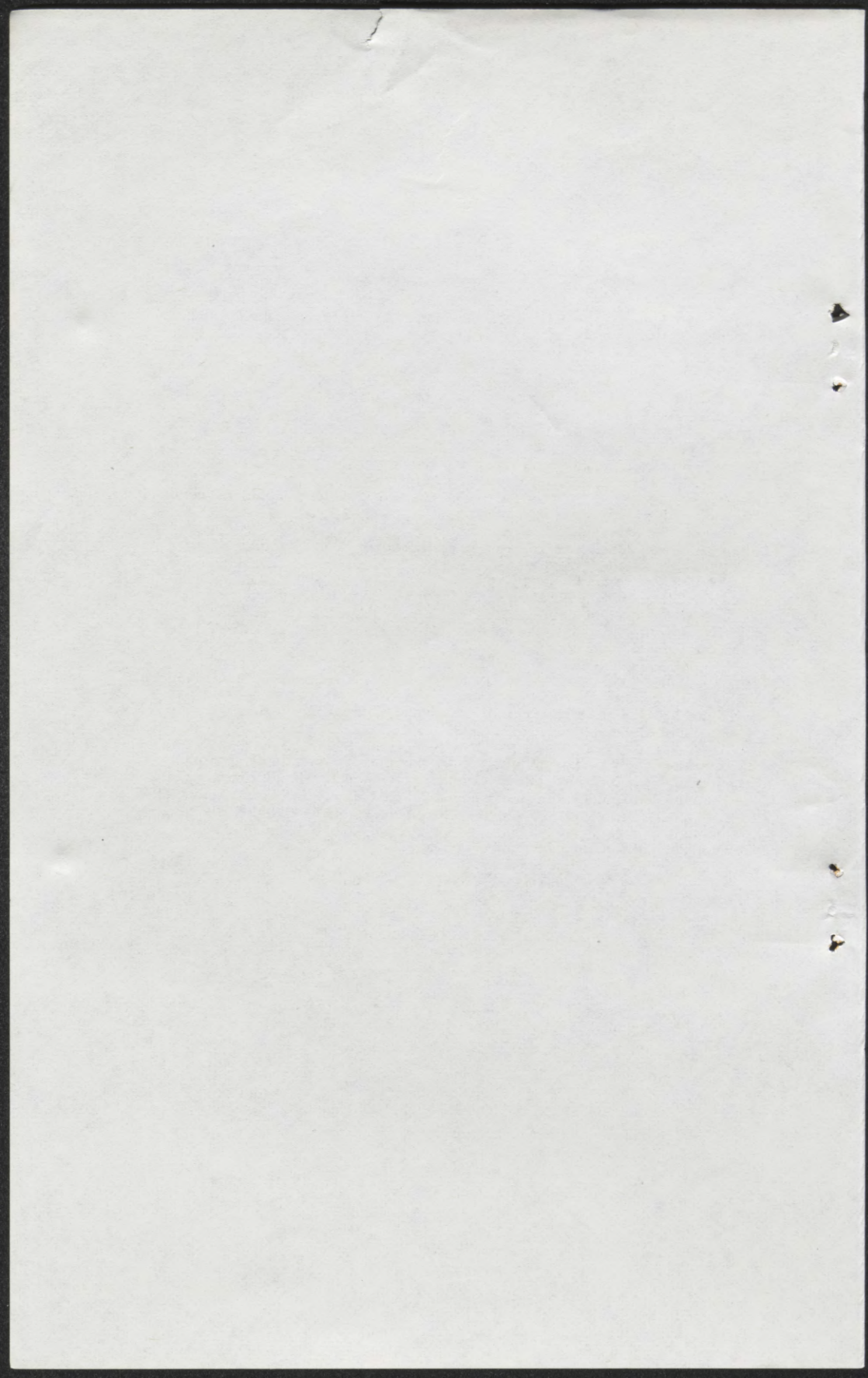
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AMENDING THE BLACK BASS AND LACEY ACTS

TUESDAY, NOVEMBER 6, 1979

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON RESOURCE PROTECTION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:00 a.m., in room 4200 Dirksen Senate Office Building, Hon. John H. Chaffee presiding. Present. Senator Chaffee.

OPENING STATEMENT OF HON. JOHN H. CHAFFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFFEE. Good morning. Over the next 2 days the subcommittee will examine an issue which truly deserves congressional attention: The preservation of wildlife on an international level. It has come to our attention that there are monumental problems of illegal trade, habitat loss, and other barriers to conservation that are the result of a rapidly developing world. Although there are treaties and statutes which deal with these problems, we have far to go in tightening the loopholes which still exist and in finding new ways to help other countries in their wildlife protection efforts.

This morning, the subcommittee will focus on illegal wildlife trade and S. 1882, a bill to amend the Lacey and Black Bass Acts.

Tomorrow, the agenda will be broader and will cover general global wildlife conservation issues.

In 1925, Simon Bolivar issued a decree outlawing the killing of the vicuna in Peru. In more recent times, Brazil outlawed the commercial exploitation of all wildlife in 1976. Venezuela banned the export of crocodile hides in 1970. Colombia prohibited trade in skins or live specimens of the number of animals in 1974. Kenya took similar action in 1978.

These countries are what one could call "wildlife-producing" nations. Their attempts to protect various species can be all but torpedoed by the fact that a wildlife consumer always waits somewhere. While some consumption is justified, other trade violates the efforts both domestically and internationally to preserve species.

This is what the Lacey Act is about. That act, passed in 1900, was our Nation's first law to supplement the wildlife protection attempts of other countries and among our States. The act makes it illegal to trade in wildlife taken, transported or sold in violation of a foreign state, or Federal law. Similarly, the Black Bass Act makes it illegal to trade in fish protected by State or foreign law.

What the Lacey Act says is that we are willing to close an open door here in this country, so that international conservation goals can be met. It says that because you transport an illegally obtained animal from one State across State lines, don't assume that there will be no penalty.

But such assumptions are made. The record under the Lacey Act is not encouraging. There were 584 convictions for illegal trade during 1977. They were misdemeanor convictions. Fines totaled \$31,117—an average of \$53.28 per defendant. Jail sentences amounted to 2,015 days—all but 10 days suspended. This is hardly a deterrent to illegal wildlife smuggling. Poacher profits are high—with low risks.

We see species gradually disappearing from the Earth. Look at the black rhino. The price for an ounce of ground rhino horn is as high as \$350 or more. The species is in such high demand by poachers that Kenya estimates its black rhino population could be wiped out within 12 months. Ten years ago, there were 6,000 to 9,000 black rhinos in a Kenya national park. Today, only 80 to 200 remain.

S. 1882 has been proposed in the spirit that the current Lacey Act cannot do the job. So let us turn to our witnesses here this morning. We will hear from Government and conservation witnesses on the extent of the illegal wildlife trade problems and the S. 1882 proposals to strengthen enforcement efforts. Also, the International Association of Fish and Wildlife Agencies and the Pet Industry Council will tell us their views on the proposed amendments.

I hope that at the end of 2 days we have the seeds of suggestions for assuring that man doesn't become a species who contemplates himself, by himself.

So, we will move on now to our first witness. Mr. Greenwalt, we welcome you here.

**STATEMENT OF HON. LYNN GREENWALT, DIRECTOR,
U.S. FISH AND WILDLIFE SERVICE**

Mr. GREENWALT. Thank you very much, Mr. Chairman. I have a prepared statement which I would like, if you will permit it, to be entered into the record in its entirety [see p. 57]. I will touch upon it in its salient points to emphasize the points I wish to make this morning.

The legislation to amend the Lacey and Black Bass Acts, as you know, has the full support of the administration and was referred to by the President in his environmental message on August 2. We feel very strongly about the amendment to these two acts because such amendments will give us additional tools with which to deal with the problem that you have so carefully outlined.

I would like to point out some historical background, Mr. Chairman, that will, I think, give us an insight into the nature of the problem we face today. There have been whole species of wild animals exterminated by commercial exploitation.

Few people today have heard of the steller sea cow, or West Indian monk seal, or the great auk, or the sea mink, but many people I think may remember the passenger pigeon which is a good example of what can happen to a species when its exploitation is unconstrained.

The passenger pigeon was a bird common to this country, to North America, in the last century. It was so abundant as to be almost without limit, it was believed. I quote from a publication:

The passenger pigeon needs no protection. Wonderfully prolific, having the vast forests of the North as its breeding grounds, traveling hundreds of miles in search of food, it is here today and elsewhere tomorrow, and no ordinary destruction can lessen them * * * (Palmer 1912).

In one 40-day period in 1869, nearly 12 million pigeons were sent to market from Hartford, Mich. The last wild pigeon was shot near Detroit on September 14, 1908, and the last passenger pigeon in captivity died in the Cincinnati Zoological Garden on September 1, 1914.

Mr. Chairman, I think your point is well taken. It is possible for man to wind up contemplating himself, if man is not in fact very careful.

By the late 1890's it was clear that market hunting was having a profound effect on fish and wildlife in this country. Although many States did not have laws governing the taking of fish and wildlife, Congressman John F. Lacey of Iowa authored the Lacey Act of 1900 to stop illegal market hunting and he said this and I quote: "This bill is directed against the pothunter. When you take away his market, you destroy his occupation. Take away his market and the pothunter must cease to carry on his nefarious traffic."

That was the basic philosophy, the basic concept of the Lacey Act. And it has been an effective tool since 1900. It has been hailed by all the States in our country and most of the nations of the world, including both wildlife producing and consuming countries. It was amended over the years to keep pace with changing illegal commercial practices and for that reason, it has been valuable.

It was amended 10 years ago to expand its scope and increase its penalties. Since then times have changed and it must be amended again to cope with the expanding commercial inroads into the diminishing wildlife resources of the world.

Let me cite for you, Mr. Chairman, that world commerce in wildlife is an enormous business and I cannot overstress that idea. In 1978, importations into the United States alone amounted to over 13.1 million animal hides and skins, 368,000 live birds, 2.5 million live reptiles and amphibians, 152,000 game trophies, 260 million tropical fish, and 187 million individual products manufactured from wildlife.

These figures are particularly staggering when one realizes that they include only declared and documented shipments which are ostensibly legal. The sheer volume of these shipments makes adequate inspection by our limited number of enforcement officers working closely with U.S. Customs almost impossible.

Smuggled wildlife, of course, is not declared, and therefore not included in these figures, the exact extent of illegal traffic is unknown. But based on actual seizures and intelligence, we believe it may run as high as 10 to 25 percent of the total wildlife shipments depending on the species involved.

Not only do we have a large volume of illegal wildlife imports, but there is an even larger percentage of illegal exports in the United States, because there is no effective export control system; moreover, our laws have driven some U.S. firms to clandestine commerce without importing wildlife in the United States and thus running afoul of U.S. law.

As you can see from the appended graphs declared wildlife in ports are on the increase. I have also included some maps which show basic routes of foreign commerce for some of the most heavily traded categories of wildlife. These maps dramatically illustrate the worldwide nature of the wildlife business.

While the current Lacey Act has been an effective tool, it no longer provides the deterrent needed to prevent interstate and foreign commerce in wildlife where a State or foreign law has been violated. The reason is simple. The penalty is too low and the profits too high. The maximum penalty for a criminal conviction is now only a misdemeanor with a possible sentence of \$10,000 and 1 year in jail.

Judges rarely, if ever, hand down the maximum, and U.S. attorneys naturally give priority that Congress has placed on the offense. Profits generally run more than 100 percent; that is, each person in the marketing chain from the poacher through the various middlemen, brokers, dealers, and retailers at least double their investment. Often the profit margin is much higher—up to 3,000 percent. We know that many wildlife criminals are highly organized and often deal also in narcotics, stolen property, weapons, and other illegal activities with profits.

As more and more animals become threatened with extinction, the demand for them increases, driving up the price and the illegal profits. Currently a woman's purse made from crocodile leather sells for between \$400 and \$1,200 in Europe, rhino horn aphrodisiac sells for over \$600 an ounce in the Far East and the hyacinthe macaw, a beautiful purple parrot, sells for \$8,000 in the United States.

Total illegal profits involving U.S. citizens probably run into tens of millions of dollars a year. These profits are just too great to be deterred by the current penalty structure of the Lacey Act.

Not only does the current penalty structure not match the potential profits, we also have a problem with the criminal culpability standards. During fiscal year 1978, we opened 914 investigations predicated on complaints or other information indicating a possible violation of the Lacey Act and closed 842 cases. Of these closed cases there were 173 criminal convictions, 9 acquittals, 83 declinations by U.S. attorneys, 84 civil penalty assessments, and 493 cases closed administratively. No case is closed administratively until all investigative leads have been followed and it has been established that there is insufficient evidence for a criminal prosecution or a civil penalty assessment. This large number of administrative closures is a direct result of the culpability standards of the current law and we are suggesting appropriate amendments. These amendments, along with the improved penalty structure, will be discussed more fully by the Justice Department witness.

Senator CHAFEE. As I understand it you have only asked for a \$10,000 fine in the amendments that you have offered. That is the same as the current maximum.

Mr. GREENWALT. Right; we have asked for substantially greater criminal penalties.

Senator CHAFEE. Go on.

Mr. GREENWALT. I think that is one of the points that is germane in two ways. First of all, the penalties must in some fashion match the crime, else there is no deterrent as it is fairly obvious.

Secondly, I think it is important also to note that there has been concern lest the penalties in the new structure be applied without discretion across the board. Said another way, there are a great many people involved in these transactions many of whom are hapless or unknowing, for example, the transport firm, the truck driver who delivers shipments in interstate commerce or some other such thing.

And in hearings in the recent past on this, there has been some concern raised about the possibility of having these very strong penalties accrue to individuals who may not have been knowingly or intimately involved in the illegal transaction.

I think one of the analogies that perhaps should be brought to the attention of the committee is that there are very great penalties for other things in the United States. For example, the importation of liquor from a foreign country. One can accrue a tremendous penalty potentially for bringing in more liquor from a foreign country than the law allows. Yet, this high penalty is seldom assessed. The deterrent is there. Its application is judiciously applied. So that the citizen, the individual who may not be at all criminally involved in these activities is not likely to be subject to the penalties even though the potential is here.

I think the important thing, Mr. Chairman, is to point out that the violations of the Lacey Act, the violations of these international agreements are very serious business and they make tremendous inroads on the fish and wildlife resources of all countries.

Senator CHAFFEE. I agree with that. What I was saying is that \$10,000 doesn't seem to be a very stiff penalty.

Mr. GREENWALT. \$10,000 in the face of the kind of things I try is not a serious penalty, a criminal charge that involves time in jail is a different matter altogether.

Senator CHAFFEE. Yes, I understand, but I would have increased the fine along with the jail term.

Mr. GREENWALT. The criminal penalty as we propose it is \$20,000 and 5 years.

Senator CHAFFEE. I would have made it 15. But, never mind. Go ahead.

Mr. GREENWALT. The deterrent effect is one of the things where we are desperately seeking for the reasons I think I have perhaps exhaustively described, the potential for making money in this market is extraordinary.

Additionally, as is often the case with these illegal activities, the animals are handled with a cavalier disregard to their own well-being and I am sure the quality of handling will demonstrate the inhuman treatment often imposed on live imports, the mixture of activities is fascinating in some ways.

The mixture of importation of wildlife and other contraband, for example, I am aware of several instances in which drugs were smuggled in the company of poisonous snakes. The object being to deter anyone from examining very carefully the shipment because no one wants to look intimately into the well-being of a bag of poisonous snakes and that makes a good place to hide narcotics, and it has been done.

So the opportunity seized upon by people who make a living smuggling anything to use wildlife to add to their profit is there and it is taken.

I might say again that the element about which we are concerned, that group of people who deal in illicit wildlife are very likely to be hardened cases and very serious criminals who are not contributing very much at all to society.

I want to make another point, Mr. Chairman. That is that we don't wish to hinder legitimate trade in wildlife or wildlife products. In fact, we believe that healthy wildlife populations are good for the trade. It is the destructive poaching of fish and wildlife that must be controlled and I reaffirm my belief in Congressman Lacey's idea that the role of the Federal Government is to dry up the interstate and international market where the fruits of poachers who will then cease to carry out his nefarious traffic.

Senator CHAFEE. What are other nations doing—other so-called consuming nations? Are they vigilant in this area? Japan, West Germany?

Mr. GREENWALT. Not very well, sir, and I have to confess that the United States is not as vigilant itself as I would like it to be. We in the Fish and Wildlife Service work very closely with the Customs and other people. We don't give it a scrutiny that it really warrants because we lack the capability to do that.

I will say that we have had a long and very profitable history of association with the Customs Service. And without them, we would have been unable to do anything of the sort that we have accomplished in this past several years. Our Nation is one which has the advantage in this regard. Other nations do not have anything like our capability and, therefore, the attention paid to this problem in other consumer nations is not nearly as great as it should be.

Several of the European nations are very diligent and have an opportunity to be very effective in this regard. In my experience, there is not the capability worldwide among the consumer nations to do this sort of thing very well.

Obviously, the producer nations, given the nature of producer nations these days, are unstable governments and economic problems are unable to do very much at all. It is a very difficult problem and I think can be in part at least resolved by providing the kind of tools we think come with the amended Lacey and Black Bass Acts to achieve this end.

Senator CHAFEE. Mr. Greenwalt, I am afraid we are going to have to move along here.

Mr. GREENWALT. I recognize that. I would like to say only that the two acts, the Black Bass Act and the Lacey Act as we have proposed, will offer an opportunity to improve and to do a better job.

I would say that among the things that we are concerned about and it is a small thing and it is only—the only thing we do not want to change in the Lacey Act is its name. We think it is only proper that Congressman Lacey receive continued recognition of the basic philosophy of the act which we still strongly support.

I would be glad, Mr. Chairman, to offer other comments that I might.

Senator CHAFEE. In your testimony you say:

This spring in Texas we seized 16,000 furs valued at \$1.1 million. These furs were from animals killed illegally in Mexico and destined to the European market. Because of problems with the current Lacey Act, the U.S. attorney agreed to a settlement which returned half of the seized pelts to the defendants and a fine of \$10,000 and 5 years probation.

Will these changes take care of that situation?

Mr. GREENWALT. The changes, had they been in effect at the time this was undertaken, would have resolved the problem.

Senator CHAFEE. Are you satisfied, under this act, that you have a strong enough forfeiture provision? Seems to me if there can be forfeiture, we will have taken a big step forward.

Mr. GREENWALT. We have recommended much more simplified forfeiture procedures so that the relieving of the violator of the contraband is a much more streamlined process.

We feel that that will help immeasurably, particularly in the administrative sense.

Senator CHAFEE. As I understand the proposal, you take the Black Bass Act which is separate from the Lacey Act, and you combine them together.

Mr. GREENWALT. Correct.

Senator CHAFEE. Into a new Lacey Act.

Mr. GREENWALT. That is right.

Senator CHAFEE. Thank you very much. Now, let me ask you this: If this bill passes, is Fish and Wildlife prepared to commit the resources to it? We have on, numerous occasions, passed stringent acts and improvements in present law, but then the agency that deals with it doesn't have the resources. So we are no further ahead than when we started.

Mr. GREENWALT. Mr. Chairman, this is an area in which I have some understanding. We would like very much to commit the resources recognizing that while I and my folks may recommend the commitment of such resources the decision is not mine alone to make.

Senator CHAFEE. I appreciate that, but in your priorities, after all—

Mr. GREENWALT. We do set our priorities.

Senator CHAFEE. Where is this going to be in your priorities?

Mr. GREENWALT. Substantially higher in our priorities than we have made it in the past, because I think with the improvement of the Lacey Act, the Presidential support that we have received, the efforts that the President is presently making with respect to wildlife law enforcement, we can justify and convince those who might otherwise not agree with this that we should receive the kind of resources that are necessary effectively to carry this out.

It will, Mr. Chairman, be high on our priority of Fish and Wildlife Service activities.

Senator CHAFEE. Your chart for game trophies imported to the United States during 1972 to 1978 shows a spectacular shot upward in 1977? What happened?

Mr. GREENWALT. I am informed that part of it is the improved reporting procedure and we haven't really determined what it was that happened at this time that may have caused this to go upward so rapidly.

Senator CHAFEE. Some in the chart on, live reptile importations, 1972 to 1973, it dropped down and 1977 to 1978 it shot upward.

Mr. GREENWALT. I think again, there may be a sort of vogue involved in some of these things. Certain kind of pets or—

Senator CHAFEE. Again in the next chart. Large mammal importations. It goes off like a rocket in 1977. Also live bird importations. I have never seen such precipitous changes in graphs.

Mr. GREENWALT. In part, it is improper reporting procedure. There is also a clear increased interest in the importation of these things

because there is a market for many of these creatures or their products. Products made from these creates, it is—a reflection of the times I would say.

Senator CHAFEE. I see. Thank you very much, Mr. Greenwalt. We will be talking with you further on this and there might be additional questions.

I see Mr. Meyers from the Pet Council is going to testify. He obviously will raise some points. We can take those up with you at another time so that you don't have to wait around this morning.

I notice that Mr. Green from the Customs Service is going to be on the panel and we can check with him on the points that Mr. Meyers will be raising.

Let's take the next panel, the conservation panel. Mrs. Stevens, Ms. Duplaix, and Mr. Heymann.

Why don't we proceed this way? Why don't we allow the maximum of, say, 40 minutes for this panel. I assume that everybody has statements. I see Mrs. Stevens' statement, Ms. Duplaix's statement, Mr. Heymann's statement.

You don't have to read these in their entirety. Why don't we start with Mrs. Stevens. We welcome each of you here.

Mrs. Stevens, if you would like to proceed. You can summarize your statement, speak from it, do as you want. Yours isn't too long, so you handle it the way you want.

STATEMENTS OF CHRISTINE STEVENS, SECRETARY, SOCIETY FOR ANIMAL PROTECTIVE LEGISLATION, WASHINGTON, D.C.; NICOLE DUPLAIX, DIRECTOR, TRAFFIC (U.S.A.), PROGRAM OF THE WORLD WILDLIFE FUND, WASHINGTON, D.C. AND HENRY HEYMANN, WASHINGTON REPRESENTATIVE, INTERNATIONAL PRIMATE PROTECTION LEAGUE

Mrs. STEVENS. Thank you, Mr. Chairman, I think I might ask that these numerous pictures and exhibits be brought up to you. Because it would be easier to follow.

On the top are our pictures which are not mentioned in my statements, so I will start with them. This is an article from the old Life magazine, which shows giraffes at sea. They slowly became more and more ill and debilitated. If you turn the page, you see one that finally collapsed and died, even though he was said to be a favorite of the crew. And the dead giraffes were thrown overboard.

That case received substantial publicity. The people responsible and who were named in the indictment, were represented in court by eight very high-powered lawyers, and they got off scotfree. Now that is a rather gross example of failure of the Lacey Act to do what it should do. I bring up this old example because a major animal dealer at the meeting last week of the Animal Air Transportation Association referred to the fact that these people got off. He was quite interested. He attended the court proceedings to find out what was going to happen to them. He also stated that the same people were involved in the recent scandal at the Rome Airport, which I do refer to in my written testimony. It is one of the most horrible things that has happened in recent times. I have seen the eyewitness reports. These

animals slowly and horribly died even after representatives of animal welfare organizations got there. They could not get the animals out. And they should never have been sent in the first place without legal permits.

Now, that kind of dealer has got to be punished. But it has been years and years that he has been doing such things, and he keeps getting off. That is just one example of why we feel so strongly that the Lacey Act enforcement has got to be made effective. It simply hasn't been. The idea behind the Lacey Act is absolutely correct, but as you have certainly heard in full detail from Mr. Greenwalt, Interior can't actually make it work.

Now, I would comment on the other things you have there. You have a picture of a Little Dennis, the orangutan. That was taken some years ago, also. He was seized at National Airport and he looks happy there now in the flowers of the National Zoo, but he was packed into a crate that really was too small even for a coffin for a creature of that size, and he was mislabeled as a monkey so that nobody knew, unless they looked very hard, that he was an endangered great ape.

I have seen these small crates. In fact, reference to snakes reminds me of the fact that I once went up to look inside a cargo airplane, and they told me "don't go up there because we lost a couple of poisonous snakes up there and you should really not go up."

Well, of course there weren't any snakes up there, that is just a very common way of keeping anybody that wants to look at things out, because of the actual phobia that many people have about snakes and the fact that some are dangerous.

Well, chimpanzee infants packed in these tiny coffinlike containers is what they didn't want me to see. One was dead. Now—

Senator CHAFEE. In your testimony, you stress that the loss of the animals, never mind the illegality, and the fact that these animals are taken from other nations where they are endangered and they are endangered internationally as well. But in the mere transport of them into the country, so many of them die and so there, they are not even—they don't arrive here alive, they die enroute.

Mrs. STEVENS. Yes. Those two books, manuals you might call them, the "Bird Business," by Greta Nilsson which goes into the U.S. business, "Airborne Birds" and "All Heaven in a Rage," by T. P. Inskipp which report on the trade into and through Britain. All of them provide excellent workmanlike documentation. You asked, Mr. Chairman, about other countries. Great Britain is making an effort, and they have an excellent organization, the Royal Society for the Protection of Birds, that has been very active. But the trade at the present time is really beyond every country to regulate properly at this point. And I am sure if the United States strengthens its Lacey Act, that will help a great deal to lead the way as we have in other wildlife conservation matters for other countries who are also struggling with this terrible problem. It is just plain greed. I mean, there is a huge amount of money to be made; exotic pets are very popular now.

Now, this does not address the legislation that we have before us right now. But there is widespread international feeling that the use of exotic animals and birds for purely commercial purposes should be rapidly phased out before, like the whales, the commercial interests wipe themselves out because they have got nothing left.

Senator CHAFEE. You point out that that is a separate subject from what we are dealing with today. I think that would, the mere mention of that would get the pet people thinking that this is like the camel getting his nose under the tent and so forth.

As we approach this subject, to curtail the possession of animals is not one of my objectives. I haven't even thought that through. I don't even want a suggestion that this is the first step in that direction because as far as I am concerned, it isn't.

Mrs. STEVENS. I perhaps should not even mention it, but I don't feel it is the first step. In fact, if you are to pass this bill, and the trade is cleaned up, that would be the greatest reason for the pet trade to be able to continue. At the present time, it is indefensible because of the violations.

Senator CHAFEE. Yes. Well, fine.

Mrs. STEVENS. Mr. Chairman, if I can just submit my statement for the record. [See p. 91.]

Senator CHAFEE. Great. If you could, will you remain at the table?

Mrs. STEVENS. Yes.

Senator CHAFEE. Unless you have anything else you want to add at this minute, we will hear from Miss Duplaix, and then Mr. Heymann. After which I will have a few questions that I would address to the panel as a whole.

All right. Miss Duplaix, representing director of TRAFFIC (U.S.A.), located in Washington.

STATEMENT OF NICOLE DUPLAIX

Ms. DUPLAIX. Mr. Chairman and members of the committee, I am Nicole Duplaix, director of TRAFFIC (U.S.A.). TRAFFIC (U.S.A.) is a scientific, information gathering organization monitoring the trade in endangered and other wild fauna and flora. Funded entirely by the World Wildlife Fund—US, TRAFFIC is a specialist group of the Survival Service Commission (SSC) of the International Union for the Conservation of Nature and Natural Resources (IUCN).

I am pleased to represent the environmental community along with Mrs. Christine Stevens of the Society for Animal Protective Legislation—SAPL—and Mr. Henry Heymann of the International Primate Protection League—IPPL. We are here today to support the proposed amendments to the Lacey Act, and our testimony includes ideas and suggestions of many conservation organizations not represented on this panel. Attached to our testimony are tables detailing the volume and value of live animals and their products imported into the United States in 1978 and January through August 1979. The data in these tables were obtained from the Department of Commerce. May we request these be included in the record?

Senator CHAFEE. Fine. That will be done. [See p. 17.]

Ms. DUPLAIX. Most prosecutions under the Lacey Act have involved only the transport of wildlife across State lines within the United States, that is, violation of State regulations rather than those of international commerce. Obtaining sufficient evidence to prosecute international violators successfully has been the main stumbling block.

But now the proposed amendments, providing for increased civil penalties, lowering the culpability standards, detailing the civil penalty procedure so that court cases are handled more uniformly, and increasing penalties, will help make the Lacey Act an enforceable, effective legislation tool. The addition of a strict liability forfeiture clause, which gives the Secretary of the Interior the ability to confiscate any illegal wildlife and wildlife products will also be a welcome addition to the act.

These proposed amendments are essential if the international trade in wildlife is to be effectively regulated. According to the fact sheet from the President's Second Message on the Environment, August 2, 1979, approximately 200,000 documented wildlife shipments and their products were imported to the United States in 1978; at least 10,000 of these shipments contained endangered or threatened wildlife—cites appendix I or II species and their products.

Official Department of Commerce statistics show the United States importing over 3 million live mammals and reptiles and 600,000 live birds in 1978. The exact number of zoo and aquarium specimens is not available, but based on the total value of under \$400,000, zoo involvement is negligible compared to the \$29 million worth of live mammals, reptiles, birds, tropical fish, and shellfish destined for the pet trade and private and Government research institutions.

The Customs import values are based on the importers buying price, that is what the person pays for the wildlife in a foreign country, and are, in fact, only a fraction of the ultimate retail price. For example, Psittacine birds such as macaws, parrots, et cetera, are categorized in table 1 under "Birds, Not Elsewhere Specified (NES), Value greater than \$5." The average price per bird in this category is \$25; thus, profits are immense since parrots and macaws in the United States sell for hundreds, sometimes thousands of dollars.

The profits for live wildlife in trade also extends itself to wildlife products. For example, lynx furskins were imported for just under \$290 per skin in 1978. It takes approximately 10 furs to make a lynx coat or approximately \$2,900 worth of imported skins.

Presently, the retail price of a lynx coat is around \$10,000. For this reason, the total dollar amounts listed below and in tables 1 and 2 represent, in most cases, only one-third or less of the final retail values.

The value of all wildlife and its products imported to the United States in 1978 and for the first 8 months of this year is \$300 million and \$230 million, respectively. Buyers and manufacturers imported \$23 million worth of raw hides and leather, mostly from reptiles, well over 16 million furskins, valued at \$48 million, and almost 12 million pounds of bird feathers and down, valued at \$70 million.

In addition, almost \$7 million of shell articles, over 9 million pounds of crude marine shells, 1½ million pounds of coral and sponges, almost 400,000 mounted and stuffed animals, including game trophies, 20,000 pounds of elephant ivory tusks and \$7 million of ivory articles were imported by the United States in 1978 alone.

We support the suggested amendment to include all vertebrate and invertebrate animals in the Lacey Act. And, therefore, Mr. Chairman, we applaud the inclusion of corals in the Lacey Act. This will prevent the import of coral originating from the Philippines. In July 1979,

they banned the export of coral due to the widespread destruction of their coral reefs. In August 1979 alone, the U.S. imported 40,231 pounds of coral from the Philippines, and before that, from January to August, we imported more than 10 times that much.

Senator CHAFEE. If the Philippines banned the export of coral, how can we have the statistics that from January to August about a half million pounds of coral was imported into the United States? How does that take place?

Ms. DUPLAIX. At the Commerce Department, U.S. trade statistics show the amount of wildlife products imported on a monthly basis.

Senator CHAFEE. I see, it wasn't banned in July 1979.

Ms. DUPLAIX. No, but in August, and there may be a discrepancy because there is only 1 month's difference there, but in August, we were still importing coral from the Philippines.

Senator CHAFEE. What do people do with the coral?

Ms. DUPLAIX. Well, it is used for, apart from rather small use, for decorating and jewelry. It is also used for lime, to build roadbeds. It has quite a large range of uses in fertilizers and it is usually ground down.

If the reef as been blown up and the individual pieces of coral are too fragmented, it has been ground down to use in roadbed.

Senator CHAFEE. But I can't believe they import it all the way from the Philippines to use for roads in this country.

Ms. DUPLAIX. No; from the Philippines, it is mainly for decorating purposes. There are souvenir shops in Florida, California; that is all coral on the shelves.

Senator CHAFEE. Thank you. Why don't you go ahead?

Ms. DUPLAIX. One must realize that wildlife laws are only as effective as their enforcement. For instance, in July 1978, Fish and Wildlife regulations, 50 C.F.R. section 17.40(e), went into effect allowing the import of elephant ivory only from countries party to CITES. So far in 1979, January through August, the United States imported 2,918 pounds of ivory tusks from Zambia and 43,122 pounds of ivory articles from the Philippines, mainland China, Taiwan, Korea, and New Zealand. And yet, not one of these countries is party to the CITES. Many 3-177 declaration of import forms and CITES permits are not complete and often do not provide the country of origin as required by the Convention. Enforcement is lax and the documentation leaves much to be desired, refer to Mike Bean letter to Clark Bavin, appendix I.

Difficulty still exists in prosecuting persons who violate Lacey Act regulations overseas. Are you aware that the provisions of wildlife laws of foreign countries, vital documentation for effective enforcement of the act, are not kept current or readily available by any Federal agency we contacted? We were told that such an endeavor would be too costly, too time consuming, and the delay required to seek out the most current wildlife laws would probably make the original query outdated. At the moment interagency inquiries into international regulations are dealt with on a piecemeal basis.

Furthermore, officials of U.S. embassies in other countries cannot identify protected wildlife or provide interpretations or even lists of current U.S. or foreign wildlife laws. This is documented in a Fish and Wildlife Service report by Terry Grosz, special agent for law

enforcement, who contacted U.S. embassies in Southeast Asian countries only to learn that our attaches had little or no knowledge of the wildlife laws of that country.

We suggest serious consideration be given to establishing a network of technically qualified persons stationed abroad and working in cooperation with the U.S. Department of State. Such officials could serve as accessible sources of accurate information on the status of wildlife and the laws pertaining to trade or other utilization. This would facilitate implementation and enforcement of the Lacey Act, particularly as it relates to developing countries.

There exists a widespread and growing concern in the developing nations to control exploitation of wildlife and to promote a wise and rational program for the use of their living resources. This concern was eloquently addressed at the recent CITES Conference in Costa Rica.

The delegate from Brazil claimed that her country was unable to effectively monitor its vast borders and control exports. She requested assistance from other nations—particularly developed, consumer nations—by prohibiting the import of Brazilian specimens of wildlife that are being taken and exported unlawfully. And indeed, this delegate's remarks are well founded when you consider the staggering amounts of wildlife imported by consumer nations.

Senator CHAFEE. Tell me a little bit about this Convention on International Trade Endangered Species. What are there, about 51 nations that belong to this?

Ms. DUPLAIX. At the moment, 53, and Italy has announced its intention to ratify by the end of the year.

Senator CHAFEE. This was a treaty which the U.S. Senate ratified?

Ms. DUPLAIX. It ratified in 1975 and was instrumental in drafting it. It was the first nation to ratify. It was drafted in 1973.

Senator CHAFEE. I missed that. It was the first.

Ms. DUPLAIX. First.

Senator CHAFEE. The United States was?

Ms. DUPLAIX. Yes.

Senator CHAFEE. I see. Fine, thank you. Go ahead, please.

Ms. DUPLAIX. I will discuss this, the relationship of cities in the Lacey Act in the conclusion of my testimony.

Closer to home, the United States was responsible for the import of \$17 million worth of tropical fish in 1978. True, a large proportion of these are captive bred in specialist fish farms overseas, but the remainder have been removed from the waters of source nations. Both fresh and marine fish are brought into the United States in water-filled containers with up to 300 fish per plastic bag.

The Federal inspectors can only spot check these shipments at best, but cannot count the numbers or identify the species listed on the import permits. For this reason, it is easy for endangered fish or species protected by source countries to be included in these shipments.

An unexpected side effect of wildlife imports can be their accidental introduction into our ecosystem. The problems of such potential "injurious" introductions have not been addressed in the new Lacey Act amendments, and in fact, the term "injurious" has not been defined in the Lacey Act or the Code of Federal Regulations except in part 16 which mentions but does not qualify the term.

We have several pertinent examples of foreign wildlife and plants having been accidentally introduced, then proving to be detrimental and difficult to eradicate. In the mid-1960's, the exotic species of walking catfish, *Clarias batrachus*, escaped from a fish farm during a heavy rain and since then has proliferated spectacularly.

Senator CHAFFEE. But the Lacey Act isn't going to deal with that type of problem, is it?

Ms. DUPLAIX. I think it will because I think the Lacey Act should at least define the term "injurious." I think it is up to the importer to prove that the species that he is importing is not injurious, but at least the term should be defined and this is more of a caveat because the injurious introductions really have not been treated in any other piece of legislation.

Senator CHAFFEE. All right. Go ahead, please.

Ms. DUPLAIX. There are, for instance, 26 foreign species of birds that have now become part of our resident fauna.

In Mrs. Stevens' testimony, she mentions the fact that Psittacine birds should be listed in potentially injurious wildlife section. We have one parrot introduction, the monk parakeet, *Myiopsitta monachus*, in Northeast United States that has become an agricultural pest. It seems rather sad, Mr. Chairman, that our own parakeet, the Carolina parakeet became extinct and we now introduce another parakeet to take its place.

Plants are also considered to be injurious wildlife. The water hyacinth and hydrilla cost the United States \$15 million a year to eradicate. The hyacinth from Brazil now covers 200,000 acres of Florida's canals and lakes. It impedes boat traffic and shades out other plant life, monopolizing the aquatic flora ecosystem.

The hydrilla from Malaysia and Africa has a growth rate of an inch a day, and is known to inhabit 150,000 acres of waterways in Florida, overwhelming native aquatic plant life. The Department of the Interior is currently developing new injurious wildlife regulations. We urge you to set a deadline for the release of the new regulations, hoping that they will clarify some of the aforementioned problems.

In view of the possible, even probable, introduction of injurious wildlife and plants in the future, we would like you now to consider a provision in the proposed Lacey Act amendments to include plants. A major purpose of the existing Lacey Act is to strengthen and supplement State and foreign wildlife conservation laws regulating harvest and trade.

A similar provision should be made to support State and foreign plant conservation laws. Controls are needed now. Public interest in rare plants for horticultural purposes is skyrocketing.

For example, figures 1 and 2 show that both the volume of orchid imports and the number of foreign countries exporting orchids into the United States have doubled in the last 10 years. Similar data can be provided for other plant groups such as cacti and succulents, carnivorous plants, and cycads. Many species are in danger of being completely wiped out from their natural habitats by unscrupulous amateur collectors.

To a large extent, new State and foreign efforts to control harvest and trade in wild plants are proving ineffective because they are not complemented by appropriate Federal controls. For example, Arizona law requires that cacti be identified by State tags prior to export from the State.

However, despite aggressive enforcement efforts, illegally obtained Arizona cacti are routinely offered for sale throughout the United States and other countries including Germany and Japan. Federal support for State harvest controls is particularly important, because the Endangered Species Act does not prohibit the State harvest of endangered plants.

Similar to the efforts made by the States, many foreign countries are also trying to protect their native flora, but lack of resources to implement effective export controls allow an extensive illegal trade to the United States.

For example, the Australian Flora Protection Act (No. 37) of 1938 lists *Cephalotis follicularis*, a native Australian pitcherplant, as endangered and prohibits its export. In January 1978, a shipment of two cartons consisting of 750 *Cephalotis follicularis* arrived in New York. Even though these plants were smuggled out of Australia, U. S. officials were powerless to confiscate them since no "Lacey Act" authority exists to deal with plants that are taken or traded illegally.

President Carter recently ordered increased efforts to enforce trade controls for plants. He established a special interagency task force to investigate the illegal trade in plants and to initiate prosecutions. He ordered the U.S. Department of Agriculture to hire special agents to investigate the illegal plant trade. In addition, the Department of Justice has established a new division of wildlife enforcement. Modification of the Lacey Act to include plants would provide timely support to these initiatives.

The proposed amendments of the Lacey Act would not require major Federal expenditures or the establishment of costly Federal programs. Enforcement of the proposed amendments could be accomplished through existing USDA and USDI programs for enforcing trade controls of the Endangered Species Act, the CITES, the Injurious Plant Control, and the existing Lacey Act.

Senator CHAFEE. You are sending out a pretty heavy menu here.

Ms. DUPLAIX. Yes, definitely. But extending the coverage of the Lacey Act to include plants would provide a unifying framework for State, Federal, and foreign laws.

Senator CHAFEE. These are good points, but we don't want to start sliding into second until we get on first. A full menu, but you are presenting even greater efforts. Why don't you go ahead and proceed.

Ms. DUPLAIX. The suggestions I made are merely suggestions and one must sit on one's fantasies. But to conclude, Mr. Chairman, I would like to say that the Lacey Act is potentially one of the most effective pieces of conservation legislation that this country possesses and we should be proud of it.

Senator CHAFEE. Let me ask you one question that Mrs. Stevens touched on in her testimony about inhumane treatment. Now, the Lacey Act doesn't cover that does it?

Ms. DUPLAIX. Yes, it does. There was an amendment I think in 1939 or 1949 covering the inhumane treatment.

Senator CHAFEE. Well, you are pointing, Mrs. Stevens, to what there?

Mrs. STEVENS. Those giraffes imported under that part of the Lacey Act.

Senator CHAFEE. That is what I was confused with. In other words, the Lacey Act does cover inhumane treatment of animals even though they might be legally imported. I see. So, therefore, those people

in that article from Life magazine even though they might have had permits for those giraffes would be in violation?

Mrs. STEVENS. And if the substantial proportion are dead or dying, that is a sign that they weren't treated right.

Senator CHAFEE. Well, I will ask the next panel whether we get any convictions under that.

Ms. DUPLAIX. Mr. Heymann, Mr. Chairman, will deal with the inhumane aspects.

Senator CHAFEE. Fine. All right.

Ms. DUPLAIX. The concept of U.S. Federal "back up" of State and foreign laws is unique and could provide a very efficient operation. Important differences exist between the Lacey Act and the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES). First, the Lacey Act addresses interstate trafficking of wildlife within the United States, an issue not covered in the CITES. Second, the CITES is still in its infancy and violations of its regulations occur daily. Many countries party to the convention are unable to control the export of appendix I, endangered, species and their products.

For instance, 17 CITES countries still export sea turtle products, and yet, all sea turtles are placed on CITES appendix I. Without the proposed amendments to the Lacey Act to help other countries protect their wildlife and plants, the U.S. hinders wildlife conservation efforts overseas. With the proposed amendments and a system whereby current, accurate information is available to those who implement the act, we feel the United States could work much more efficiently with the States and other nations to insure the effective conservation of the world's renewable resources.

Thank you.

[Attachments to Ms. Duplaix's statement follow:]

TABLE 1
U.S. WILDLIFE IMPORTS:
LIVE ANIMALS

| ITEM | 1978 | | NO. OF EXP. COUNTRIES | (Jan. - Aug) 1979 | |
|---|-------------|------------|--------------------------|----------------------|------------|
| | QUANTITY | VALUE (\$) | | QUANTITY | VALUE (\$) |
| MONKEYS | 28,778 | 1,061,552 | 26 | 14,821 | 643,736 |
| TURTLES | 36,972 LBS | 45,503 | 17 | 6,523 LBS | 18,007 |
| FOXES, SILVER OR BLACK | 78 | 19,376 | 3 | 45 | 6,240 |
| FOXES, OTHER | 150 | 59,505 | 1 | 45 | 5,540 |
| ANIMALS, NES | 3,106,629 | 2,459,730 | 47 | 1,657,154 | 1,476,086 |
| TOTAL LIVE MAMMALS | 3,135,635 + | 3,645,666 | | 1,672,033 + | 2,149,609 |
| AND REPTILES | | | | | |
| CANARIES, VALUE < \$5 | 11,433 | 51,543 | 5 | 1,555 | 5,326 |
| CANARIES, VALUE > \$5 | 5,855 | 45,129 | 9 | 7,318 | 56,265 |
| PIGEONS, FANCY OR RACING | 5,112 | 8,974 | 5 | 30 | 1,089 |
| GAME BIRDS, FOR STOCKING PURP. | 8,092 | 32,560 | 1 | 5,842 | 34,662 |
| BIRDS, NES, VALUE < \$5 | 324,893 | 525,379 | 31 | 124,814 | 205,880 |
| BIRDS, NES, VALUE > \$5 | 288,340 | 7,213,345 | 49 | 124,074 | 3,826,569 |
| TOTAL LIVE BIRDS | 638,725 | 7,876,930 | | 263,633 | 4,129,791 |
| LIVE FISH OR SHELLFISH (INCL. TROPICAL FISH) | --- | 17,853,291 | 47 | --- | 12,636,577 |
| WILD ANIMALS, BIRDS, AND FISH FOR EXHIBITION (ZOO AND AQUARIUM SPECIES) | --- | 376,593 | 27 | --- | 217,025 |

Source: U.S. IMPORTS FOR CONSUMPTION, Bureau of Census, U.S. Dept. of Commerce.

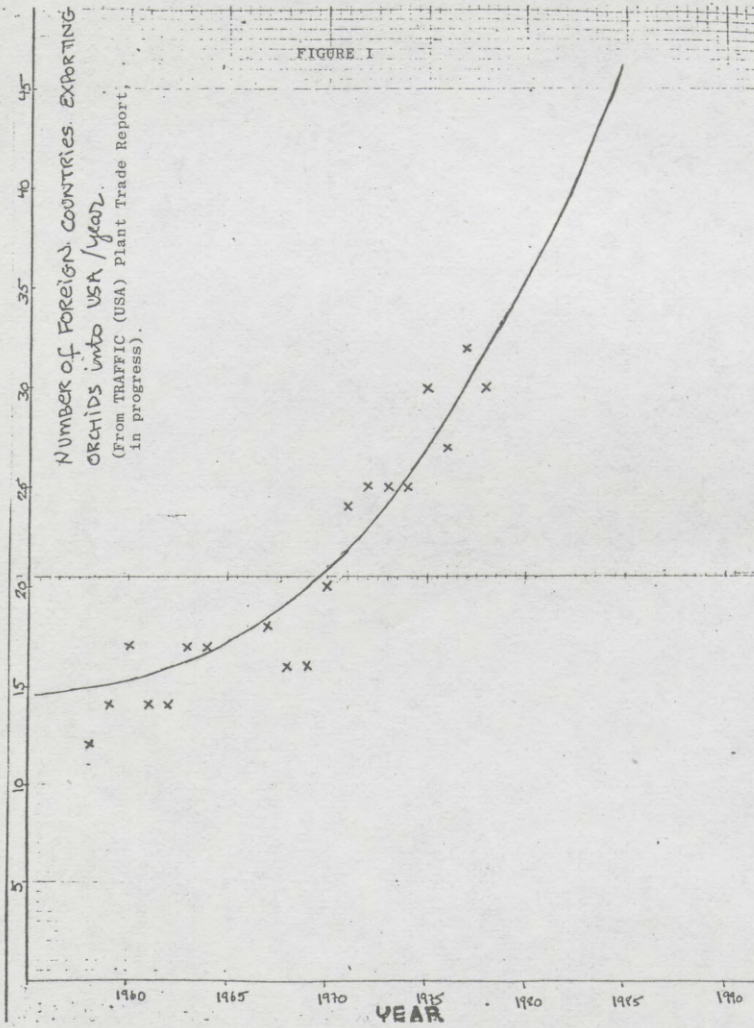
TABLE 2
U. S. WILDLIFE IMPORTS: PRODUCTS
(Jan - Aug)
1979

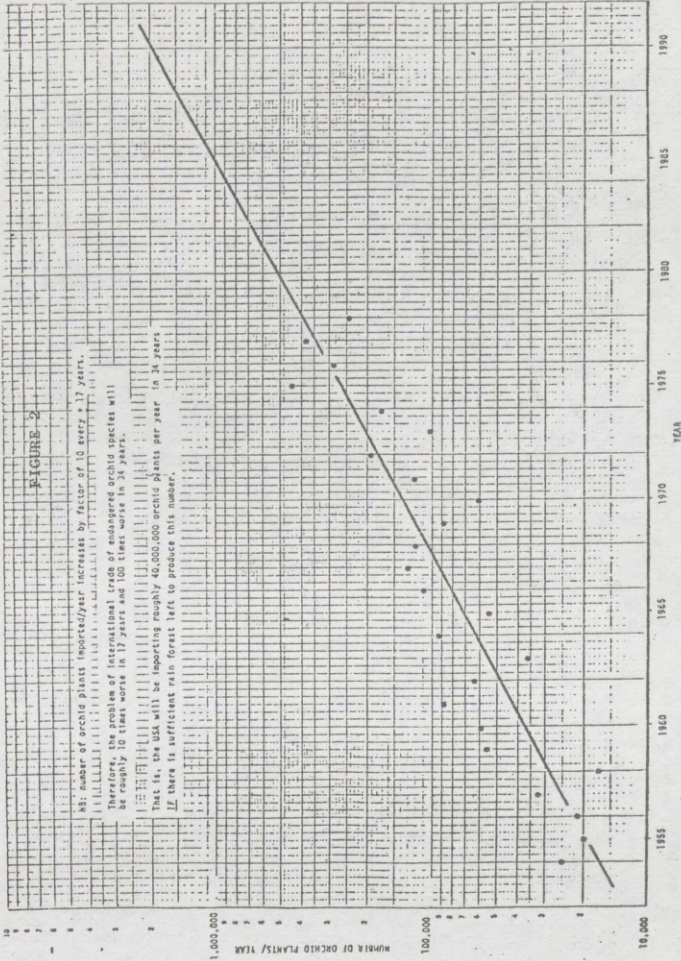
| ITEM | 1978 | | 1979 | |
|--|---------------|-------------|---------------|-------------|
| | QUANTITY | VALUE (\$) | QUANTITY | VALUE (\$) |
| FURSKINS, SILVER BLACK, AND PLATINUM FOX | 1,217 | 52,434 | 352 | 10,861 |
| BEAVER FURSKINS | 56,033 | 921,970 | 50,123 | 1,623,157 |
| FOX FURSKINS | 264,158 | 18,033,036 | 231,316 | 23,519,524 |
| HARE FURSKINS | 3,596,970 | 1,261,192 | 833,707 | 220,753 |
| LYNX FURSKINS | 15,620 | 2,495,097 | 14,508 | 5,188,769 |
| MARTEN FURSKINS | 92,692 | 2,591,769 | 71,727 | 3,031,060 |
| MINK FURSKINS | 3,207,799 | 80,891,479 | 2,525,629 | 80,635,387 |
| OTTER FURSKINS | 141,359 | 80,668,479 | 473 | 48,487 |
| RABBIT FURSKINS | 3,579,640 LBS | 7,658,773 | 3,135,430 LBS | 6,599,947 |
| SABLE FURSKINS | 141,359 | 9,365,593 | 113,844 | 8,340,001 |
| SEAL FURSKINS | 1,238 | 46,585 | 1,110 | 49,950 |
| WHOLE FURSKINS, NES | 1,630,522 | 14,305,546 | 861,699 | 13,292,284 |
| FUR TAILS, PAWS, PIECES | --- | 1,039,444 | --- | 538,774 |
| TOTAL RAW FURSKINS | 9,011,557+ | 140,582,098 | 4,704,136+ | 143,088,093 |
| FOX FURSKINS, DRESSED, NOT DYED | 17,111 | 390,371 | 11,516 | 221,810 |
| MINK FURSKINS, DR., NOT DYED | 213,130 | 5,103,385 | 136,870 | 3,849,160 |
| BEAVER, OCELOT, WOLF, SABLE, ETC., DRESSED, NOT DYED | 135,919 | 3,389,373 | 101,358 | 2,704,387 |
| CONY RABBIT FURSKINS, DR. | 1,260,746 | 1,574,974 | 785,704 | 882,717 |
| FURSKINS, NES, DR. | 2,906,448 | 2,543,881 | 3,013,844 | 2,769,852 |
| FUR TAILS, DRESSED, NOT INCL. RABBIT | --- | 1,664,257 | --- | 760,077 |
| TOTAL FURSKINS, DR., NOT DYED | 4,533,354+ | 14,666,241 | 4,049,292+ | 11,188,003 |
| FOX FURSKINS, NOT SILVER, BLACK, OR PLAT., DRESSED, AND DYED | 4,224 | 147,527 | 5,206 | 114,499 |
| MINK FURSKINS, DR. AND DYED | 6,638 | 172,904 | 4,115 | 188,992 |
| PERSIAN LAMB AND CURACUL | 4,224 | 90,859 | 2,623 | 66,825 |
| BEAVER, OCELOT, WOLF, SABLE, ETC., DRESSED AND DYED | 32,821 | 525,233 | 19,648 | 347,034 |
| RABBIT FURSKINS, DR. AND DYED | 78,867 | 218,079 | 43,679 | 183,438 |
| FURSKINS, NES, DR. AND DYED | 2,345,375 | 2,283,936 | 674,573 | 655,895 |
| TAIL PIECES, PAWS, DR. | 190,139 | 176,738 | 83,530 | 42,873 |
| TOTAL FURSKINS, DR. AND DYED | 2,662,288 | 3,615,276 | 833,374 | 1,599,556 |

TABLE 2
U. S. WILDLIFE IMPORTS: PRODUCTS (CONT.)

| ITEM | 1978 | | NO. OF EXP. COUNTRIES | (Jan - Aug) 1979 | |
|--------------------------------|-----------------------------|------------|--------------------------|-----------------------------|------------|
| | QUANTITY | VALUE (\$) | | QUANTITY | VALUE |
| REPTILE SKINS, RAW OR CURED | 333,066 PC (169,216 LBS) | 1,124,279 | 15 | 440,898 PC (121,337 LBS) | 2,367,976 |
| REPTILIAN LEATHER, NOT FANCY | --- | 9,824,728 | 23 | --- | 4,730,145 |
| REPTILIAN LEATHER, ARTICLES | --- | 133,960 | 10 | --- | 47,769 |
| SHARK SKIN LEATHER | --- | 524,419 | 5 | --- | 244,024 |
| LEATHER, NOT FANCY, NES | --- | 7,504,242 | 31 | --- | 5,831,485 |
| HIDES AND SKINS, NOT FURSKINS | --- | 4,278,157 | 13 | --- | 3,205,023 |
| TOTAL SKINS AND LEATHER | ? | 23,389,785 | ? | ? | 16,426,422 |
| IVORY TUSKS | 19,873 LBS | 256,316 | 8 | 2,918 LBS | 79,804 |
| ARTICLES OF IVORY | --- | 7,126,308 | 24 | --- | 3,848,882 |
| MOUNTED OR STUFFED ANIMALS | 373,390 | 301,745 | 15 | 297,615 | 274,064 |
| ORAL, CRUDE | 1,667,254 LBS | 496,674 | 16 | 554,294 LBS | 222,145 |
| MARINE SHELLS, CRUDE | 9,475,095 LBS | 4,033,547 | 33 | 6,059,472 LBS | 3,097,495 |
| ARTICLES OF SHELL | --- | 6,818,249 | 31 | --- | 4,607,828 |
| MARINE SPONGES | 79,329 LBS | 814,769 | 11 | 64,949 LBS | 762,314 |
| ARTICLES OF NATURAL SPONGES | 25,662 LBS | 84,328 | 11 | 10,215 LBS | 69,810 |
| OSTRICH FEATHER AND DOWN | 61,761 LBS | 1,094,700 | 2 | 40,977 LBS | 826,989 |
| FEATHERS, CRUDE, MEET FED. ST. | 138,438 LBS | 1,430,356 | 8 | 88,848 LBS | 140,766 |
| FEATHERS, CRUDE, NOT M. F. ST. | 7,964,762 LBS | 31,008,257 | 24 | 5,782,871 LB | 14,707,709 |
| DOWN, CRUDE, MEET FED. ST. | 106,590 LBS | 1,642,079 | 6 | 22,214 LBS | 238,631 |
| DOWN, CRUDE, NOT MEET F. ST. | 3,497,732 LBS | 34,718,621 | 20 | 1,403,617 LB | 12,120,341 |
| TOTAL BIRD FEATHERS | 11,769,283 LBS | 69,894,013 | ? | 7,338,527 LB | 28,034,436 |

Source: U. S. IMPORTS FOR CONSUMPTION, Bureau of Census, U. S. Dept. of Commerce.





1st: number of orchid plants imported/year increase by factor of 10 every 4 1/2 years.

Therefore, the problem of international trade of endangered orchid species will be roughly 10 times worse in 17 years and 100 times worse in 34 years.

That is, the USA will be importing roughly 40,000,000 orchid plants per year in 34 years if there is sufficient rain forest left to produce this number.

Source: TRAFFIC (USA) Plant Trade Report, in progress.

APPENDIX I



May 22, 1979

Clark Bavin, Esq.
Chief, Division of Law Enforcement
U.S. Fish and Wildlife Service
Department of the Interior
Washington, D. C. 20240

Dear Clark:

As you know, I have for the last several months been examining Fish and Wildlife Service records relating to the importation of African elephant ivory. That examination has revealed several apparently serious deficiencies in the Service's enforcement of the special threatened species regulations that pertain to African elephants, 50 C.F.R. § 17.40(e), as well as the enforcement of regulations governing wildlife importation generally.

Specifically, I have found the following:

1. A substantial number of commercial shipments of ivory have been allowed to enter the United States even though the Forms 3-177 filed with such shipments show that the countries of origin for such products were African countries not parties to CITES. Under the Service's special African elephant regulations, only those products which originated in the wild in a CITES party nation may lawfully be imported. I have examined more than 250 of the Forms 3-177 filed at the ports of New York, Los Angeles, and San Francisco since June 11, 1978, the effective date of the elephant regulations, and of these approximately 64, or 25 percent, show non-parties to CITES as the countries of origin.

I recognize that the Form 3-177 may not, by itself, conclusively establish the legality or illegality of any particular shipment. The information appearing there might, for example, be contradicted by that appearing on the CITES permits that accompany the shipment. Unfortunately, the Service's recordkeeping system is such that it is extremely difficult to match up Convention permits with Forms 3-177 once the former are separated from the latter and forwarded to the Federal Wildlife Permit Office. I personally examined the files at the Permit Office and attempted to locate the Convention permits that corresponded with a sample of the Forms 3-177 in my possession, but was unable to find most of the corresponding permits. Even when I found the corresponding permits, they frequently failed to establish the legality of the shipment. For example, the re-export certificates issued by India simply recite that the specimen was acquired before the Convention applied to it. However, your regulations are clear that compliance with Article VII, paragraph 2, of the Con-

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vention shall not constitute compliance with § 17.40(e)(2)(B). Hong Kong issued similar re-export certificates, although they have of late begun to stamp the certificates with the name of the CITES country of origin. In no case, however, do official documents from such countries of origin appear.

2. For an even greater number of shipments, the Form 3-177 fails to indicate the product's country of origin, in violation of the Service's general import regulations at 50 C.F.R. § 14.61. In some cases, the appropriate box for indicating country of origin is simply left blank. In other cases, the word "Africa" or some similar designation appears. In still other cases, Hong Kong, India, or other countries which could not possibly be the true countries of origin for African elephant products are indicated as such. Of the forms I have examined, at least 122, or 50 percent, fall into this category. When combined with the forms from the first category, approximately 75 percent of all the Forms 3-177 I have examined either fail to indicate the true country of origin or indicate a country from which importation may not lawfully be had. Copies of several of these forms, plus several of the CITES permits I located are enclosed for your perusal.

The failure of these forms to indicate true countries of origin means that the legality of these shipments under the special elephant regulations cannot be established without resort to the Convention permits. However, as with the forms in the first category, the corresponding Convention permits cannot be readily located in the existing recordkeeping system; many cannot be located at all. Wholly without regard to the special elephant regulations, the failure of the Service to insist upon accurate reporting of countries of origin calls into question the Service's ability adequately to enforce the Lacey Act.

3. An unknown, but apparently substantial number of ivory shipments are being imported via mail, and import declaration forms are apparently not being collected for such importations. This matter came to my attention when the Service responded to my Freedom of Information Act request by producing only four Forms 3-177 for African elephant importations through the port of San Francisco during the past eleven months. That response strains credulity because it is my understanding that San Francisco represents a major (and perhaps the major) market for ivory in the United States. A note accompanying that response provided the following explanation:

Please note that a high percentage of our African elephant ivory product importations are through the Oakland Mail Facility, Oakland, CA, or come in as personal accompanying baggage at the international airports, in this case S.F. Consequently, very few completed 3-177's are obtained by S.F., P.G.E.

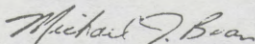
Clark Bavin, Esq.
Page Three
May 22, 1979

It is unclear from this explanation whether there simply are no 3-177's for these mailed shipments, or whether they exist but were not provided me because they were outside the scope of my request for 3-177's from "the port of San Francisco." If the latter is the case, I would like to request them now; if the former, it would appear that this practice violates your regulations at 50 C.F.R. §§ 14.11 and 14.62.

I hope you will agree that prompt action to correct the above deficiencies is needed, not only to insure technical compliance with legal requirements, but also to facilitate a more effective law enforcement effort. I note in particular that the Service's system for retention of import declaration forms and Convention permits makes it exceedingly difficult for law enforcement interests to use these potentially valuable documents effectively in an after-the-fact audit. In addition, the existing record retention system and the failure to insure full and accurate reporting on such records makes the compilation of reliable trade statistics virtually impossible. Such compilations offer a more than theoretical value. For example, in the pending lawsuit of Cayman Turtle Farm against the Secretary of the Interior (in which EDF has intervened on the side of the Secretary), a significant issue concerns changes in the size of the U.S. market for green sea turtle products during the past six years. Yet, reliable information on that important issue is essentially non-existent because of the manner in which the Service's records are kept.

EDF views these matters very seriously. Accordingly, to protect our interest in securing a satisfactory resolution, I am this day sending a 60-day notice of intent to sue to the Secretary, as required by Section 11(g) of the Endangered Species Act. I expect, and hope, that we can find a satisfactory resolution without resort to suit. To that end, I would like to meet with you and whomever else you feel appropriate at your earliest convenience to discuss the matters raised in this letter.

Sincerely,



Michael J. Bean
Chairman, Wildlife Program

cc: James Webb, Office of the Solicitor
Kenneth Berlin, Department of Justice

Enclosures

MJB/sc

APPENDIX II

CONCLUSION

All in all, I feel the trip was justified if for nothing else then for the assistance and information provided to our U. S. Embassys, which in actuality are the foreign extensions of the Service when it comes to assisting the traveler and businessman. I found the Embassys almost totally in the dark concerning U. S. Laws in spite of all the materials sent to them at earlier dates. After they were briefed on the problems in the U. S. including the history of species exploitation, most became quite interested and willing to assist in any manner possible. Basically, it took someone to "walk" them through the laws and make them comfortable with them at which time their enthusiam to assist increased markedly.

Excerpt from "Southeast Asia Trip - 1978" by Terry Grosz,
Special Agent of Law Enforcement, FWS, pg. 27.

Senator CHAFEE. Thank you very much, Ms. Duplaix.
Now we will hear from Mr. Heymann.

STATEMENT OF HENRY L. HEYMANN

Mr. HEYMANN. Mr. Chairman, I appreciate the opportunity to testify before this committee, particularly since my organization has been seeking for several years to make the section of the Lacey Act pertaining to the importation of wildlife, exported or taken contrary to the laws of a foreign country, an effective instrument for the protection of primates and other wildlife.

Unfortunately we have not met with any success. For example, in 1973, at least 67 siamangs and 43 gibbons entered the United States from Singapore, even though neither is native to that country or bred there for export. The IPPL compiled these figures on the basis of Department of the Interior import documents. The animals came from the neighboring countries of Thailand, Indonesia, and Malaysia to which they are native and which prohibit or severely limit their export. During 1973, no siamangs and a total of only two gibbons were imported directly from these countries into the United States. These 67 imports were made by five large dealers, who certainly should have known what they were doing.

The section of the Lacey Act pertaining to the importation of wildlife contrary to the laws of a foreign country was simply inoperable in the case of Singapore.

Senator CHAFEE. Why was that?

Mr. HEYMANN. It—that is the Lacey Act—was not being enforced.

Senator CHAFEE. Not enforced?

Mr. HEYMANN. The reason it was not enforced, which I obtained from Interior after a long effort, was that the requirements culpability clause in the Lacey Act were just too difficult to prove.

Senator CHAFEE. What happens in that instance? Did they forfeit the animals?

Mr. HEYMANN. These animals were not forfeited. They were just brought into the United States. We were told by Interior that this sort of violation of the Lacey Act was just too difficult to prove. You have to prove that the accused knowingly violated the act—I'm talking about civil cases or in the exercise of due care should have known that he was violating the act. We were told this was just impossible to prove, so these importations were just allowed.

Senator CHAFEE. All right.

Mr. HEYMANN. In addition to primates, many other species, protected by law in their countries of origin, were imported from Singapore to the United States. These included many animals of the cat family, such as leopards, clouded leopards, and tiger skins. American conservationists, posing as potential U.S. buyers, were offered a wide variety of protected species by Singapore animal dealers. In one case, this included a Java rhinoceros, which would have been extremely difficult to sneak by U.S. authorities. When the "buyers" mentioned that such imports were illegal according to U.S. law, the dealers laughed and said U.S. laws imposed no difficulties.

Senator CHAFEE. Mr. Heymann, we are a little short of time, why don't you take some examples as you go through. Your points

are good in this testimony and why don't you just excerpt some of the testimony and get on to some of the principal points you want to make. Of course, your statement will be in the record. (See p. 103.)

Mr. HEYMANN. I appreciate that my written testimony will be in the record. As I said, Interior explained that the requirements of the civil capability clause were too difficult to prove. It was impossible to get the courts to take any action. And therefore, we welcome very much the imposition of strict liability for civil prosecutions in the proposed bill.

We believe, however, that the \$500 fine is too low. The profits of wildlife today are immense and \$500 is too low as a deterrent. We believe that the civil penalty should be raised to at least \$1,000.

Another point: We asked Interior why don't you have the importer produce foreign documents showing that the imports are legal. In the Code of Federal Regulations there is a section (50 CFR 14.41) which states that Interior may request such documentation from the importer. We suggest that this be changed so that the importer will be required to present documents showing the import to be legal.

Senator CHAFEE. We will have the administration panel on next and I will ask them that question.

Mr. HEYMANN. In fact, it was the people I spoke with in Interior who originally gave me the idea that the importer be required to present the document.

The other point is about inhumane shipments. Title 18 of the United Code, part 42(c) contains the provisions of the Lacey Act, pertaining to inhumane shipments. I just want to quote from that section. It states "it shall be unlawful for any person, including an importer, knowingly to cause or permit any wildlife to be transported to the United States under inhumane or unhealthful conditions."

Title 18, United States Code, section 42(c)(2), states, "the presence of a substantial ratio of dead, crippled, and deceased, or starving wild animals shall be deemed prima facie evidence of the violation of this subsection."

The trouble is we found that the provisions on inhumane shipments were also not enforced. The courts, as explained to me by Interior and Treasury, couldn't agree on what constituted a substantial ratio of dead or deceased or injured animals. And, in my testimony, I listed a "chamber of horrors" showing just what these inhumane imports are.

Mrs. Stevens has presented photographs which further graphically show these inhumane shipments. In my written testimony, I suggested wording which I would think should make the inhumane shipment section of the Lacey Act enforceable. The adoption of this wording, or other wording which would accomplish this purpose, is utterly necessary. Not only the chamber of horrors, which I listed, but Mrs. Stevens' photographs underline the necessity of amending the inhumane section so as to make it enforceable.

Senator CHAFEE. That is a good point.

Mr. HEYMANN. In other words, the three points that I make are one, that in the strict liability section, as envisioned in the bill under consideration, the fine be raised from \$500 to a minimum of \$1,000. Two: that the importer be required to present documents showing that the wildlife was legally exported.

The regulations for the enforcement of the Lacey Act Code of Federal Regulations state that Interior may request such documents. I want this to be put into the basic law and that the importer be required to present the documents.

Third, the inhumane provisions of the Lacey Act should be amended so they are enforceable.

Thank you.

Senator CHAFEE. That has been very helpful. Is there anything anybody would like to add to any of this? Mrs. Stevens or Ms. Duplaix or Mr. Heymann?

Mrs. STEVENS. I would just like to—it's in the record, in my statement, but about taking an exemption for the Psittacine bird, I didn't read any part of it or give it at all in my oral testimony, that's a very minor part of the whole Lacey Act but it has caused considerable difficulties.

If you had it there it's 18 U.S.C. 424, "nothing in this subsection shall restrict the importation of dead natural history specimens for museums or for scientific collections, or the importation of domesticated canaries, including all other species of Psittacine bird or such other caged birds as the Secretary of the Interior may designate." I believe that this only meant parrots that were raised domestically, but Interior has interpreted it as being any parrot. Once you put it in a cage, it's domesticated. So, in that case, and then also in the part on injurious wildlife you find it again. It's so long ago that nobody knows why that was done.

Congress did that and it seems unwise. As Nicole Duplaix mentioned, parrots are, so, they certainly shouldn't be exempted in this way. There's more backup in my testimony. But I just wanted to be sure that it was noticed.

It's a simple thing that could be done now while action is being taken on the Lacey Act.

Senator CHAFEE. Thank you all for your willingness to come forward and testify and we have made notes and we will raise these questions with the next witnesses.

Let's have the administration panel of Mr. Moorman, Mr. Mellon, Mr. Bavin, Mr. Gordon, and Mr. Green.

Gentlemen, you all heard the testimony, and the questions that were raised by prior panels, and in the course of your testimony would you direct yourselves to some of the points they made? If you inadvertently leave them out I will ask you about them. Why don't we get started with Mr. Mellon. Why don't you proceed.

STATEMENTS OF JAMES W. MOORMAN, ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE; THOMAS E. MELLON, JR., ASSISTANT U.S. ATTORNEY, CHIEF, CRIMINAL DIVISION, PHILADELPHIA, PA.; CLARK R. BAVIN, CHIEF, DIVISION OF LAW ENFORCEMENT, U.S. FISH AND WILDLIFE SERVICE; WILLIAM GORDON, DIRECTOR OF RESOURCE CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION; AND WILLIAM GREEN, DIRECTOR, OFFICE OF INVESTIGATIONS, U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

Mr. MELLON. Mr. Chairman, the Department of Justice policy statement of position with this material will be given by Assistant Attorney General James Moorman.

Senator CHAFEE. Fine. Mr. Moorman, Assistant Attorney General for Land and Natural Resources Division of the Department of Justice. Go to it.

Mr. MOORMAN. Thank you for asking me to present the views of the Department of Justice on the Lacey Act Amendments of 1979. These hearings could not have come at a more appropriate time. For the past year, the Department of Justice has become increasingly involved with the problem of illegal trade in wildlife. On October 2, Attorney General Civiletti announced the formation of a new Wildlife Enforcement Section in my Division which will be staffed by eight attorneys stationed in Washington. They will work with U.S. attorneys around the country, the Customs and Fish and Wildlife Service, and the Departments of Commerce and Agriculture. Their first priority will be Lacey Act problems.

This staff will enable us to supervise wildlife investigations, work with local U.S. attorneys' offices and try significant cases. For the first time, the Department will have the resources to deal effectively with the problem of illegal trade in wildlife. The amendments before you today will allow us to use these resources most productively in enforcing the current provisions of the Bass and Lacey Acts.

We estimate that some 10 to 25 percent of all wildlife shipments into the United States today are in violation of these acts. Last year, the United States received 10,000 shipments of wildlife species listed on the Convention of International Trade in Endangered Species. These imports included 91 million animals and hundreds of thousands of birds and reptiles.

The value of the illegal wildlife traded—

Senator CHAFEE. That sounds impossible, 91 million animals.

Mr. MOORMAN. A lot, Senator.

Senator CHAFEE. It just sounds impossible. If it was fish, I think that's possible. But check that statistic.

Mr. MOORMAN. It also includes animal products; not just live animals, Senator; shoes, handbags.

The value of illegal wildlife trade is estimated to be \$50 to \$100 million or more every year. But its potential cost to the U.S. agricultural and pet industries and to American taxpayers is even greater.

Wildlife is often imported with false documents including false health certificates, which make a mockery of our quarantine laws. Imported wildlife frequently carry exotic diseases which can affect domestic pets, poultry, livestock, and fish.

The most important of these diseases to date has been exotic Newcastle disease, which is transmitted to domestic poultry and other birds by imported birds. In 1971, the Federal Government destroyed 12 million fowl in flocks exposed to this disease. In 1979, 14,000 pet birds exposed to the disease had to be destroyed. These outbreaks of Newcastle disease cost the taxpayer \$58 million. Department of Agriculture officials estimate that if the disease becomes permanently established in the United States, the yearly losses would be \$230 million or more. The taxpayer will also foot the bill to protect formerly common species which the wildlife trade threatens to drive toward serious endangerment and even extinction.

But there are other costs which are not calculated in dollars and cents. Grisly tales abound of the illegal wildlife trade's acts of cruelty and its wanton destruction of the natural environment: we know that flocks of birds have been blasted from trees with buckshot, so that the few who survive can be sold. Entire nesting areas are destroyed by the common practice of cutting down trees and shooting adult birds to harvest the more profitable young birds. Adult chimpanzees, gibbons, and other species are also slaughtered in order to capture their young.

Not only are the illegal wildlife trade's harvesting methods brutal, but its transporting practices are equally so. During transportation, it is estimated that as many as 90 percent of captured animals die lingering and painful deaths from freezing, overheating, thirst, starvation, or overcrowding of suffocation.

Investigations have led us to conclude that those involved with this illegal trade earn profit margins comparable to those earned by some drug dealers. For example, the evidence adduced at a trial of a Philadelphia reptile dealer revealed that he illegally purchased a species of reptile in a foreign country for \$10 a pair and sold them for \$550 a pair.

This illegal trade also causes a flourishing of white collar crime, which requires a disproportionate amount of investigatory resources. As such, it deserves the resources and strict laws which are used to combat other areas of white collar crime. The criminal element involved and the financial incentives provided by this trade can only be countered with exceptionally strong disincentives. The proposed Lacey Act Amendments of 1979 are an extremely important step in this direction.

The Lacey and Black Bass Acts make it illegal to import or otherwise trade in wildlife taken, transported, or sold in violation of State or foreign laws.

Senator CHAFEE. Mr. Moorman, we have a time problem here. I would ask you to summarize your testimony if you would. Just move through it a little swifter, because we have five witnesses on this panel and two after you. So, if you could move a little quicker, I would appreciate it. Go ahead.

Mr. MOORMAN. Since the State and foreign laws regulate trade, the Lacey and Black Bass Acts are in many ways our most important wildlife protection laws. And they are the laws most frequently violated by traffickers in wildlife.

The current Lacey Act includes civil liability penalties for knowing violations and for violations involving a lack of due care. It also includes a criminal penalty for knowing and willful violations, which most courts have interpreted as a specific intent violation. By "specific intent" I mean that the defendant must have had specific knowledge that he violated the Lacey Act itself, as well as the foreign law picked up by the Lacey Act.

Senator CHAFEE. Is that a standard that is much stiffer than many of the criminal acts you enforce?

Mr. MOORMAN. Absolutely. It's very unusual that you have such a thing.

The amendments add to this structure a strict liability forfeiture provision and a strict liability civil penalty. The amendments also increase both the civil penalty applicable when a person fails to exercise due care, and the criminal penalty when a person commits a knowing violation of the act. As a consequence of the amendments, the Lacey Act penalty scheme would be very similar to that presently in effect under the Endangered Species Act.

With strict liability, under the current act, a violator does not have to forfeit his illegal shipment unless the Government can prove he knowingly violated the Lacey Act or failed to exercise due care. The proposed strict liability forfeiture section of the amendments would allow us to protect various species from harmful illegal trade by withdrawing illegal shipments from the marketplace even when the violation itself is inadvertent. Under the proposed strict liability civil penalty section a judge would be able to impose a fine of up to \$500 upon a technical violator. The proposed penalty provision's flexibility and the low limit of the fine adequately protect citizens who unwittingly violate the law. At the same time these sections of the law provide the incentive to know the law.

Speaking of due care penalties: In addition to including a strict liability civil penalty, the amendments increase the due care civil penalty for failure to exercise due care in importing, exporting, transporting, acquiring, or otherwise handling wildlife in violation of the act. The penalty would be increased from \$5,000 to \$10,000 per violation, but would make no other change in the current act's due care provision.

Senator CHAFEE. What do you think about increasing that civil penalty from \$500 on the strict liability?

Mr. MOORMAN. I think that's unnecessary. That's a new provision in the act which is designed to pick up—

Senator CHAFEE. The tourist that is coming through with something?

Mr. MOORMAN. Well, it will be exercised with discretion, of course, and the "unaware," if you will, tourist, will probably only suffer forfeiture—no fine at all. But I think we ought to have some practice with strict liability penalty for a while before we decide to increase it further. After all, we will increase the criminal penalty to \$20,000, due care civil penalty to \$10,000, plus we are proposing a strict liability forfeiture provision, and I think that it is perfectly all right to ride with \$500 on strict liability penalty for a while to see how that works out.

Actually, I don't think that will be nearly as important as the forfeiture provision, which is also strict liability.

Turning to the criminal provisions, the proposed amendments increase the status of criminal violations of the Lacey Act from that of a misdemeanor to that of a felony, which it does by increasing the possible sentence to 5 years and the penalty to \$20,000. This revision is necessitated by the fact that violations of the Lacey Act are now being committed by large scale commercial dealers involved in significant criminality that would normally be considered felonies in other contexts.

The amendments also bring the culpability standard into line with most other criminal laws by changing what was in effect a double specific intent standard to a single specific intent standard. In other words, it will no longer be necessary for the Government to prove that a person knew of the existence of the Lacey Act itself, as well as the foreign or State law that was violated. Under the amendments, the Government will have to prove only that the person knew his activities were illegal under foreign or State law. Specifically, the Government will still be required to prove that: (1) The wildlife was taken in country A; (2) country A forbids the taking of wildlife; (3) the defendant knew country A forbids the taking of the wildlife; and (4) the defendant nevertheless imported the wildlife into the United States.

Senator CHAFEE. Pretty tough standard right there.

Mr. MOORMAN. I think it's pretty tough. It's for criminal sanction. I think that it is actually less tough than what we now face, but it's adequate to protect defendants.

Senator CHAFEE. What about the situation that the prior witness told about where some came out of Singapore, and yet the animal originated in Thailand, and Thailand forbids the export of such an animal whereas Singapore didn't.

Mr. MOORMAN. I believe that would be caught by the Lacey Act as illegal, because the act refers to the country of origin, natal origin. By "natal," I assume it means the place where it was born.

Senator CHAFEE. What about the argument that the pet industry raised in the House that we're delegating legislative power to a foreign state?

Mr. MOORMAN. Well, we're not actually doing that. What we're doing is, in a sense, assimilating their legal provisions into our criminal code and this is a procedure that we have used often. They claim it's unconstitutional delegation, but they have no leg to stand on in that regard. The court decisions have upheld the Lacey Act.

Mr. MELLON. Mr. Chairman, there is a recent opinion from the U.S. Court of Appeals, Third Circuit, directly addressing that issue. The Court of Appeals of the Third Circuit has found that the unconstitutional delegation argument is "patently frivolous."

Senator CHAFEE. All right, Mr. Moorman, anything else?

Mr. MOORMAN. The rest of my testimony can be entered into the record, Senator.

Senator CHAFEE. Mr. Moorman, in my opening comments I pointed out that there were 584 convictions in 1977. The fines totaled over \$31,000, an average of \$54 a person, and jail sentences amounted to 2,000 days. All the rest got away. Even with the tools we have at hand, when we do get convictions the sentences are always suspended even in the light of these horrendous examples that have been cited here in this testimony.

Mr. MOORMAN. I think that as far as the court prosecutions of these cases are concerned, with a few minor examples, I have to say that I think we have not adequately enforced this act and that was one of the reasons why we have established the new wildlife section in my division.

Senator CHAFEE. But setting that aside, we're talking about the convictions you get.

Mr. MOORMAN. Judges have a tendency to give the same degree of importance to the violations that society in general does. A violation of the Lacey Act is presently a misdemeanor. Until very recently, the Justice Department did not make this a particularly high priority. There were a lot of signals out there to the courts that this was a fairly low-level priority matter. I think that judges will very quickly understand that this is considered more serious business now, especially with these amendments.

For example, I think these amendments will be a signal to the courts from the Congress that this is to be taken seriously. So, I think the fact that these amendments are passed will be noted by the courts, and they will realize that the priority that they have been giving to this, just as the Justice Department has, has been too low. I think it will have an effect on enforcement.

Senator CHAFEE. You're saying that if we up the penalties and make it easier to get the prosecutions, make it a criminal offense, that would show the courts that we are more serious about this whole business?

Mr. MOORMAN. Absolutely. And the fact also that the Attorney General in Washington has organized a specialized, centralized unit giving support to the U.S. attorneys, and a whole number of things like this, will all come together indicating to the courts that this is a high priority business.

Senator CHAFEE. All right. Fine.

Mr. Mellon.

Mr. MELLON. Senator, with regard to your last question, and answer by Mr. Moorman: As a practical matter, the 97 U.S. attorneys' offices in the United States have very limited resources and, as a practical matter, they expend those resources on areas which will have a maximum effect in the local jurisdiction. Most local jurisdictions, like the Eastern District of Pennsylvania, don't think of international wildlife trading as being a very serious matter. So, your first concern with regard to the enforcement of the Lacey Act heretofore is that there

is not a high level of sensitivity. I think the President's directive of August 2, 1979, might change that; both in the community at large, and second, and most importantly, in our law enforcement community.

Senator CHAFEE. In one of the statements I read there was reference made to somebody who had been trafficking, got a conviction; he was let off on probation. He was arrested again before his probation period was up, got another conviction, and I think that time he got 6 months in jail. Was that your statement?

Mr. MELLON. I believe that was Mr. Greenwalt's testimony. But the facts of that sort are rather common in this area, because as I had just mentioned, there's little or no sensitivity on the part of the law enforcement and judicial community as to the very serious nature of this crime.

In addition to the sensitivity question, there is, as Mr. Moorman just said, a very serious problem of limited resources in the U.S. attorneys' offices. Frankly, we don't prosecute and we don't give much attention to misdemeanors if Congress doesn't mandate something to be the level of a felony.

Senator CHAFEE. Why should we bother if Congress doesn't mandate it? Why should you bother?

Mr. MELLON. That's essentially and sadly correct.

And lastly, with the amendment now before the Senate, if we choose to bother ourselves, and basically we don't, if but we choose to, the burden of proof here, which is a double specific intent standard, would be very, very difficult to prove.

Senator CHAFEE. What do you think of the changes in the burden of proof from having to knowingly violate, having known of the Lacey Act—that's been removed now.

Mr. MELLON. Being familiar with the Lacey Act as I am, and being familiar with the proposed changes as I am, I can assure the Senate that it would facilitate more vigorous prosecutions in this area. I can at the same time say the way the act is now drafted, vigorous prosecutions are very, very difficult, almost impossible.

Senator CHAFEE. All right. Go ahead with your testimony. Have you submitted something. You've got some slides.

Mr. MELLON. I believe the Customs services' presentation will entail the slides. I will, however, give a little color and background.

Senator CHAFEE. Well, you're next up. Have you finished?

Mr. MELLON. Yes. I have finished. I adopt wholeheartedly the testimony of Mr. Moorman.

Senator CHAFEE. All right. Who's next?

Mr. Bavin.

STATEMENT OF CLARK R. BAVIN

Mr. BAVIN. Thank you. I have been involved in the wildlife law enforcement business for 15 years. I started out with the U.S. Fish and Wildlife Service as a field officer and for the past 7 years, have been chief of the Division of Law Enforcement during that period of time. I have witnessed first hand both in the field and in the headquarters office the frustration experienced by our officers in attempts to enforce the Lacey and Black Bass Acts. Mr. Greenwalt has presented the official testimony of the Fish and Wildlife Service and

Department of the Interior and I'm here to answer any questions that you might have, specific questions in the enforcement area.

Senator CHAFEE. Go ahead.

Mr. BAVIN. I would say I might address the issue raised by Mr. Heymann regarding the demanding of the production of the foreign documents. If you would look at page 9, line 5 of the bill, we believe this issue is now properly covered in the amendment that we're proposing.

Senator CHAFEE. All right. Mr. Heymann raised three points in his testimony. One was the strict raising of the \$500 to \$1,000 fine. That was just covered by Mr. Moorman. He thought we're getting into new territory here, so just stick with the \$1,000. Do you agree on that, stick to the \$500?

Mr. BAVIN. Yes, I do, sir. That's the same penalty level.

Senator CHAFEE. OK. The documentation question you have just answered. Is the Lacey Act under the inhumane section? It talks about substantial ratio. What do you think of that? Mr. Heymann thought that was too stiff.

Mr. BAVIN. Senator, that's in section 42 of the Lacey Act which has its own penalty provisions. We're not suggesting in our proposed amendment to change that section of the bill at all, and I'm really not prepared to address that particular question raised in terms of those standards.

Senator CHAFEE. Have you in your experience, ever dealt with, and I would like to ask this of Mr. Mellon too, have you attempted to prosecute under this section?

Mr. MELLON. Section 42?

Senator CHAFEE. The section dealing with the inhumane aspects.

Mr. MELLON. No, Senator, we have not. We have found that using section 43, the sale, transportation and receipt of protected or endangered wildlife to be a much more effective section, the injurious section. We've had no experience with any in Philadelphia, and frankly, I'm not familiar with any cases that have been made recently.

Senator CHAFEE. It would seem to me that there would be a high incentive on the part of the people who are doing this illegally to take care of the product so they would have more when they got there, but it doesn't seem to be true. It certainly wasn't true in slave trade either.

Mr. MELLON. Senator, that's not entirely correct. The mortality rate here is somewhere between 75 and 90 percent.

Senator CHAFEE. Mortality?

Mr. MELLON. Mortality; from the country of origin to the wholesale dealer. However, generally, what you pick up on, what you investigate, what you prosecute are those specimens that they have in their shops where they sell to undercover agents, where they sell to zoos. And generally, those specimens are in great shape; and again, the specimens that have died, the attrition simply cannot be determined with sufficient accuracy given the burden of proof to be brought to a criminal trial. You may have knowledge of it, but you can't prosecute them under section 42.

Senator CHAFEE. All right. Now, what about extending this law to plants? Ms. Duplaix suggested that. I thought that was getting into a big new area. What do you think of that, Mr. Moorman?

Mr. MOORMAN. I haven't given it any thought at all, Senator. I am not prepared to address that issue. We have just recently appointed someone to an interagency committee on the whole plant trade. I haven't had a chance to talk with the people about their recommendations, so I really can't speak to it. Maybe the other gentlemen have an idea on that.

Senator CHAFEE. Mr. Mellon.

Mr. MELLON. Senator, it's been my experience in 6 years with the U.S. attorney's office in Philadelphia, that we have not been presented with or even discussed the possibility of prosecuting a case which involves endangered protected plants. Without looking at the annotations and statistics, I imagine those cases are very, very few, if any.

Senator CHAFEE. Well, as I understand it, what the suggestion by Ms. Duplaix is, is that this act be extended and broadened to include plants. In other words, the Lacey Act doesn't cover plants now, does it?

Mr. MELLON. I believe a section of United States Code, title 16 does cover plants. The Lacey Act doesn't, but title 16 does.

Mr. BAVIN. Mr. Chairman, the Endangered Species Act does protect plants; that is, either inhumane or endangered. The Lacey Act, of course, does not now cover plants. The enforcement of the plant provisions under the Endangered Species Act or under the jurisdiction of the Department of Agriculture—I would think that they would be the proper agency to address whether plants should be included.

Senator CHAFEE. As I took Ms. Duplaix's testimony, it wasn't so much the plants that were endangered as plants that were injurious to the situation in the United States.

There's a charge made by one of the witnesses nobody in the State Department seems to be very familiar with the law overseas. What do you say about that? No one seemed to know much about it. Ms. Duplaix says "difficulty still exists." Are you aware that the provisions of wildlife laws of foreign countries are not kept current, readily available by any Federal agency we contacted? We are told an endeavor would be too costly, too time consuming. Officials of U.S. Embassies in other countries cannot identify protective wildlife. What about all that?

Mr. BAVIN. Well, Mr. Chairman, we have over the years attempted to maintain a library of foreign wildlife laws, and I think the statements made by Ms. Duplaix are correct. We do not have the resources to maintain this on an absolute basis. We do under the current Lacey Act and under the proposals, plus a due care standard on the persons engaging in traffic. The burden to find out what the law is is for the person who wants to trade in the wildlife. And as enforcement officers, of course, we target on the specific countries or the specific kind of wildlife that causes the greatest problem.

Senator CHAFEE. I can just see the Pet Council representatives come in here and say, "You're holding us to an impossible standard. We innocently bring in some birds from Thailand and even the U.S. Embassy doesn't know whether they are protected or not. So, we innocently come in with this group of birds. We find that it's against the law."

Mr. BAVIN. Well, the Lacey Act was changed in 1939, I believe, to adopt foreign law provisions. We've had great experience with this concept and we are not suggesting any major changes here in concept, I don't believe.

Senator CHAFEE. Yes; but we're treating it more seriously than we did.

Mr. BAVIN. That's true. But those that were involved in these serious examples know very well what they're doing, know what's going on.

Senator CHAFEE. All right. Mr. Gordon.

STATEMENT OF WILLIAM GORDON

Mr. GORDON. Thank you. Mr. Chairman, I have a very brief statement of the Department of Commerce on S. 1882, a bill to provide for the control of interstate and foreign commerce in fish and wildlife. The broad purpose of the bill is to provide for the control of interstate and foreign commerce in fish and wildlife. The bill would replace the present Black Bass and Lacey Acts with a single expressive law dealing with illegal trade in fish and wildlife. The bill would expand the kind of animal life subject to interstate and foreign commerce provisions, revising the penalty structure and amounts and settle arguments of specific intent to violate the law.

The Department of Commerce participated in drafting of this bill and believes that these and other provisions addressed by the bill will significantly improve the Federal capability to act decisively against the widespread illegal trade in fish and wildlife. We strongly recommend enactment of this bill which the Department of Commerce through its National Oceanic Atmospheric Administration would jointly enforce the Departments of the Interior and Treasury.

The Department of Commerce has reason to believe that large amounts of coral harvested and exported in violation of foreign law are being imported into the United States. I would cite some recent statistics on coral imports. In dollar amounts, 1976, over \$7 million; 1977, around \$5 million, and about the same amount in 1978. Most of the coral is for decorative purposes, including jewelry, and more recently the precious coral, some of which fall under the Endangered Species Act, may be finding their way to the United States.

We are also concerned over recent reports of our field agents which indicate a substantial increase in the level of illegal trade in other forms of fish and wildlife of interest to the Department of Commerce. This bill is a necessary aspect of the administration's commitment to improve wildlife law enforcement efforts and outlined in the President's environmental message on August 2, 1979.

Since that time, we have participated in two meetings of the newly established Interagency Wildlife Law Enforcement Agency and we are optimistic that improved coordination brought about by the committee's efforts will pay important dividends in curbing illegal trade in fish and wildlife. We also have a close working relationship in the Department of Justice on a major wildlife smuggling case. The Department of Commerce does not receive appropriated funds specifically to enforce the present Black Bass and Lacey Acts because most of our enforcement activities are funded under broader legislation such as the Fish and Wildlife Act of 1956 as amended, and similar authorities.

Although we are not prepared at this time to gage the full impact this legislation will ultimately have in our enforcement resources, we are exploring ways to obtain greater enforcement.

I will be pleased to answer any questions the subcommittee may wish to ask. Thank you.

Senator CHAFEE. In consequence with the enforcement efforts, I would like to ask Mr. Moorman and Mr. Mellon if they envisioned with this stiffer act, whether you're going to require a lot more people or do you think that the fact that the act has stiff penalties that it might deter these violations from taking place?

Mr. MOORMAN. Congress has just provided us with the money for the new Wildlife Enforcement Unit, Senator, which went on-stream in fiscal year 1980, and that's going to be useful. These particular amendments will allow us to make use of that resources and the U.S. attorney resources more effectively. It does not require us to seek any additional resources, per se.

Mr. MELLON. As a practical matter, Senator, the effect of these amendments will enable more vigorous prosecutions in the area of wildlife, and as a practical matter, having some firsthand knowledge in this area, I'm confident that both the Fish and Wildlife Service and the Customs Service could very profitably use more resources in this area. Specifically, additional special agents to investigate violations of the Lacey Act and the Endangered Species Act.

May I add further that the resources they presently seem to have in this area, just from my myopic point of view in Philadelphia, seem to be inadequate through no fault of the agencies; so therefore, in answer to your question, they certainly could use a shot in the arm in terms of resources to help this act have a full impact on the wildlife community.

Senator CHAFEE. When you have this forfeiture provision, what happens when you seize a python from somebody who has illegally brought it in? Now you got the python; what do you do with it?

Mr. MELLON. I would rather have Mr. Bavin answer that, because I would do nothing.

Mr. BAVIN. In terms of wildlife, Senator, once they're forfeited to the Government, they are then put out on loan to various zoos or places where they can be exhibited or for research purposes.

Senator CHAFEE. Is this quite a problem or do you always find a taker?

Mr. BAVIN. It depends. It has been a problem in the past, although the Congress amended our authority a couple of years ago in which it makes it easier to take care of disposition of forfeited property.

Senator CHAFEE. Do you pay room and board?

Mr. BAVIN. We have in the past, because under the current Lacey Act, it's not possible to charge. So, he can often string out civil penalty hearings for months and months, maybe even years, until all the appeal process is done. During that period of time, we must board the wild animals.

Senator CHAFEE. "We" being the U.S. Government?

Mr. BAVIN. Being the U.S. Government. And the zoos have in the past been nice and taken this on for a free ride. But after years of feeding thousands of parrots, for example, that eat a great deal of food, they cannot afford to do this on a gratis basis.

Under the provision of the amendment which we are proposing, it will be possible for us to charge the violator, once he is convicted, for the cost to the government for storage and handling of that property which he brought about the illegal importation of.

Senator CHAFEE. Suppose he's not convicted?

Mr. BAVIN. Of course, if we're unable to prove a violation, there would be no way to expect him to pay a penalty of either violating the act or of providing for the care and feeding of the wildlife. He would be completely free.

Senator CHAFEE. So he gets an animal restored in good shape, well fed?

Mr. BAVIN. That's correct. There are also provisions in the act for bonding—back to the importer—if there's a determination made by the Department that that's in the best interest of the wildlife and of the administration of the law.

Senator CHAFEE. All right.

Mr. Green, director of Office of Investigations, U.S. Customs Service, Department of Treasury.

STATEMENT OF WILLIAM GREEN

Mr. GREEN. Thank you very much.

Senator CHAFEE. Do you have a prepared statement?

Mr. GREEN. Yes. I was going to ask you if you would like me to offer it for the record. (See p. 119.)

Senator CHAFEE. Nothing would please me more.

Witnesses seem compelled to read every word of their statements. That is not always necessary.

Mr. GREEN. The only thing I would like to add is when we do seize those pythons, we handle them very carefully.

One of the highlights, I think, that I'm going to touch on deals with our slides, which basically concerns some very rare reptiles that American experts had never seen. Yet, when smugglers in this particular case became suspicious that they were under investigation, they buried the specimens alive in a New Jersey marsh, hoping to kill and hide the evidence. Our agents were later able to dig up the frozen remains and preserve them for trial. I think at this time we can show the slides covering this.

Senator CHAFEE. I thought you would never get to them.

Let's see what you have.

Mr. MELLON. Senator, what we are looking at presently is a series of slides provided the Government by coconspirators who have been convicted of taking worldwide trips for the purpose of collection and ultimate sale of wildlife.

Now, here we see a rather common scene in Asia. Basically, a jungle where all kinds of wildlife was captured by the natives and in turn provided to the Americans going overseas to purchase them. [Slide.]

More Asian jungle, basically. As you will see, that is one of our convicted smugglers, a very young man, who is picking up a rare python. Being a herpetologist, he can do this without any danger to to himself. That python cost him in the area of three or four U.S. dollars, which is a lot of money in the Orient. However, in the United States, it will sell for many hundreds of dollars; if, Senator, it makes it to the U.S. alive.

Senator CHAFEE. Who would buy it?

Mr. MELLON. It seems from our investigations, there are multifarious purchasers; for instance, private collectors, pet shops, zoos, and

museums. In Philadelphia alone, there is a herpetological society; that is, individuals who are into reptiles. And Senator, the one in Philadelphia has 500 members, to show you the magnitude of the individuals who are interested in this kind of wildlife.

That is a picture of yet another convicted smuggler, yet another young man, who, I believe, in that picture, is holding a Fiji Island iguana, very rare, again purchased overseas for a couple of U.S. dollars, taken literally off the trees and brought to the United States. In this instance, that was sold to a Philadelphia reptile dealer, who, in turn, marked it up a couple of hundred dollars to sell to whoever would pay the money, be it a zoo, museum, private collector, whatever. [Slide.]

Again, more of the same. I believe that specimen in the hand of the convicted smuggler is called a Fiji Island iguana. We have been told by the zoologist that we have been dealing with—we have been dealing with zoologists throughout the United States to get a broad spectrum of the problem, a broad spectrum of expertise—that that specimen is on the verge of extinction; that is, the rarest of all iguanas in the world.

Here we have, Senator, one of the convicted smugglers, here in detention by the U.S. Customs Service, who buried, to the best of our knowledge, approximately 150 rare Australian specimens. And as the next several slides show, a U.S. Customs agent proceeded to dig them up. They, of course, have been identified as highly rare, highly protected Australian specimens. They were purchased overseas, Senator, for \$5,500. In the United States, they had a domestic value of at least \$50,000.

Our zoologist from the Bronx Zoo, New York, Mr. John Baylor, assisted the Federal agent in picking them up.

We have here, as you can see from the slide, the identification of the various specimens and the country of origin. In this particular shipment, Senator, 621 specimens left Switzerland bound for New York and Philadelphia. Approximately 300 made it alive to Philadelphia; and within a week only 200 were actually alive for purposes of resale. Of the 200, 150 were destroyed intentionally to avoid detection. The remaining 50 or so were hidden in the basement, or in some way eventually sold or destroyed.

Again, more identification of the rare Australian specimens. I might add also, during the course of these investigations. We have been in contact, of course, with the Australian Government and many of the other concerned governments. They are very enthusiastic about our efforts to enforce these laws.

We begin to see by this picture the number of specimens that were intentionally killed, once again, to avoid detection by Federal Customs authorities. I understand there are two more slides, Senator, and that will complete our minishow.

Mr. GREEN. This gives an example of how birds are attempted to be smuggled into the United States.

We have cases where they are brought in this way, or sometimes crammed into peoples' pockets. Sometimes they are drugged or they are given alcoholic beverages to keep them silent. Sometimes they are under the car hoods as well as in the trunks.

This is another much better focused example of how many birds are literally crammed into these cages.

Senator CHAFEE. Where was the last slide taken of the bird; was that some bird that had been seized?

Mr. GREEN. I believe that was down in San Ysidro, yes, they were seized birds.

Mr. MELLON. We have had, Senator—not in relation to the case that you just saw, the films, but in other cases—very definite information that not only is wildlife smuggled into the United States for purposes of selling, but wildlife is very definitely smuggled into the United States in conjunction with other matters that are contraband such as gems, gold, very definitely heroin and opium. So not only do we have a very serious problem for wildlife, but the integrity of our borders, by utilizing wildlife for the purposes of smuggling, is also an issue here.

Senator CHAFEE. Have you found that in your personal experience?

Mr. MELLON. Absolutely. Positively. I have informants who have confessed to doing the same repeatedly, and there are investigations right now with indictments pending in which that will become a matter of fact.

Senator CHAFEE. Do you gentlemen see any problem that the changes proposed under S. 1882 would lead to any unjust penalties and sort of semi-innocent tourist or transporters who unknowingly bring in some of this material?

Mr. MOORMAN. Senator, if a person is innocent, you can't convict him. A person who doesn't know that he is violating the law is never subjected to the criminal penalties. Now, they would possibly suffer a forfeiture of the wildlife or wildlife product that they have; furthermore, there is always the possibility, as there is in all laws, that there will be some overzealous application of the forfeiture provision by the secretary. However, I think that the professional agencies that handle this are unlikely to make very many mistakes. I mean, one can't discount the fact that in the application of all laws, there is occasionally a mistake made. Now, the person who is subjected, probably appropriately, to a penalty has the right to ask for a hearing and he also has the right to judicial review. So there are plenty of safeguards in this statute as remedies for the tourist who perhaps is handled too harshly, if that should occur.

Senator CHAFEE. What about this placing an undue burden on the pet industry?

Mr. MOORMAN. I think that the pet industry certainly should have the resources to find out whether its activities are legal or illegal in various countries. That doesn't strike me as a very heavy burden whatsoever.

Now, if you are in a foreign country and that country for some reason refuses to tell foreigners what is lawful or unlawful, that would be a very unusual situation. I can't really conceive of a country that would pass a law to prohibit the export of something and then refuse to tell anybody about it. That may pertain in some bizarre place when all law and order breaks down. But I do think you do have to rely on the good sense of the prosecutors and enforcement agencies to recognize bizarre situations. In every law that we have, situations arise in which there are technical violations so that it would be unjust to prosecute and we don't; in fact, I think the history of the Lacey Act so far has not been one of overenforcement, but clearly one of under-

enforcement. So, I don't think we've even gotten to that point yet where we have to worry about overzealous enforcement.

Mr. GREEN. We found in our investigations that we are not dealing with amateurs, but professional criminal types. In this type of example we show that they have little regard for wildlife and the health and quarantine laws designed for the protection of not only the animals, but human beings. Our accent has been in that area.

Senator CHAFEE. Anybody else have anything to add?

[No response.]

Senator CHAFEE. I tell you what I would like to do now, gentlemen. I would like Mr. Gottschalk—if he would be good enough to wait—I would like to have Mr. Meyers, who is general counsel for the pet industry come up. And, if perhaps Mr. Mellon and Mr. Moorman could wait, if there are any points that Mr. Meyers raises, I would like to be able to ask you your view on that instead of having to get back to you later. I think it would be easier to get answers to problems that Mr. Meyers raises right away. And Mr. Bavin.

If you three gentlemen could wait; and Mr. Green and Mr. Gordon, we thank you very much for your testimony.

I would like to take just a 5-minute break and then we'll start with Mr. Meyers.

[Short recess.]

Senator CHAFEE. Now, we will continue with Mr. Meyers, Mr. Marshall Meyers, general counsel of the Pet Industry Joint Advisory Council.

Mr. Meyers, we welcome you here.

STATEMENT OF MARSHALL MEYERS, COUNSEL, PET INDUSTRY JOINT ADVISORY COUNCIL, AND RESEARCH ANIMAL ALLIANCE; ACCOMPANIED BY BOB ROBERTSON, EXECUTIVE VICE PRESIDENT, PET INDUSTRY JOINT ADVISORY COUNCIL

Mr. MEYERS. Mr. Chairman, I am here on behalf—

Senator CHAFEE. And you have with you?

Mr. MEYERS. Bob Robertson, who is the executive vice president of the Pet Industry Joint Advisory Council.

We are also here today on behalf of the Research Animal Alliance.

We have attempted in our testimony to limit it to legal issues, because we do not want to enter into a debate over some highly charged often emotional unsubstantiated allegations. And I would appreciate it if my lengthy statement could be included in the record. I'll briefly summarize the key points.

We, too, are opposed to poaching and needless habitat destruction, and the illegal importations such as we saw in the slides today.

Senator CHAFEE. You have a prepared testimony?

Mr. MEYERS. Yes, sir. It's a lengthy statement.

Senator CHAFEE. Thank you. Go ahead.

Mr. MEYERS. For everyone's sake I'll not read it into the record. (See p. 127.)

We have heard a lot of comments this morning about injurious wildlife and release of Monk parakeets, which really is covered under section 42 of the Lacey Act, which we're not dealing with today. And so we would like to really confine our comments to S. 1882, not to some of the other discussions.

Senator CHAFEE. Fine.

Mr. MEYERS. We are not opposed to certain provisions of the proposed amendments to the Lacey Act, such as consolidation of the Black Bass Act into the Lacey Act, the simplification of the statutory language, and the provisions for review of the civil penalties, provided they could be expeditious.

We are opposed, however, to some of the loose and ambiguous language not only in the existing statutes, but also language which will be contained in the proposed amendments.

Prior to overhauling the Lacey Act, we suggest that we ought to give some serious consideration—the Congress should—to the legislative intent and the due process safeguards.

More extensive hearings are needed when, and if, the administration can demonstrate existing remedies are inadequate, and that the inadequacy is not just due to poor management. Laws shouldn't be amended for the sake of reflecting activity.

We in the pet industry are not those involved in the endangered species. We do deal with some species listed in appendix 2 to the Treaty. But the vast majority of our animals are not listed as protected species here or abroad. They are, nonetheless, regulated by export permits, import-export declarations, et cetera.

We want to emphasize that we are involved with live animals: Bird, fishes, reptiles. We are not dealing with skins, parts, or products derived from wildlife. And that, in our opinion, is probably where the major problem lies: items which can easily be concealed and where the volume is significant. Some of the statistics given here this morning were misleading: 91 million animals turned out to be animals and products derived therefrom.

In our testimony, we are basically addressing the fundamental problem areas, one of which involves the strict liability provision which will hold a U.S. citizen strictly accountable for the acts of an individual over whom they have absolutely no control, regardless of whether the U.S. citizen knows the facts of the situation, or that a law has been violated. Also we are concerned with the provision that assimilates all foreign laws into the Lacey Act without any safeguards or specificity as to which laws are specifically included.

The elimination of the willful standard—

Senator CHAFEE. I think that charge was dismissed as frivolous and irrelevant.

Mr. MEYERS. There are two different problems: One is whether or not there is an illegal delegation of congressional power which Mr. Mellon says the court of appeals said was patently frivolous. I might point out that the court of appeals delegated that comment to a footnote in which the authority relied upon involved the assimilation of State laws and the *Curtiss Wright* case, which involved U.S. citizen's sales of arms to Bolivia.

To the best of our knowledge, the court of appeals has not really tried it in its true essence, and it's buried in the footnote No. 1 in their decision. I don't think we should get into a quibble on the linguistics of it.

It would be our position that issue has not really been tried in court. But I am not talking about just the delegation issue, the problem of holding U.S. citizens responsible for all of the foreign laws, which we address with some specificity in our testimony beginning

at page 7. Under these provisions, one may be held responsible because a foreigner, over whom you have no control, forgets to do something, makes a mistake, doesn't label a box properly.

On page 8 we list the types of things for which a U.S. importer of tropical fish can be slapped with a \$10,000 fine because he did not exercise "due care" and make sure that an exporter from Thailand properly marked that he was putting captive-bred fishes in the box. As to the administration of the statute, under the existing standard, I was somewhat amused this morning at Mr. Greenwalt's comment, saying that it was administered judiciously, because we gave some examples of these on pages 9 through 12 of our testimony, one involving the shipment of birds; another one involving fishes—which only happened on October 10, 1979, when three firms were assessed fines of \$6,000, \$7,200, and \$10,800 because the foreign exporter failed to list the address of the consignor on the box. They involved 30, 36, and 54 cartons of ornamental fishes.

Also it is interesting that Northwest Airlines was slapped with a similar fine of \$10,000. Now, if that fine sticks, I suspect Northwest will say, "We will no longer carry livestock."

If this is what is meant by "judicious administration," of the Black Bass Act, especially in light of the fact that on several motions to dismiss complaints on the Black Bass Act citations in Florida they were thrown out under the strict construction doctrine in *United States v. Wingate* and *United States v. Socoloff*.

So our problem is, Senator: Is it being properly administered?

That is one of the great concerns we have, especially with strict liability and with the due care standard. And at the end of our testimony we make a series of proposals, because we believe certain things are needed to be taken care of through legislative history, clarification in the language, and the provision of reasonable standards one must meet.

For example, we included an example of administration which breeds contempt, when an importer, in February 1979, received a shipment of reptiles. They cleared customs; they cleared Interior. He opened the box and discovered that there were four more specimens than listed on the appendix 2 permit under the endangered species group. He notifies Interior and reports the actual number. Five months later he's cited and fined \$100. And as we said in our written testimony. Interior determined honesty was worth something and did not assess the maximum \$500 "strict" liability penalty, or attempt to assert the "due care" standard used for the \$10,000 jackpot. But they could have. But he was honest, he called up and reported what the exporter shipped.

I also want to return to a comment which we've heard today about the illicit trade of "wildlife, and other contraband."

The shipment, for example, for which the \$10,000 fine was assessed at Los Angeles, included 56 boxes of tropical fish. It came from Colombia. All customs did was count the boxes, write up the fine because the boxes were "improperly marked." They never opened the boxes. They never even looked at the fishes inside. Is this the way a wildlife statute should be handled? That is one of our fundamental problems with this entire program: there have to be some guidelines.

And especially at page 14, Mr. Chairman, we put in a little example to bring it closer to home as to what would happen one day if you arrived home to your wife's ire because she had been cited under the Lacey Act and fined \$500 because she had received as a gift a caiman purse purchased by your daughter—a purse imported from a French manufacturer which undervalued the value and/or utilized a skin not properly tagged or exported from the United States. In addition, the purse had been seized by Government officials. Furthermore, if your wife had requested that your daughter purchase the purse and, because of recent write-ups in the media, she allegedly should have known a violation was implied by the mere use of such material, she could then become subject to a fine of \$10,000. And what would your daughter say when she's cited?

Senator CHAFEE. Mr. Meyers, in the examples you give, it seems to me that you say any of our existing laws on a subject not dealing in this particular area, can come up with an equally—I don't want to call it "preposterous"—but an equally absurd—if I might, without being harsh—stretching of what could take place, of the ultimate. I'm sure that you could have that under a motor vehicle law, for example, or under a larceny law, of a rental car that somebody rented, but it turned out to be stolen, and your wife rented it. And the thing could extend to the ultimate: that she's a felon because she was driving a stolen car.

So I think we've got to use commonsense and assume that the Government is going to have some brains in its application of the law.

Mr. MEYERS. We feel, sir, and we have a certain degree of sympathy, and also support for some of the reactions of the people in the conservation area, and the protectionist area, that there are abuses. The trouble is that we feel that the law is not being properly aimed at the right targets. They hit the "mislabeling"—there are a lot of these mislabeling fines being assessed. And we really wonder where the primary effort is going.

And, yes, I am sure these are extreme examples, sir. But they are occurring.

Senator CHAFEE. But it would help me much more if you would address the problem that exists.

Here we have a situation where obviously these imports are taking place. The present law has these standards that do not exist in other laws; standards that you object to removing.

The penalties in the existing law are not adequate. I think we all recognize that. They are only misdemeanors; they're not felonies. The fines are nominal. So what are we going to do? How can we solve the problem?

Now, it would be helpful to me if you could address the problem.

Mr. MEYERS. What we did, sir, in our testimony, is to highlight the problems and the types of ways that the laws are presently being enforced.

At the end of our testimony we provide you with 11 recommendations as to possible ways of getting the information out.

One of the biggest problems that we point to in our testimony is the question of ferreting out the applicable laws. It's not so easy, as Mr. Moorman suggests, to locate some of these foreign laws.

For example, there's a computer printout of the laws of the world that apply just to only those animals on the endangered species. It doesn't include the language of the laws, it just lists them. And one has to be fairly conversant in Latin to get through it. One of the fundamental difficulties is in locating and ferreting out these laws.

At page 31 of our testimony we list a variety of things we think can help cure the problem.

The first one is that a manual should be prepared to insure maximum uniform administration of the act by all of the agencies to insure that the intent of the law with regard to wildlife was carried out, and to reduce the administrative irregularities.

What we are saying there is, does the law assimilate all foreign laws affecting wildlife, or just those that affect conservation of wildlife? In other words, if a foreign exporter underevaluates a shipment because he wants to avoid a local tax, is that grounds for a criminal violation here? Or is it to assimilate only those laws that are involved with conservation of wildlife? In our opinion, they would include only those involved with conservation of wildlife.

Senator CHAFEE. Well, I'll tell you what I'm going to do. If we are going to get in a back-and-forth situation here, why don't we have Mr. Moorman, and Mr. Mellon, and Mr. Bavin come up here and sit down, and let us try and iron out some of these problems.

Who is this gentleman?

Mr. MOORMAN. This is Mr. Kenneth Berlin, of my wildlife enforcement section. He's up here to make sure I don't tell you a lie.

Senator CHAFEE. All right.

OK. Now, let's address the problems raised by Mr. Meyers. Let's take the first one.

He raises three objections.

The strict liability provision making U.S. citizens strictly and personally accountable for acts of individuals over whom they have no control, regardless of whether the U.S. citizen knows the facts of the situation, or that a law has been violated. OK? Now what do you say to that?

Mr. MOORMAN. Well, I think that the major impact of the strict liability provision is the forfeiture provision. I believe it's perfectly legitimate for the Congress of the United States to take the position that wildlife brought into this country in violation of foreign laws can be forfeited to the United States. I don't see any injustice that results from that at all.

Second—

Senator CHAFEE. You're sticking to that one? OK, go ahead.

Mr. MOORMAN. Second, the fine which is provided, and which it provides for, is fairly modest: It only goes up to \$500, and the secretary has discretion.

In addition to that, there are two safeguards provided to the person who has brought in the wildlife: One, he can ask for an administrative hearing before an administrative law judge; then, in addition, he can go to court if he is really hot about it so he can get the facts explored.

So the real thing, it seems to me, is this is a provision which once it's known is going to have—going to cause people to make sure to stay on their guard. And I think that because the \$500 is really so reasonably low that it's not going to be subject to any major abuse.

Senator CHAFEE. All right. Back to you.

Mr. MEYERS. The problem I have with "strict" liability: How far down the chain is it to be applied? And, again, this is where I'm saying the manual, or the legislative history can clarify.

If it means that a subsequent purchaser in due course innocently walks in and buys an animal, and it turns out that the animal is exported—and here we have to draw the line between violations of a wildlife conservation law and other laws, or when there was a mislabeling problem—the animal could have been exported legally, but somebody didn't mark the outside of the box properly, is that the reason to slap a \$500 fine, or forfeiture?

I think a more appropriate place to use that—so the animal has been taken in violation of local law?

Mr. MOORMAN. Senator, can I say something about this mislabeling thing?

This mislabeling problem is really—the way Mr. Meyers describes it sounds like a trivial thing—but it is not a trivial thing. It is the major problem: The fact that wildlife, which may be an illegal species, is stamped with a label of a legal species, for the purpose of avoiding detection by customs, is the major technique for bringing wildlife into the country.

I don't think reference to a "mere mislabeling" does it justice. I think mislabeling is a serious problem and the major technique used for smuggling an illegal species into the country.

Senator CHAFEE. I suppose there must be examples in other areas dealing with imports of other materials where mislabeling is a serious offense—forgetting animals—but there must be in certain drugs, I suppose.

Mr. MELLON. Senator, I think that is correct. Without regard to the wildlife concerns we have here today, something is brought into the borders of the United States and it is mislabeled, not even a holder in due course is going to have rights to that property. For instance, let me explain.

Assuming we have a situation where we have received stolen goods here in Washington, D.C., and assume those goods have to do with a work of art taken from the National Gallery. The fact that the thieves took it and sold it to someone who had no knowledge as to how he got it, does not make them a holder in due course and they will forfeit that piece of art, or that which they received as stolen goods, whatever the merchandise might be.

So as a matter of evidentiary law, as a matter of substantive law, the forfeiture provision here is nothing more than a codification of the law under title 18.

Mr. MYERS. I think we are talking about blatant mislabeling and mislabeling. I think we are talking about two different degrees of mislabeling, where they are probably dealing with an ordinary shipper, a foreign exporter will place on the first box the inventory of all the animals in a multibox shipment which the Department of the Interior, by the way, is requesting us to simplify the marking. What happens is—this is one of the \$10,000 fines which is assessed—a foreign exporter puts his name on the box, but not the address. That's why we say we've got to come up with some legislative history of what types of labeling problems we're going after, and come up with a manual, as we suggested be provided, that these are not the types of violation that they're going after. That is what the fishing industry is being hit with all the time.

Mr. MOORMAN. I was going to say, we have here a technical expert from Customs, Mr. Stuart Sidell back here, who tells me that the labeling provisions are not uncommon in custom law generally. You may wish to hear his views on it as they apply to other areas.

Mr. CHAFEE. Go ahead. Identify yourself.

Mr. SIDELL. My name is Stuart Sidell, the Assistant Chief Counsel for Enforcement and Operations.

It is not at all uncommon for importers into the United States to be required to label their products. In fact, almost every law we enforce—there is anywhere between 400 and 1,000 of them—for other agencies have various requirements as to labeling. Most of these are to protect the American consumer and the American citizen.

It's very obvious that the customs officer has a label that describes something, a fish or wildlife, product, and he is going to go through it one way. If he has something that describes it as inert substance, he's going to examine it another way. We've had shipments of reptiles and amphibians come into the country described as dried nuts and dried figs. The officer is quite shocked when he's bitten by what almost turned out to be a lethal bite. We had to rush a serum to him.

The labeling requirements that have always been a requirement of customs was—and they apply with or without the objective of official law—is product.

On the other hand, on wildlife products, the biggest violations that we're having are items that intentionally misdescribed. I'm not talking here about an individual that did not know what the substance was, what the animal was, and the specie was, because we frequently find shipping documents that are very accurate.

It's an intent to deceive the customs officer, and fish and wildlife officers, into believing that the product is either from another country, or a different species than that that is actually being imported.

Senator CHAFEE. What about what Mr. Meyers says about innocently leaving off the address?

Mr. SIDELL. I'm not aware of any specific case that Mr. Meyers was referring to. I would doubt seriously that anybody would impose a strict liability standards simply because an address was off. I would think that in this case that you would find that what was left off was the country of origin, which is an essential element to import merchandise into the United States. Frequently animals are shipped from captivity or from wild jungles, and the country of origin makes a big difference as to what laws it's subject to.

Mr. MEYERS. I will be more than happy to submit for the record a copy of Notice of Penalty for Liquidated Damages of Customs on the \$10,000 issue, which says it's the name and address.

Mr. BAVIN. Mr. Chairman, in Mr. Meyers' testimony on page 10 he implies that this penalty is under the Black Bass Act. And now he states that it's a customs law violation.

I should point out that under the current Black Bass Act the maximum penalty is \$200. It would be impossible to assess the penalties for mislabeling that Mr. Meyers has implied.

Mr. MEYERS. Except that the customs' notice says "Examination: Examination revealed that the cartons were not marked in accordance with the Black Bass Act." And that is what they were cited for under 16 U.S.C. 582(a). I have three of them for October 10, sir, and I'll put them into the record if you so wish.

Mr. MOORMAN. Senator, I think we can look into that particular incident and it's quite possible that injustice was done. Of course, that's one of the reasons we have hearing provisions in the act. But I do think that people do make mistakes.

Senator CHAFEE. All right, now. Let's take Mr. Meyers' second point.

The provisions that a violation of any foreign, American Indian tribal law, regulation or treaty constitutes a violation of the Lacey Act, leaving the act vulnerable to the charges of being unconstitutionally vague, overbroad, and ambiguous, or representing an improper delegation of legislative power.

Now, if that's a Constitutional item I don't want to get bickering back and forth on that; whether there was a footnote on—or whatever it was. But that is basically the constitutional argument you're arguing there, Mr. Meyers?

Mr. MEYERS. Our basic problem—let's put aside the constitutional argument, because that can be fought out in the courts. Our basic problem is the notice requirement—how is one to know what they are—what due care standard does one have to comply with to protect themselves—under the statute—to try to ferret out a law relative to a particular species? Or, sir, even in your own State of Rhode Island, they recently enacted a law which I understand will be up for revision in the next legislature because it included everything, including man. One could not bring his cousin over from Massachusetts because of bad definitions in the law.

In the Rhode Island statute, for example, they lumped together certain species which they did not mean to exclude, and now they are letting people trade in them in violation of their own law. So it's how does one know what law really applies?

Mr. MELLON. Senator, I believe I have a response to that.

First, in regard to the constitutional question, the record should reflect that the opinion that we are all discussing, for future reference is the opinion of the *United States v. Molt*—that's M-o-l-t—and it can be found, for future reference, in 599 F. 2d 1217. It's a 1979 opinion, Senator, and I want the Senator to know the third circuit said about the defendant's objection to the constitutionality of the Lacey Act, the third circuit said the constitutional questions are not ruled upon directly by the district court, but they are—as I said earlier—“patently frivolous.” The act does not delegate legislative power to foreign governments, but simply limits the exclusion from the stream of foreign commerce wildlife unlawfully taken abroad.

Now, I'm thankful Mr. Meyers showed us that footnote because in fact such a clear point in law doesn't rise to the level of dictum.

With regard to his second point, notice, the amendments necessitate that I, as a prosecutor, would have to prove the defendant did in fact know the foreign law. So this concerns the matter of notice and due course justice to the defendant. I have the burden of proof beyond a reasonable doubt of proving that he did know that foreign law.

So I think with regard to Mr. Meyers' contention as to the constitutionality and notice, I do believe there is more thinking on his part that is necessary.

Senator CHAFEE. Well, Mr. Meyers, in your report it doesn't mention constitutionality. That's out of our sphere here. But get on to the other point that Mr. Mellon says he's got to prove now on the part of the defendant: knowledge of the foreign law.

Mr. MEYERS. I think we feel that is very true under the existing law. Under the proposed law, as Mr. Moorman described it this morning, one's knowledge goes from a double specific intent to a single specific intent—that's fancy-sounding language.

If what it means is that they do not have to prove that one knowingly violated the Lacey Act, but knowingly violated a foreign law, we can live with that. But then our suggestion is: Let's amend the proposed language to say it.

Senator CHAFEE. Well, that's my understanding there: That you only have to prove the knowledge of the foreign law; you don't have to prove that they had knowledge of the Lacey Act. Is that right, Mr. Moorman?

Mr. MOORMAN. That is correct.

I will say Mr. Meyers does have a point: That the statute is a little tricky to decipher on that point, and I would certainly be willing to work with him if he has some proposed clarification that gets there, Senator. And I'm willing to see anything you have and discuss it with you and see if we can come to an agreement on that point.

Senator CHAFEE. You're not going to discuss it with me. The ball is in Mr. Meyers' court and he can get in touch with you on this and you folks can straighten this out.

Now, let's go on to point 3.

"The elimination from the criminal penalty of the requirement that the defendant has 'willfully' violated the statute so that a U.S. citizen * * *'" It seems to me that's about the same, isn't it?

Mr. MEYERS. Yes, sir, we would be able to take care of that.

Senator CHAFEE. OK. No. 4.

The provision for up to eight different forms of penalty, several of which have been substantially upgraded, at least six of which are discretionary, and most of which are unaccompanied by sufficient standards to guide their administration—creating the potential that the act will be arbitrarily administered, will be used to harass unfavored businesses, and will be challenged as being unconstitutionally vague and ambiguous.

All right, Mr. Moorman.

Mr. MOORMAN. Well, I think that the criminal provision we'll set aside. I think the terminology which is the provision used by the new criminal code that the Congress is considering is well understood; the double versus the single specific intent problem we can discuss.

The other two standards in the act are the strict standard and the due care standard. Let me say something about the due care standard. That's the one under which a penalty of up to \$10,000 can be assessed.

That's a very common and much construed phrase in the law. It's essentially the standard of the reasonable man, the circumstances of which is applied by the courts quite frequently.

Now, Mr. Meyers is worried about the fact that it is very difficult sometimes to find out what foreign law is. With due care, under the criminal provision, if he was unable to find out, and didn't know he was violating foreign law, he couldn't be prosecuted.

Under the due care standard for the civil penalty of \$10,000, if he has taken reasonable action under the circumstances to find out what the foreign law was, and was unable to discover that what he was doing was illegal, he would not be subjected to that penalty. And he has every opportunity under this law to have a judicial determination of that point, if it's improperly assessed by the Secretary. So I believe he is safeguarded.

As for the strict liability standard, the reason for the principal penalty is to support the future of wildlife. And there again I have to reiterate that I think that even if he exercised due care and did not know the violation, but did in fact import something in this country which was illegal, I don't think it's excessively burdensome. I think it is very reasonable for Congress to say that for the purpose of the forfeiture we want strict adherence; we want to take the wildlife; it was illegally exported from a foreign country.

Senator CHAFEE. Don't we go back to the analogy that Mr. Mellon cited of a work of art in which the person buys it at their risk? The buyer in due course does not have title to it; if it's been stolen, or if it's been illegally imported in some manner, he has to give it up?

Mr. MOORMAN. Counterfeit currency is another example.

Senator CHAFEE. And it seems to me that where I would again find it would be helpful to talk to Mr. Meyers in addressing the overall problem. There are problems here. How are we going to solve it?

Now, I haven't had the opportunity to read your testimony in the latter pages but I assume that there's where you address some of the problems.

I can't quite see why if somebody goes into a pet shop and buys a pet that's been illegally imported that they well may have to forfeit it. Although it seems to me that the situation we're discussing you rarely would have the forfeiture along that stage of the purchasing. It would be at the border, wouldn't it? At the point of import in the United States. Isn't that normally the place?

Have you ever, Mr. Mellon, had a situation where somebody, a buyer in due course from a pet shop, a rare macaw, or whatever it might be, has to forfeit the animal or bird?

Mr. MELLON. I have not had that situation; and, conversely, in every situation I'd had, I've had to prove they knew the existence of the foreign law to begin with.

So holder in due course problems, as a matter of criminal or civil experience in Philadelphia, have not been a problem. The people who have been holders have been smugglers, or the dealers in the United States who knew exactly where they came from.

Senator CHAFEE. Mr. Meyers?

Mr. MEYERS. Let's start, first, with the strict liability.

On strict liability and forfeiture, our problem involves enforcement when there are different levels of wildlife violations. If the animal itself is a protected species we feel, yes, it should be forfeited. But if the animal is not a protected species, but there was some paperwork violation for which a fine might be assessed, why is there strict liability? And again, I'm coming back to an exporter who puts in four more species than happens to be on the declaration form, even though it is perfectly legal to ship that species. There are different types of wildlife. And our question is: Are all laws that affect wildlife being assimilated, or just those wildlife laws that are addressed to conservation and protection of species?

Is a violation for the failure of the exporter to pay a local head tax on export, and excise tax mean the animal upon arrival here should necessarily be forfeited?

Senator CHAFEE. Well, I thought we were only dealing with animals who were in violation of the law of the nation where they're exported.

Is that right, Mr. Moorman?

Mr. MOORMAN. That's my understanding.

I should also note that the forfeiture provision is not required to be exercised by the Secretary in all cases. He would be able to exercise some discretion.

I think Mr. Meyers is citing a case where the foreign law is a very minor one involving some abundant species of wildlife, and he is suggesting that circumstances may arise where someone unknowingly imported something and got trapped with the law which was excessively technical.

I think that here we are going to have to rely upon the safeguards in the act and the good sense of the enforcers. But we can't anticipate all possible fact situations at this time.

Senator CHAFEE. Let me ask you this, Mr. Moorman:

Is the wording of this act plowing new territory in criminal law so that we're embarking in an area where the law has not been used in such a fashion for other offenses, whether it's drugs, or liquor, or paintings, or whatever it might be being imported?

Mr. MOORMAN. I don't believe there's anything—although the Lacey Act originally 80 years ago may have broken new ground when it assimilated these laws—this upgrading of the penalties is not new ground. I believe we are simply applying in a slightly different context the techniques which have been used elsewhere.

Someone else may want to comment on some examples.

Senator CHAFEE. Am I correct in assuming that the penalties, and the law is really similar to what we've got for the endangered species laws, for example?

Mr. MOORMAN. Almost identical to the Endangered Species Act, Senator.

Senator CHAFEE. Mr. Meyers?

Mr. MEYERS. We have, in our comments here and in our testimony before the House not opposed all changes; we have constantly said, "Let's clean up the language" which I think Mr. Moorman says we can work on at least one provision, which helps us dramatically. We also call for some legislative history to be built into the record so we know what the intent of Congress is, and how it's to be applied on publishing information, putting out lists, or indices. Those are some of our conditions, some of our recommendations we come up with: it is that part of the legislative history and how there is a need to gather and disseminate this information.

We have not said anywhere in our testimony that certain amendments to the statute should not be made; we're just requesting it's evenhanded administration. But the Department has to be provided the necessary resources to carry out the law properly.

Senator CHAFEE. Well, I find it very helpful, Mr. Meyers, if you could work with Mr. Moorman on this because we just don't want to have the situation where the pet industry is marshaled against this, because they are afraid that they'll be hurt in some way.

It seems to me it behooves the pet industry to be helpful in the solution to this, and not get into a contrary position.

In your opening statement you dismissed, it seems to me—you came on a little harsh talking about this as an emotional subject in which some wild people have come up with a new act.

It seems to me that what we are trying to do is the Federal Government facing up to a problem which is pretty severe. We've had a lot

of testimony on it, and it's something that I would hope we jointly, by meeting those who are most concerned on the other side, namely, the clients you represent, could help us come up with a good solution.

Mr. MEYERS. I'd like to say, Senator, we do not state it was an act drawn up by emotional wild people. We said we didn't want to engage in an emotional battle over the merits of trade.

We said we support provisions in the act, and we still do.

Senator CHAFEE. Well, perhaps I was too harsh on you.

Mr. MEYERS. I don't want to become an endangered species.

Senator CHAFEE. All right. Fine.

Well, why don't you—and I'll tell you what would be helpful, Mr. Moorman: There's Mr. Meyers' testimony. I suppose it's about the same testimony you gave before the House committee, isn't it?

Mr. MEYERS. It is more extensive, sir, because of the questioning before the House committee. We amplified it, and we also included 11 suggestions at the end of the testimony.

Senator CHAFEE. Now, Mr. Moorman, in working with Mr. Meyers, it seems to me either we try to solve the problems, or meet his objections—and I'm not saying for you to retreat; I'm just saying if he's got good points, that you acknowledged on the vagueness of them. Let's try and meet it. And the ones you don't meet, that I would be interested in knowing why.

Mr. MOORMAN. Very good.

Senator CHAFEE. I'd like to see these amendments passed. I don't mean necessarily the exact amendments; I'm not tossing out Mr. Meyers' points at all. But I would like to see this act strengthened. I think you will find most Members of the Senate—I would probably speak for the House probably the same way, although not a topic of general discussion yet.

Anything else?

OK. We'll have Mr. Gottschalk.

Thank you very much, gentlemen, each of you, for being helpful.

Mr. Meyers, one other point. Do you have trouble with changing the inhumane shipment from the ratio?

Mr. MEYERS. Since that was not included in the bill, I would not be prepared to comment on it. I would be happy to do it in writing.

Senator CHAFEE. Apparently they may want to change it.

Mr. Moorman, what about addressing the inhumane shipment thing? Is it your intention to try and tighten that up, or revise the substantial ratio at all?

Mr. MOORMAN. We have not intended to propose something on that, but why don't we consult and also supply you with something, Senator?

Senator CHAFEE. Give it some thought. See if it's really a problem.

Mr. MEYERS. Senator, if I could indulge—on the forfeiture issue, it might be wise to consider what the U.S. Department of Agriculture does with birds they seize improperly: They don't automatically give them to zoos. Sometimes they don't want them. They can be sold. USDA does that. That could help the situation with some forfeited items that Customs seizes are ultimately sold. They could be sold, and generate funds to recoup costs of holding and taking the animals.

Senator CHAFEE. I don't know enough about that. Take that up with Mr. Moorman. Thank you.

Mr. Gottschalk, we welcome you back, an old friend.

Mr. Gottschalk has helped us a lot with the striped bass legislation that we're dealing with. I can report—perhaps you know that that has not been authorized by both Houses, and it's on the verge of being approved in the conference report of the appropriations bill. And we will keep our fingers crossed that it will finally get through both branches completely.

STATEMENT OF DR. JOHN S. GOTTSCHALK, EXECUTIVE VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Mr. GOTTSCHALK. Thank you, Mr. Chairman. We are all gratified to see this conclusion to the efforts we made on the striped bass. We wouldn't have gotten anywhere without your personal interest. I'm sure that is all recognized up and down the east coast.

I'm grateful to the committee for its interest in the problem that has been so clearly and eloquently placed before you this morning. It is not my purpose to attempt to repeat in any sense the excellent testimony that you have already heard on the broad international problems of the illicit trade in fish and wildlife. It is undoubtedly a morass of conspiracy, and has overtones that none of us in the conservation business want to see tolerated.

We are very much in favor of doing all the things that need be done to bring this illicit trade under control. My remarks this morning, however, are devoted primarily to what you might call the domestic application of the Lacey Act and the Black Bass Act.

I represent the State wildlife agencies. Essentially the Lacey Act was passed, and since it was amended a few years ago to broaden its scope, the States have come to depend upon the Lacey Act and Black Bass Act to provide that extra measure of enforcement that otherwise would not be possible.

Many of us have visions, from the early movies, of seeing the sheriff chasing the outlaws who get across the State line and the outlaws stop on their side, and the sheriff stops on his side, and the outlaws smile and go about their business. The sheriff turns around in disappointed disgust and goes his way.

The Lacey Act, as it applies to wildlife violations, stops that sort of thing, because it makes it possible for the strong hand of the Federal Government to reach out and find that violator no matter where he will be.

Now, in the proposed amendments, this concept is enlarged upon to make it possible for the Federal agencies to assist the States in the protection of indigenous wildlife from the effects of poorly thought out introductions.

In other words, the Lacey Act and Black Bass Act protected the animals where they originally came from. They protected them from the effects of export. The proposed amendment protects State wildlife from the effects of imports. You've already heard a little bit about this when somebody made reference to the Monk parakeet, which has gotten loose on Long Island.

We've also heard about the walking catfish which was released inadvertently in Florida a few years ago.

We have a great concern with the species called the grass carp. It is being propagated by commercial fish producers and sent to other States whose laws prohibit introduction of that species because of its feared adverse effect upon native species.

This law—amendments—would make it very difficult for that to take place. If a State did not have laws prohibiting the importation of unwanted species, they could be shipped in. If the State has laws designed to protect its own, this amendment would give the strength of Federal enforcement to those State laws. We think that is very important.

You heard a great deal this morning about the strict liability provision, and some of the other amendments by people who are expert in this field. And I would not attempt to enlarge upon the discussion. Both Mr. Moorman and the gentlemen from Philadelphia did, based upon my experience, a very commendable job of presenting to you the situation that exists.

My experience in dealing with the Federal courts and prosecutors on wildlife matters generally has been that they have not considered these matters of utmost social importance. In fact, sometime it is hard to get a prosecutor, a U.S. attorney, to bother to take a wildlife case. He hadn't thought it was that important.

This amendment is going to go a long way to change his attitude. And I think it will go a long way toward changing the attitude of the Federal courts.

I would like to drop in here, in your committee's hands, one small caveat. That has to do with the inclusion in the amendment of Indian tribal laws. We have some problems about this because of the question of who has sovereignty over citizens who might go on an Indian reservation—non-Indians, that is—and conduct themselves in accordance with the Indian regulations, and then come back off and be in violation of State law. This is still under litigation and probably will be for some time. In other words, the relationship of Indian tribal law to State law has never been completely clarified.

We recognize that these relationships, as they concern wildlife resources, are only one small part of a much larger issue. Resources in general are at stake, so to speak, and we suspect that at some time the Congress will have to address these questions.

As you are well aware, as wildlife laws are handled today, a town cannot make special wildlife laws unless the State itself, through its legislature, has granted that authority to the town.

In the past, much the same situation has obtained with respect to Indians. Now, of course, there is a great movement on the part of the Indians to assert their sovereignty. To treat this question in this act—or in this amendment, I should say, to the Lacey Act—is going to create problems which we believe at least need to be studied more thoroughly. Possibly the proposal should be dropped out of the proposed amendment at this time so it can be treated in the context of the total question of Indian responsibility for resources.

I believe those are all the comments I'd like to make. I covered some of them in more detail in my testimony. If you have any questions, I would be glad to answer them.

Senator CHAFEE. OK. Well, that last point is a good one, and I think it is getting into a new area that's a fuzzy area, as you point out.

Didn't you say something in your statement about it currently being tested in the courts?

Mr. GOTTSCHALK. Yes.

Senator CHAFEE. All right.

Mr. GOTTSCHALK. I would be glad to give those citations to the staff, if you would like to have them.

Senator CHAFEE. If you could, that would be helpful.

Thank you very much, Mr. Gottschalk. We appreciate as always your taking the trouble to come here. Keep up the good work.

Mr. GOTTSCHALK. Thank you.

Senator CHAFEE. Now, ladies and gentlemen, that concludes our hearing today.

[Whereupon, at 12:05 p.m., the committee recessed to reconvene subject to the call of the Chair.]

[Statements submitted for the record and the bill, S. 1882, follow:]

STATEMENT OF LYNN A. GREENWALT, DIRECTOR OF THE U. S. FISH AND WILDLIFE SERVICE BEFORE THE SENATE COMMITTEE ON PUBLIC WORKS, SUBCOMMITTEE ON RESOURCE PROTECTION ON S. 1882, A BILL TO AMEND THE LACEY AND BLACK BASS ACTS, November 6, 1979.

It is a pleasure to be here today to testify on Senate Bill 1882. This legislation to amend the Lacey and Black Bass Acts has the full support of the Administration and was referred to by the President in his Environmental Message on August 2nd.

Mr. Chairman, history is replete with examples of wild animals exterminated by commercial exploitation: --Steller's Sea Cow, West Indian Monk Seal, Great Auk, Sea Mink, and Passenger Pigeon to name just a few. Habitat modifications resulting from advance of civilization and settlement, improved transportation systems, and inadequate protection and/or no enforcement have a way of devastating fish and wildlife populations.

The enormous flocks of wild pigeons which once darkened the skies of the Upper Mississippi Valley, New York, and southern New England had already begun to decrease by the middle of the last century. In 1857 a select committee of the Ohio State Senate made these comments on a bill to protect the Passenger Pigeon:

"The passenger pigeon needs no protection. Wonderfully prolific, having the vast forests of the North as its breeding grounds, traveling hundreds of miles in search of food, it is here today and elsewhere tomorrow, and no ordinary destruction can lessen them. . ."

(Palmer, 1912)

In one 40-day period in 1869, nearly 12 million pigeons were sent to market from Hartford, Michigan. The last wild pigeon was shot near Detroit on September 14, 1908, and the last Passenger Pigeon in captivity died in the Cincinnati Zoological Garden on September 1, 1914.

By the 1890's it was clear that market hunting had to be brought under control. Individual States could not protect their wild species alone because of the interstate traffic in wild meats and wildlife products. If a State set hunting seasons, bag limits and made it illegal to sell wildlife, hunters would simply poach the animals and transport them into a neighboring State for sale. State laws did not cover the wildlife killed in another State. In addition, many States did not prevent the sale of wildlife. Federal action was the only solution to outlaw interstate traffic

in wildlife illegally killed in their State of origin. Congressman John F. Lacey of Iowa authored the Lacey Act of 1900 to stop illegal market hunting. In testifying on his proposal he stated:

"This bill is directed against the pothunter. When you take away his market you destroy his occupation. Take away his market. . .and the pothunter must cease to carry on his nefarious traffic." (Lacey, 1900)

The basic concept of the Lacey Act was to prohibit interstate commerce in wildlife illegally taken, possessed, transported or sold under State law. That Act was expanded to include foreign commerce in 1935, because of concern by Congress that U.S. citizens were involved in illegal marketing of foreign wildlife.

The Lacey Act has been an effective weapon to control profiteering in the wildlife resources of the world. It has been hailed by all the States in our country and most of the nations of the world, including both wildlife producing and consuming countries.

The reason this statute has been so effective over the years has been because it was amended to keep pace with changing illegal commercial

practices. It was last amended ten years ago to expand its scope and increase penalties. Since then, times have changed rapidly and it must be amended again to cope with the expanding illegal commercial inroads into the diminishing wildlife resources of the world.

Mr. Chairman, the problem is that world commerce in wildlife is an enormous business. In 1978 importations into the United States alone amounted to over 13.1 million animal hides and skins, 368,000 live birds, 2 1/2 million live reptiles and amphibians, 152,000 game trophies, 260 million tropical fish, and 187 million individual products manufactured from wildlife. These figures are particularly staggering when you realize that they include only declared and documented shipments which are ostensibly legal. The sheer volume of these shipments makes adequate inspection by our limited number of enforcement officers working closely with U.S. Customs officers impossible. Smuggled wildlife, of course, is not declared and therefore not included in these figures. The exact extent of illegal traffic is unknown, but based on actual seizures and intelligence we believe it may run as high as 10-25 percent of total wildlife shipments depending on the species involved.

Not only do we have a large volume of illegal wildlife imports, but there is even a larger percentage of illegal exports from the United States because there is no effective export control system. Moreover, our laws have driven some U.S. firms into clandestine foreign operations where they can engage in illegal international wildlife commerce without importing the wildlife into the United States.

As you can see from the appended graphs declared wildlife in ports are on the increase. I have also included some maps which show basic routes of foreign commerce for some of the most heavily traded categories of wildlife. These maps dramatically illustrate the worldwide nature of the wildlife business.

While the current Lacey Act has been an effective tool, it no longer provides the deterrent needed to prevent interstate and foreign commerce in wildlife where a State or foreign law has been violated. The reason is simple. The penalty is too low and the profits too high. The maximum penalty for a criminal conviction is now only a misdemeanor with a possible sentence of \$10,000 and one year in jail. Judges rarely, if ever, hand down the maximum, and U.S. Attorneys naturally give priority to felonies because they feel the amount of the penalty is the priority that Congress has placed on the offense. Profits generally run more than 100 percent;

that is, each person in the marketing chain from the poacher thru the various middlemen, brokers, dealers and retailers at least double their investment. Often the profit margin is much higher--up to 3,000 percent. We know that many wildlife criminals are highly organized and often deal also in narcotics, stolen property, weapons, and other illegal activities with profits.

As more and more animals become threatened with extinction, the demand for them increases, driving up the price and the illegal profits. Currently a woman's purse made from crocodile leather sells for between \$400-1200 in Europe, rhino horn aphrodisiac sells for over \$600 an ounce in the Far East and the hyacinthe macaw, a beautiful purple parrot, sells for \$8,000 in the United States. Total illegal profits involving U.S. citizens probably run into tens of millions of dollars a year. These profits are just too great to be deterred by the current penalty structure of the Lacey Act.

Not only does the current penalty structure not match the potential profits, we also have a problem with the criminal culpability standards. During fiscal year 1978, we opened 914 investigations predicated on complaints or other information indicating a possible violation of the Lacey Act and closed 842 cases. Of these closed cases there were 173 criminal convictions, 9 acquittals, 83 declinations by U.S. Attorneys, 84 civil penalty assessments,

and 493 cases closed administratively. No case is closed administratively until all investigative leads have been followed and it has been established that there is insufficient evidence for a criminal prosecution or a civil penalty assessment. This large number of administrative closures is a direct result of the culpability standards of the current law and we are suggesting appropriate amendments. These amendments, along with the improved penalty structure, will be discussed more fully by the Justice Department witness.

Our investigative efforts under the Lacey Act in recent years have focused on large scale commercial operators who deal in illicit wildlife. We recognize that the cumulative effect of individual tourists purchasing illegal wildlife products can be destructive. We believe, however, that the best approach to this problem is to inform them of the law and thus prevent their unintentional violations. To that end we have conducted a large scale public information campaign including radio and television spots, feature magazine articles, public appearances, public displays of seized items and publication of a booklet "Facts About Federal Wildlife Laws" which I have appended to my statement.

We do not wish to hinder legitimate trade in wildlife or wildlife products. Instead, we believe that healthy viable wildlife populations are good for

the trade. It is the destructive poaching of fish and wildlife that must be controlled, and I reaffirm our belief in Congressman Lacey's idea that a proper role of the Federal Government is to dry up the interstate and international market for the fruits of the poacher who will then cease to carry on his nefarious traffic.

For most of us the wildlife poacher is a shadowy figure. He tends to ply his trade in remote areas, and like his prey, he is often alert, wily, and cunning. He is also often treacherous when cornered. Wildlife authorities are all in agreement about one thing. Poachers are difficult to control. Even here in the United States, where we have modern, well equipped State game departments, poaching can flourish, undetected, for years. Well organized poaching rings, with their middlemen and outlets, can flourish in our cities.

The poaching problem is worse in the third world producer countries. They simply do not have the resources to curb the problem at its source. There is often virtual warfare between poachers and wardens in East Africa. There are documented accounts of armed poachers using surplus military equipment, helicopters and automatic weapons. Fire fights between these gangs and government troops have occurred with increased frequency.

How does this sort of merchandise get into international commerce?

Often it will be picked up by an illegitimate dealer at a very low price, smuggled across one or more international boundaries to a country where false documents of origin are easily obtainable. The vast profits in such transactions are acquired by the smugglers and dealers who succeed in giving apparent good title to bad merchandise.

To illustrate the problem of controlling illegal international trade let me give you one example. Brazil is a vast nation, larger than the United States, with remote borders and vast areas of undeveloped lands. About 10 years ago Brazil outlawed commercial hunting and prohibited the export of wildlife. For some time wildlife products continued to flow from Brazil. It seemed Brazilian dealers had endless stocks of merchandise allegedly acquired prior to the ban. Finally, in exasperation Brazil set a date on which dealers had to clear their warehouses or forfeit the right to export. Some clandestine merchandise continued to flow, sometimes on forged documents, sometimes by the grace of officials who for a price turned their heads. But gradually the flow of wildlife merchandise from Brazilian ports came to a halt, and a new trade replaced it. Our Special Agents began to see greatly increased exports of the same wildlife merchandise from some of Brazil's neighbors. Some of these countries issue so-called "transit permits" which allow dealers to pick up merchandise at unspecified

points on the borders for "transit" through the country. These transit permits are virtually a license to smuggle, and for several years these have been used to attempt to legitimize smuggled wildlife. Fur, caiman hides, and live birds and animals continue to flow through the courtesy of numerous networks of poachers, smugglers, and shady dealers.

In order to keep U.S. citizens from profiting in this illicit wildlife traffic we must have a stronger Lacey Act that will authorize stiff penalties under criminal culpability standards similar to other criminal statutes. To emphasize some of the frustrations we are having with the current law a few examples are helpful.

In 1974 Special Agents of the U.S. Fish and Wildlife Service maintained a five-day surveillance over 1,500 miles from a New Orleans hotel to Newark, New Jersey. The object of this odyssey was 509 alligator skins worth \$50,000 which had been illegally killed in Louisiana and were destined for France. The ring leader and his accomplice were arrested and convicted under the Lacey Act in U.S. District Court where they were fined \$2,500 and \$2,000 respectively and placed on probation. Not much of a fine when you consider the profits made were probably in the neighborhood of \$20,000. Apparently the dealer did not feel the

risk was too great, because while he was still on probation Fish and Wildlife Service Special Agents arrested him again. He plead guilty this time to conspiracy to illegally purchase nearly 2,500 alligator skins in southeastern United States and ship them to tanneries in Japan and France. He was sentenced to a fine of \$10,000 and four months in jail. Hopefully he got the message, but we are not sure. Profits are just too high--maybe \$140,000 for that second series of shipments.

In another recent case four Fish and Wildlife Service Special Agents spent over four months of investigation concerning movements of thousands of jaguar, margay, ocelot and otter skins from Mexico and Brazil to markets in Europe. U.S. nationals operated the business of brokering furs stored in warehouses in foreign cities. Eventually a criminal conviction under the Lacey Act was obtained against one company and a net fine of \$10,000 was collected. However, 32 other companies and individuals escaped conviction largely because of the difficulties experienced with criminal culpability standards under the Lacey Act. Moreover, charges were never brought concerning the illegal trafficking in over 10,000 leopard and cheetah hides from East Africa and other illegal furs worth well over \$5,000,000, again, due to the current culpability standard. Profits from this operation ran into the hundreds of thousands of dollars.

It recently became necessary to administratively close a two-year investigation by Fish and Wildlife Service Special Agents involving shipments of hundreds of thousands of illegal caiman from South America to Europe and Japan through foreign freeports. The scheme again involved an American operating out of his U.S. office, working through a sham corporation and an involved system of merchandise and currency transfers. Such investigations are extremely difficult and complex and under the current law may not justify the effort.

This spring in Texas we seized nearly 18,000 furs valued at 1.1 million dollars. These furs were from animals killed illegally in Mexico and destined for the European market. Because of problems with the current Lacey Act the U.S. Attorney agreed to a settlement which returned half of the seized pelts to the defendants and a fine of \$10,000 and five years probation.

Trophy hunting is big business. Among trophy hunters there is a select group who seek the so-called "Grand Slam." This consists of taking all four subspecies of the big horn sheep. Three of these subspecies are relatively easy to acquire, but the Desert big horn is another story. Only about twenty licenses are available each year in the States. Mexico also has a small population and issues approximately 50 licenses

each year. There are never enough licenses to satisfy the demand. One recent case involved a Mexican national who would arrange illegal sheep hunts in Mexico and smuggle the trophy across the border, guaranteeing delivery to the destination of the hunter's choice. He charged from 4-6 thousand dollars for his services. Fish and Wildlife Service Special Agents had several warrants outstanding for this fellow when he was reportedly killed in an automobile crash in Mexico. Unfortunately, others have arisen to take his place. The illegal guiding racket is by no means confined to Mexico. Fees up of \$10,000 change hands for illegal hunts in our own country iwth interstate commerce almost always involved.

• Our problems are by no means all in wildlife. Hundreds and perhaps thousands of tons of illegal salmon move from our western rivers to cities clear across the country to Japan. In addition, hundreds of tons of illegal fish flow from the Great Lakes and the Midwest to markets in our midwestern and eastern cities. With salmon retailing at nearly \$6 a pound, tremendous illegal profits are involved. Some investigations by our Special Agents indicate that a single man using a pickup truck can make \$100,000 a year in the illegal salmon business.

The Black Bass Act, which is designed to regulate interstate and foreign commerce in illegally taken fish has a maximum penalty of only a \$200 fine and three months in jail.

We believe that Congressman Lacey had the right idea more than eighty years ago about the role of the Federal Government in halting this traffic. In the proposed legislation we have corrected the insufficiencies of the Lacey and Black Bass Acts and structured a more effective enforcement tool to combat illegal trade in fish and wildlife.

There is no significant difference between the problems encountered in the control of illegal interstate and foreign commerce in fish and similar illegal commerce in birds, mammals, and other wildlife and their parts and products. We are therefore proposing one comprehensive statute which solves both problems simultaneously. We also believe that having only one statute will simplify administration and enforcement and promote public understanding.

To correct these insufficiencies in the current law, we are proposing the following substantive changes. First, we would raise both the civil and criminal penalties. A \$200 fine, such as is now found in the Black Bass Act, is no deterrent to someone who can make \$100,000 per year trafficking in illegally caught salmon.

We are proposing a two-step penalty sanction for violations. A modest maximum civil penalty of \$500 is provided as a strict liability penalty. However, for violations committed by a person who fails to exercise due care in carrying out his activities, we are proposing that the maximum civil penalty be raised to \$10,000 to enable the government to cope with violations in which the profits are so great that insufficient deterrent exists at this time. We are recommending maximum criminal penalties of \$20,000 or 5 years imprisonment or both.

Second, Section 43 of the present Lacey Act and, for certain violations, the Black Bass Act, contain criminal culpability standards which render their criminal penalties virtually useless. To obtain a conviction, it appears that the government must prove that the defendant knew his activities were illegal. Proving such knowledge is almost impossible, and is not required under most statute, since "ignorance of the law is no excuse." We are therefore proposing a "knowing" standard for these amendments that would require proof only of knowledge of the essential facts of each violation. This matter is somewhat technical in nature, and the Department of Justice will provide a more detailed explanation.

Third, the current Black Bass Act applies only to fish involved in violations of the law of the State of origin. Frequently, California

and other States strongly object to shipments into their jurisdictions of live white amur carp from Arkansas. California has no remedy against the shipper in Arkansas, and the Federal Government cannot intervene on California's behalf under present law. This problem is solved by the proposed legislation.

Fourth, we believe it is desirable to extend protection to species of wildlife not now covered by the Lacey Act. We are encouraging States and foreign governments to protect a broad variety of species. Our legal mechanisms should be supportive of those governments. For example, current Federal law may not cover interstate and foreign commerce in coral, although coral is protected by a number of States and foreign governments. Nor does the current law cover fish roe, to the dismay of several States. In addition, in 1969 coverage of migratory birds was removed from the Lacey Act, and we believe such protection should be restored to provide a more adequate remedy for violations involving massive numbers of birds or unlawful commercial activity.

Finally, because of the resource management responsibilities of Indian tribes, we propose that these amendments expand upon the application of the current Black Bass Act and apply to wildlife as well as fish that are taken in violation of Indian tribal law or regulations.

We should point out that these changes would not constitute a broadening of our existing authority, They would merely allow us to provide support for the full range of State, foreign and Federal laws that protect wildlife. With the exception of the marking requirements, the substantive provisions of the Act do not stand on their own. In order to prosecute most violations under the current Lacey and Black Bass Acts or this revision, it is necessary to first prove that there has been a State, foreign, or other Federal violation.

Incidentally, Mr. Chairman, one of our problems in enforcing the Lacey and Black Bass Acts with regard to violations of foreign laws is that there is no current compendium of foreign laws relating to fish and wildlife.

We are also making a number of other changes, which, while important to the enforcement and administration of the law, could best be described as technical.

Both the current Lacey and Black Bass Acts have rigid language concerning the marking of packages and containers in interstate commerce that hold fish and wildlife products. It has become necessary to depart from this language in our proposed legislation for a number of reasons. One is the potential for theft of valuable furs or other merchandise for which

an alternative marking under permit has been provided. Another example is the tropical fish business in which a single shipment may contain a hundred species. Marking of kinds and numbers on the outside of the packages is impractical and available packing lists or invoices will suffice. Still another example is the commercial fish business in which a shipment may consist of numerous packages or containers. The present laws, if strictly enforced, would conflict with industry practices. For these reasons we are proposing that marking be done in accordance with regulations promulgated by the Secretary which may be more flexible and accommodate current industry practices.

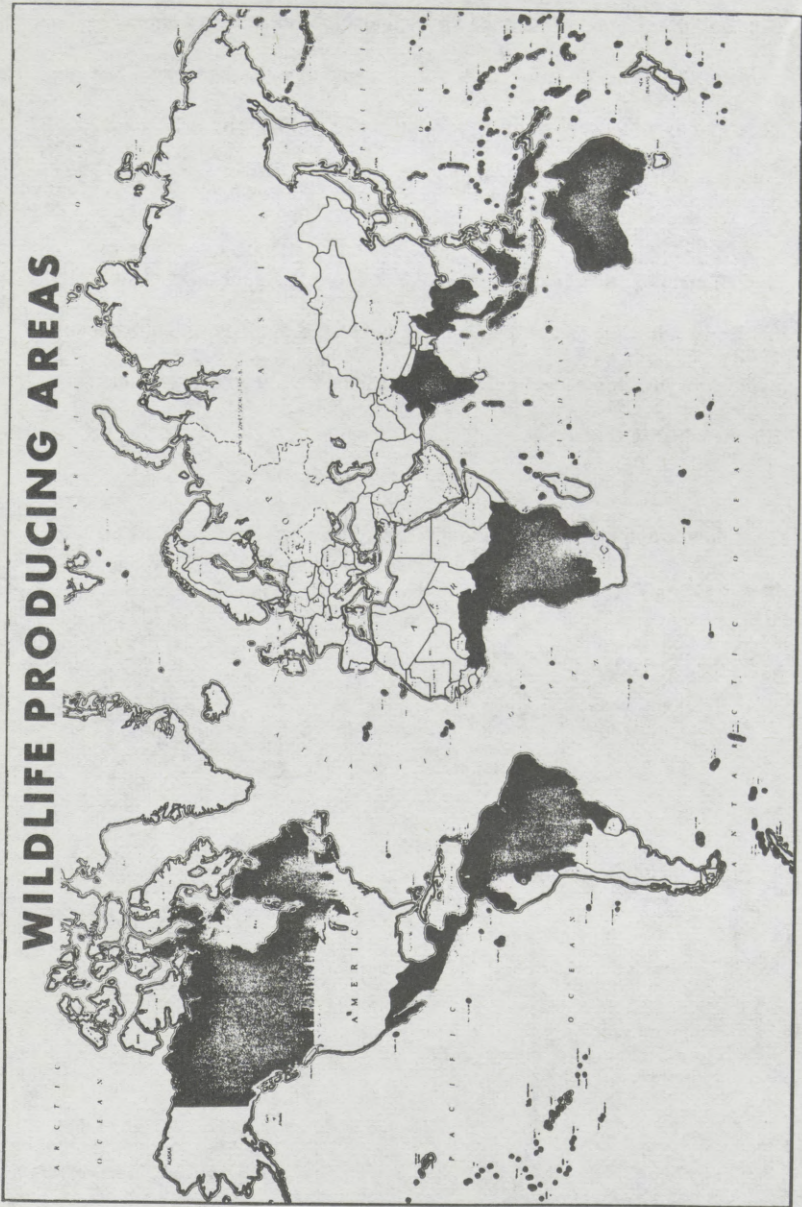
The present laws make it an offense to receive unlawful fish or wildlife in interstate commerce and make or cause to be made a false record or report. The proposed law extends the sanction against false reporting to shippers and transporters.

We are proposing that the forfeiture provisions of current laws be aligned with the provisions of other modern wildlife statutes to provide for uniform administration of forfeiture proceedings. We are also proposing enforcement authority which is consistent with other modern wildlife statutes.

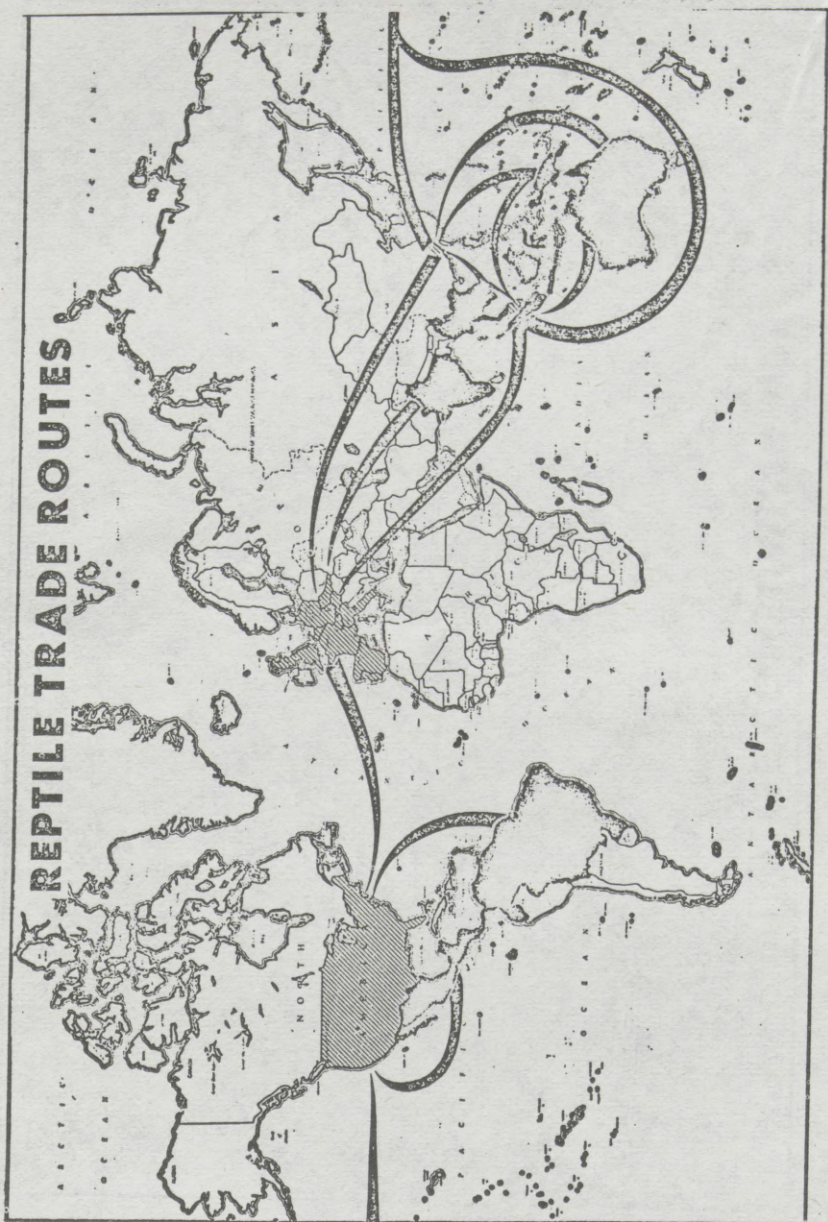
Finally, there is one thing we specifically do not want to change--the name of the Act. We think it is only proper that Congressman Lacey receive continued recognition for the basic philosophy of the Act, which we still strongly support.

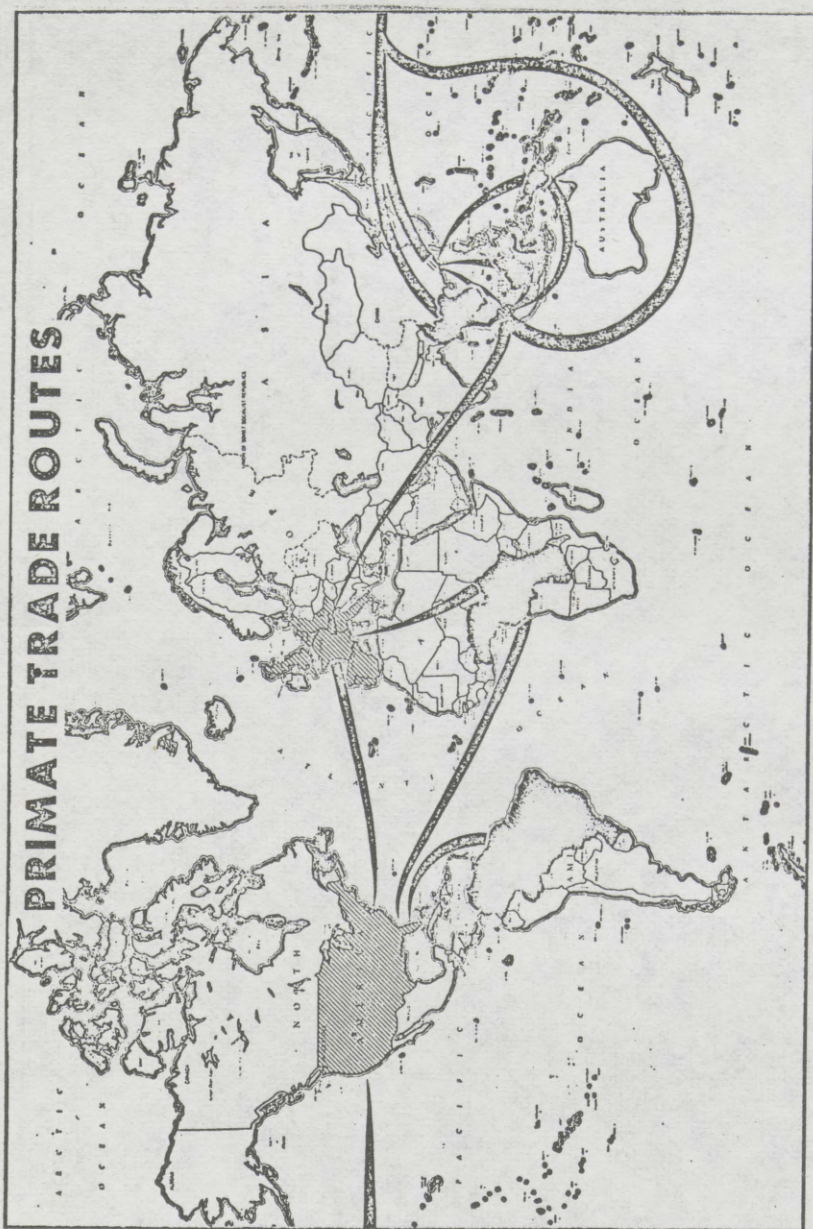
Mr. Chairman, this legislation will not solve the problems of illegal traffic in wildlife. What it will do is greatly enhance our enforcement effort and provide a real deterrent to those who reap the profits from illegal wildlife trade.

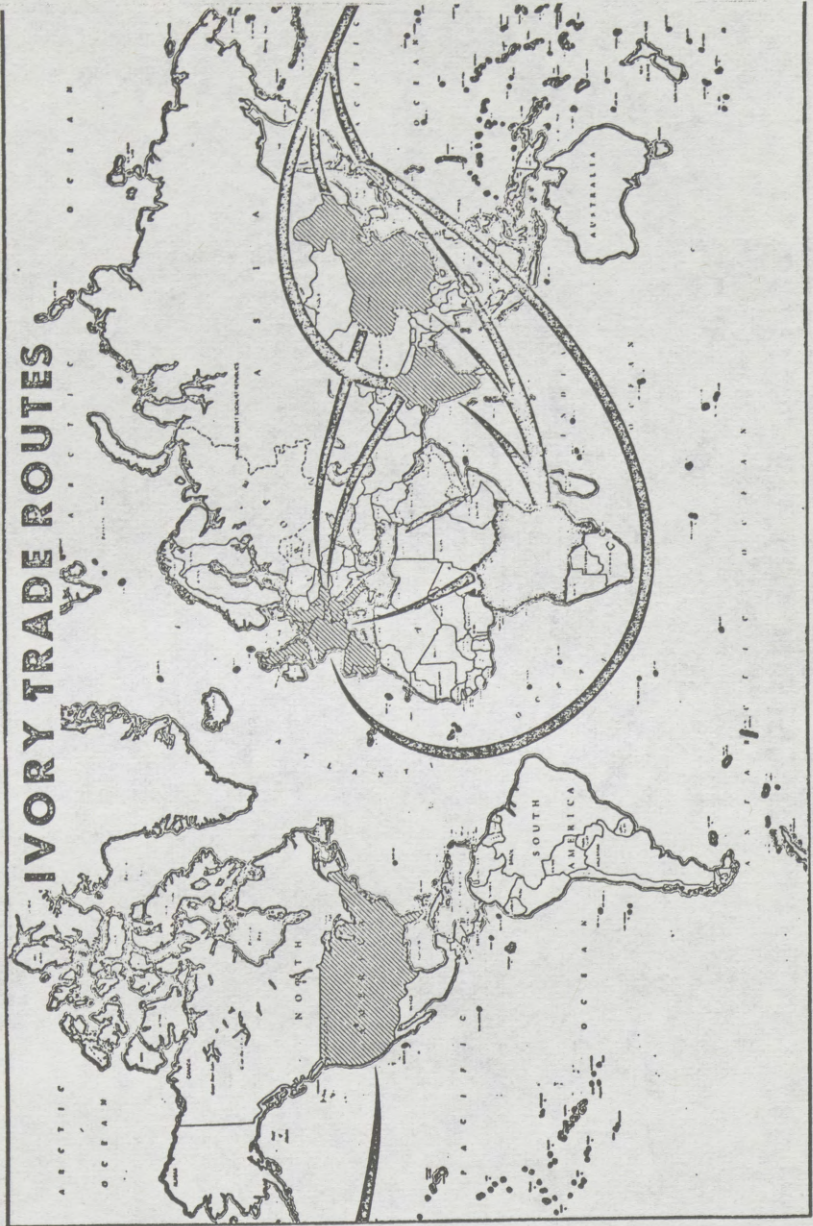
That concludes my prepared testimony, Mr. Chairman. I will be happy to answer any questions you have.

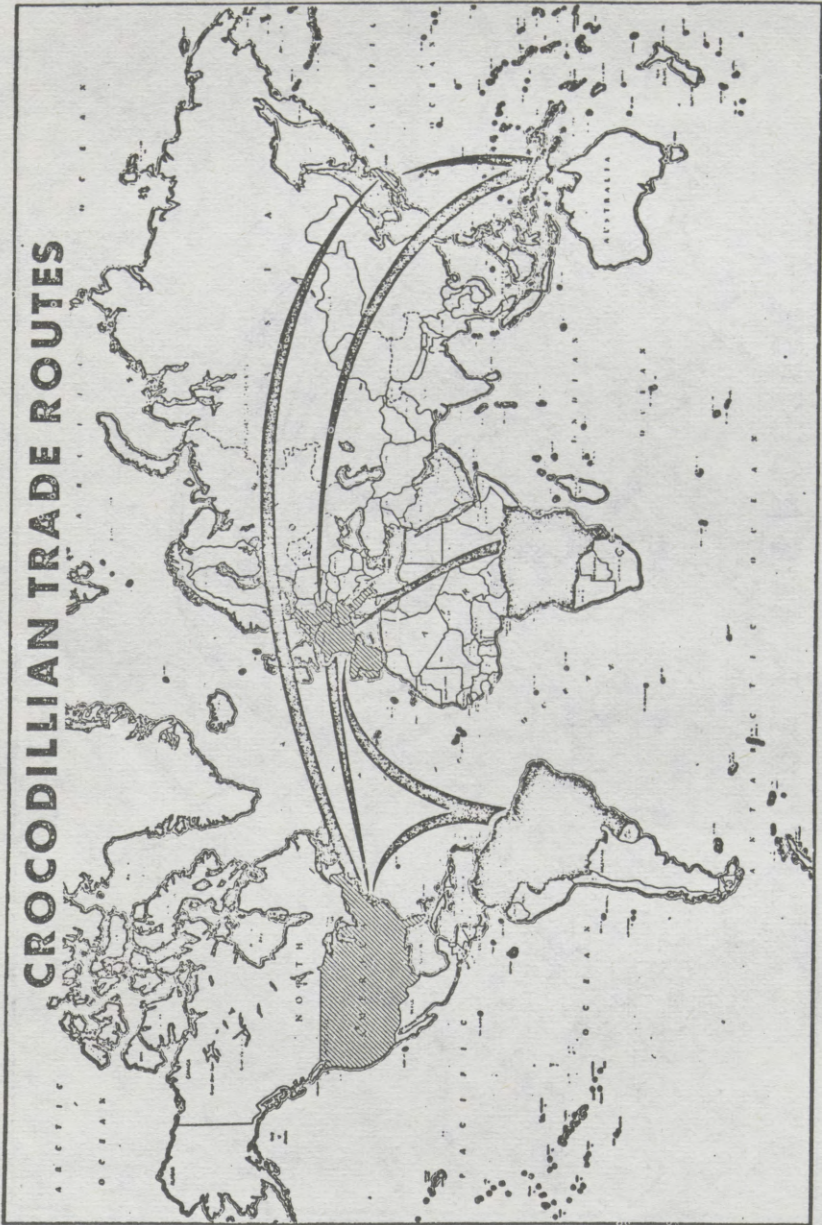


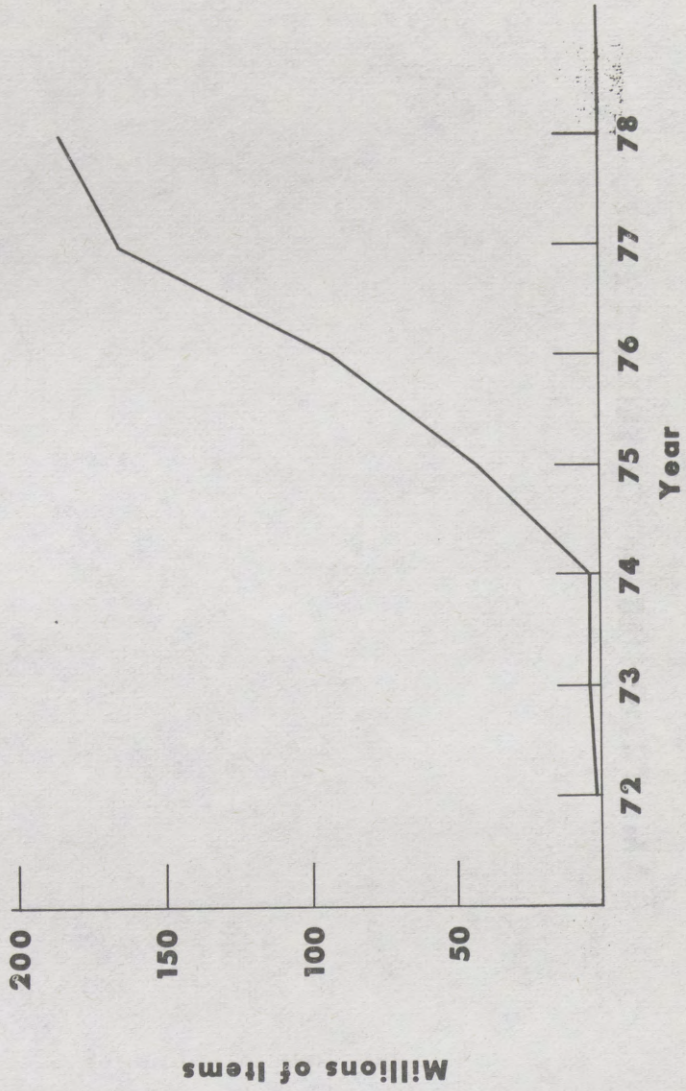


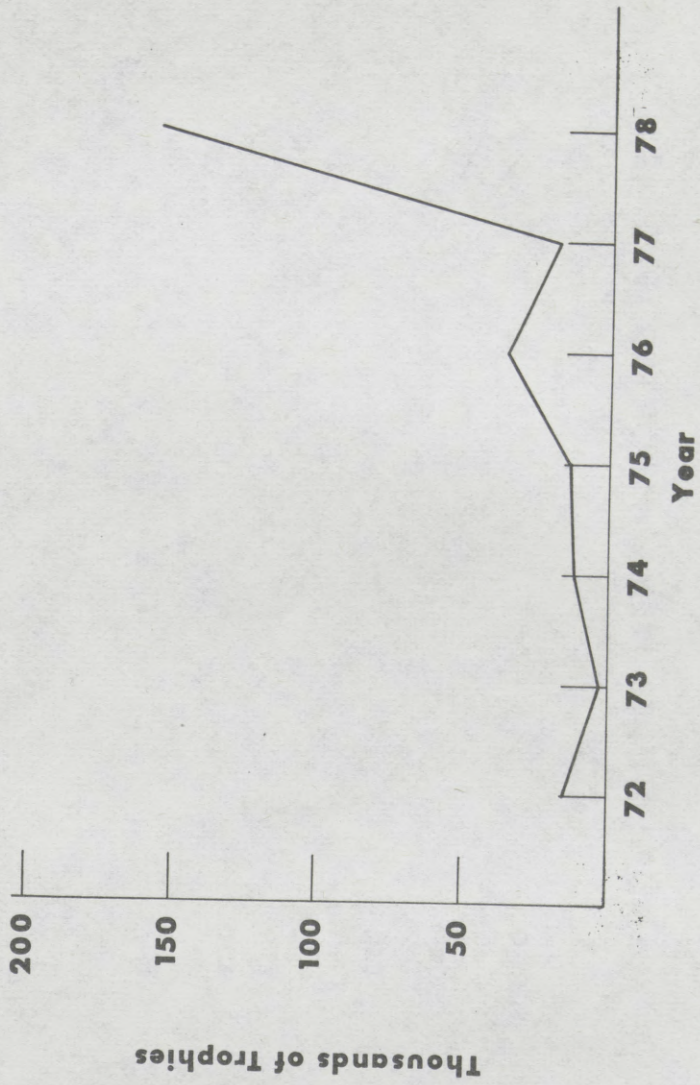




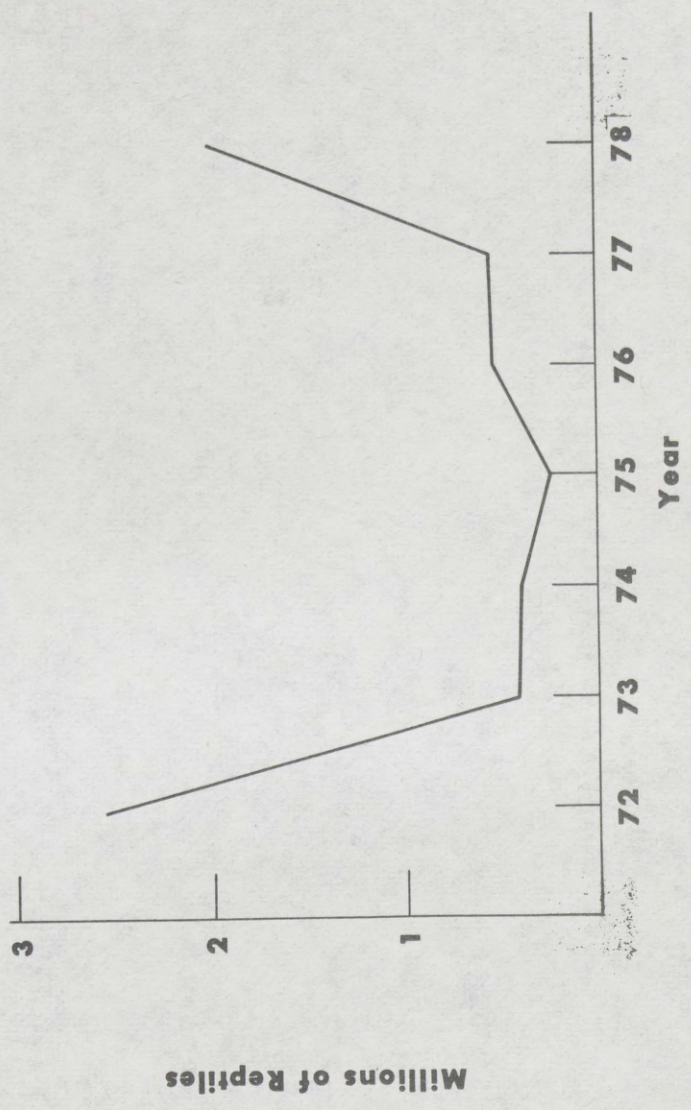


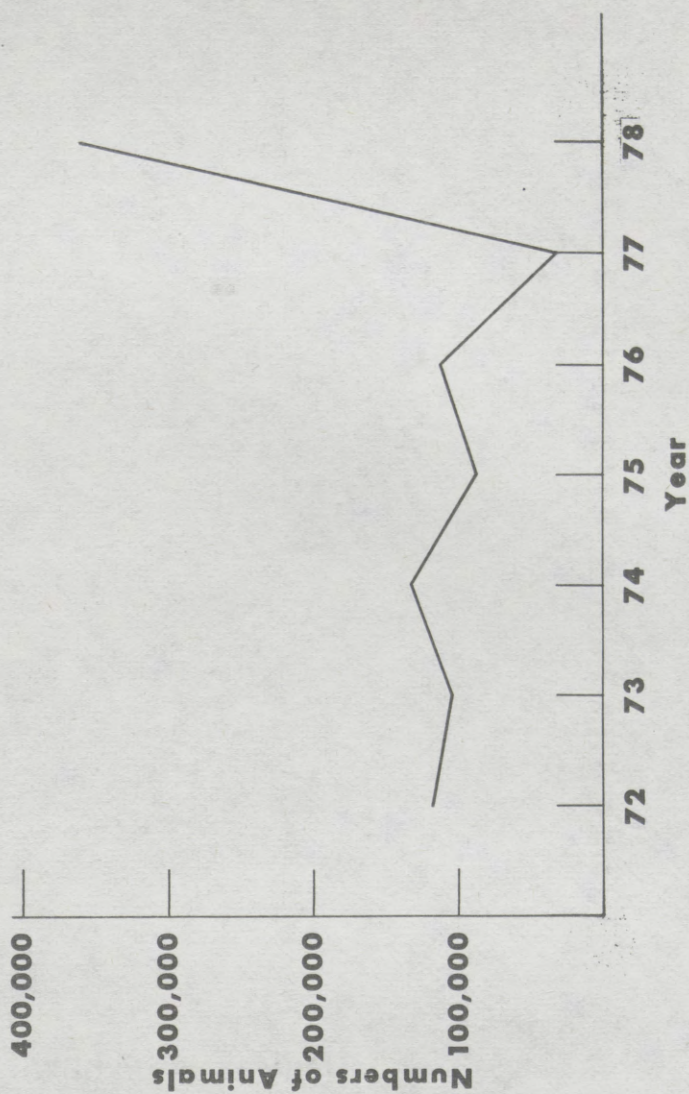


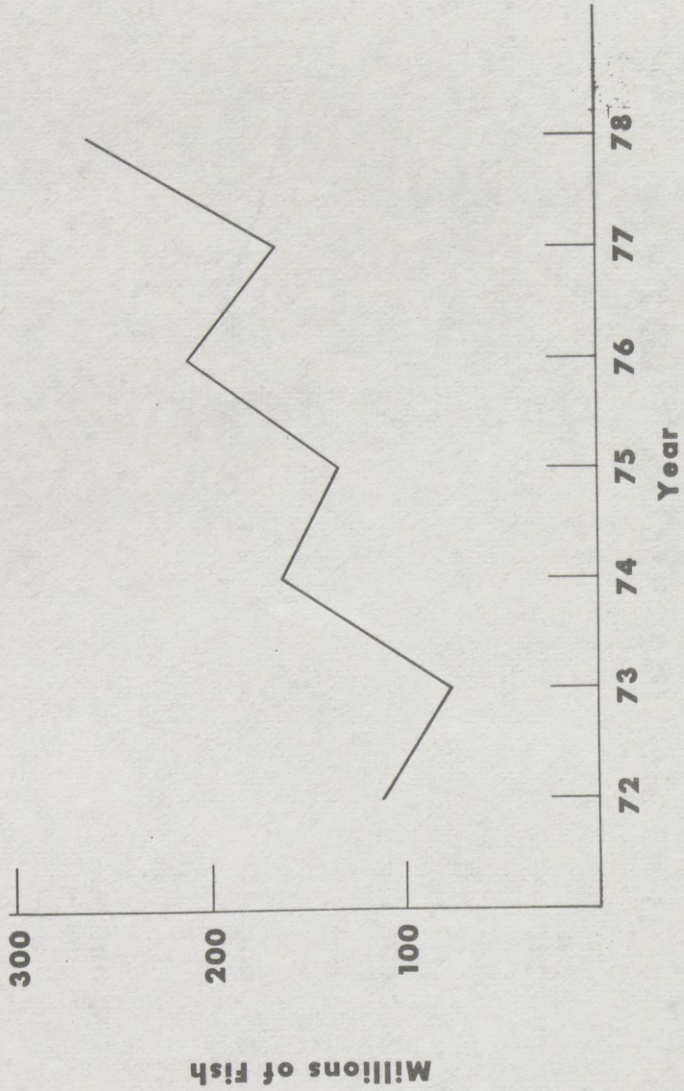
MANUFACTURED ITEMS IMPORTED 1972 - 78

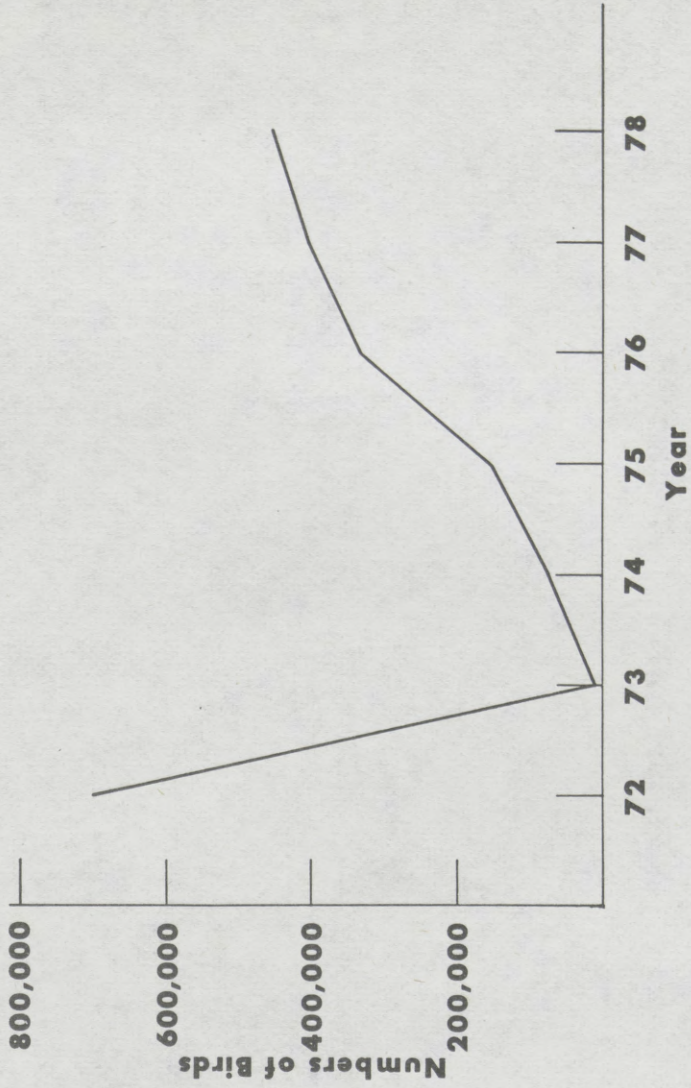
GAME TROPHIES IMPORTED 1972 - 78

LIVE REPTILE IMPORTATIONS 1972 - 78

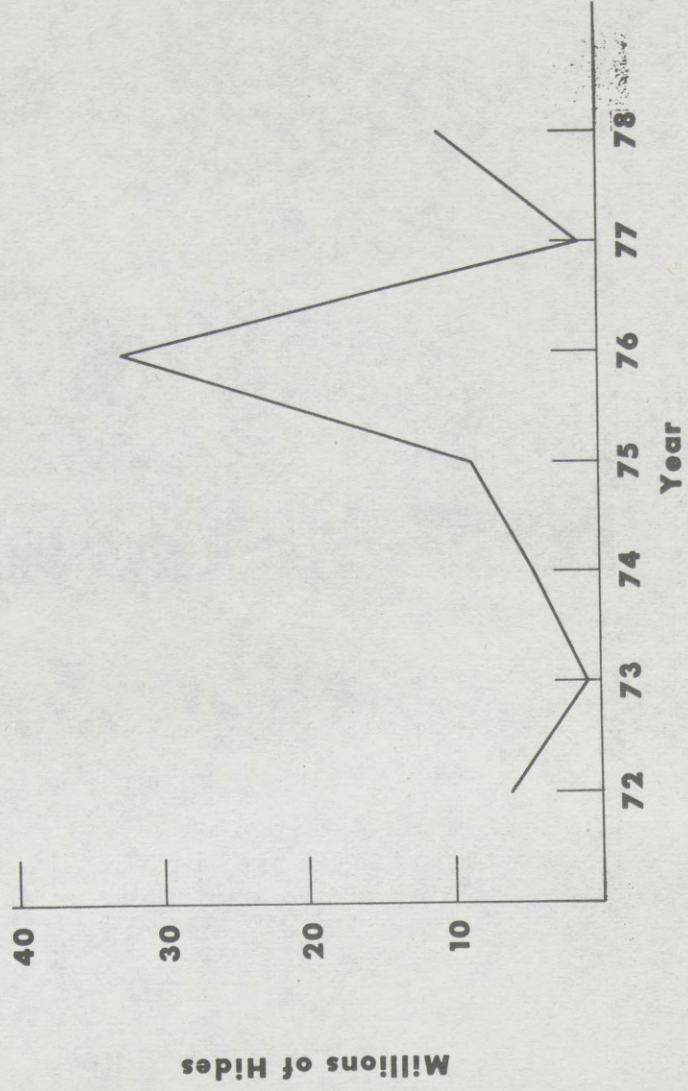


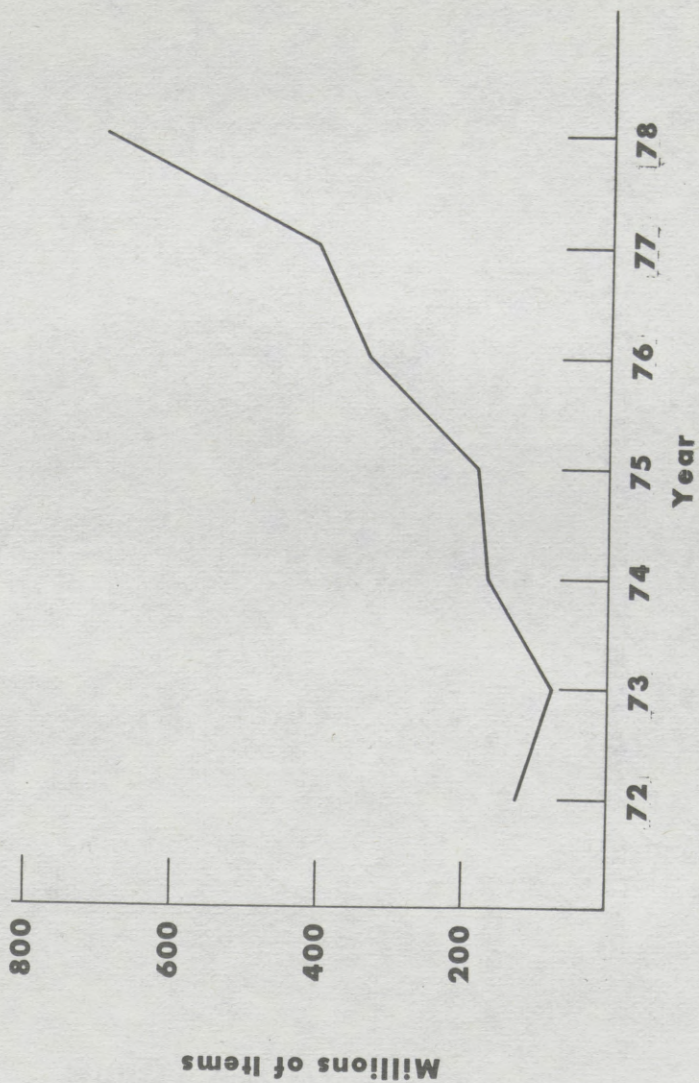
LIVE MAMMAL IMPORTATIONS 1972 - 78

LIVE FISH IMPORTATIONS 1972 - 78

LIVE BIRD IMPORTATIONS 1972 - 78

SKINS AND HIDES IMPORTED 1972 - 78



TOTAL WILDLIFE IMPORTED 1972 - 78

SOCIETY FOR ANIMAL PROTECTIVE LEGISLATION
P. O. Box 3719
Georgetown Station
Washington, D. C. 20007

STATEMENT ON THE LACEY ACT AMENDMENTS OF 1979
BEFORE THE SUBCOMMITTEE ON RESOURCE PROTECTION

November 6, 1979

by Christine Stevens, Secretary

I appreciate the opportunity to testify on the need for strengthening of the enforcement provisions of the Lacey Act. When the Lacey Act was passed, there was no comparable legislation anywhere in the world. Senator Lacey of Iowa was far ahead of his time in recognizing our nation's duty to back up the efforts other nations make to protect their wildlife.

Mr. Heymann has given several examples of animal suffering and death resulting from violations of the Lacey Act, and I would draw to this distinguished Subcommittee's attention these photographs of wildlife shipments to illustrate some of the conditions encountered. In many cases dealers have outwitted the authorities. Indeed, that appears to have been the rule rather than the exception because of the requirement in the Lacey Act, as now written, to prove a knowing violation.

To illustrate how difficult this is, I would refer to one of the few times the Lacey Act has been successfully invoked--that is when all the leading zoos joined together to bring an end to the trade in baby orangutans which was decimating the species. This young orang was packed in a box so small that it would even have been cramped as a coffin, and it was labeled "Monkey." Only through prearranged enforcement based on knowledge of this specific shipment, a matter which took a great deal of sleuthing, was it possible to have authorities at the airport to seize the orang. Clearly this kind of international detective work is generally beyond the scope of our government or of private groups eager to stop wildlife abuse. It is, therefore, essential that the proposals be adopted as speedily as possible.

Humane organizations have labored long to remove words like "knowingly" and "willfully" from the state anti-cruelty statutes because of the fact that the victims cannot speak. Thus, it is impossible to prove cases where the results are evident but there was no human witness. The majority of states prohibit cruelty

without qualifying phrases. The same should be true of the Lacey Act since, again, we are dealing with creatures who cannot communicate verbally to tell what actually happened to them.

The strict liability clauses follow the sound precedent set by the Migratory Bird Treaty Act, the Migratory Bird Conservation Act, the National Wildlife Refuge Systems Administration Act, the Migratory Bird Hunting Stamp Act, and the Airborne Hunting Act, which all have strict liability for criminal prosecution. The Eagle Act and the Marine Mammal Protection Act have strict liability for assessment of civil penalties, with fines up to \$5,000 for the former and \$10,000 for the latter. The time is long overdue when the Lacey Act should catch up with these more modern laws which have served their purpose well.

To save time, I will not go over points already made by Nicole Duplaix and Henry Heymann, with whose testimony we are in agreement. I would like to emphasize a point which their testimony has not touched on, although we are all in agreement about it: that is that the exemption under the Injurious Wildlife part of the Lacey Act for psittacine birds be removed. Although U. S. Public Health Service regulations (under 42 CFR 71 and 72) apply specifically to parrots, the Lacey Act's scope goes far beyond these public health regulations.

Actually the monk parakeet is one of the exotic pests introduced into the United States through the escape or abandonment of pet birds. These birds are regarded as agricultural pests in several parts of the United States, and they have not been successfully controlled. It is certainly illogical to have a particular exemption for a group of birds that have actually been proven to be capable of developing pest status. Indeed, you may wish to consider removing the caged bird exemption from Section 42 in toto. It is written in such a way that it has been subject to differing interpretations, and it is difficult to ascertain today exactly what Congress meant when this exemption was included so many years ago.

From the cruelty standpoint, the smuggling of psittacine birds contrary to the laws of their country of origin is a major problem. I would like to submit for use by the Committee three publications: The Bird Business, by Greta Nilsson; All Heaven in a Rage, by T. P. Inskipp; and Airborne Birds, by T. P. Inskipp and G. J. Thomas. Attached to my testimony is a recent article which appeared in the Los Angeles Herald-Examiner written by John Gleiber.

In 1976, 72.8% of the birds entering the United States through

Miami were psittacids. "Of the 57,382, 43,303 survived the 30-day quarantine; the remaining 14,079 had a dead on arrival mortality of 8,873; 3,119 were euthanized due to Exotic Newcastle Disease and 2,007 birds were returned to their country of origin due to refusal caused by disease presence." (The Bird Business, page 15)

Parrots are smuggled across the Mexican border in such incredible ways as putting them inside hubcaps or stuffing them into women's stockings to hide them. Similar problems exist worldwide. For example, "Bird exporters very rarely adhere to the IATA live animals regulations. None of the 829 cages from 15 countries imported via Heathrow and none of the 180 cages exported from Bangkok (Carter 1975) conformed to the regulations." (Airborne Birds, page 21)

Australia prohibits export of cockatoos and other psittacines, but the popularity of cockatoos resulting from the television show "Baretta" has tempted dealers to violate Australian and U. S. law because of the large profits to be made.

The trade in pet birds has resulted in an enormous amount of suffering and death through the terrible problems caused by exotic Newcastle Disease. In the most recent epizootic, USDA's Veterinary Services had to track birds shipped from Virginia to California, and it was necessary to euthanize whole farms full of exotic birds to prevent an outbreak. In round figures, it has cost the taxpayer well over 100 million dollars to deal with disease outbreaks stemming from the importation of exotic birds for the pet trade. Vast numbers of chickens have had to be killed in order to prevent its spread throughout the poultry industry. Poultry and psittacine birds are the most vulnerable to Newcastle Disease (The Bird Business, page 28).

The recent tragic event at the Rome airport resulted in part from violation of laws of the country of origin of wildlife refused entry by the Italian authorities. The nightmarish details of a struggle to save dead and dying antelopes and zebras are too revolting to recount. We can only hope that South Africa will punish the responsible dealer as severely as the hideous suffering he caused warrants.

The wildlife trade has escalated into big business, but the profound disrespect for law, which many dealers have grown up with, unfortunately remains. Attempts by the pet trade and other animal dealers to scuttle this important improvement in the Lacey Act only demonstrate how badly it is needed.

The horrible, unforgivable ordeal of those cute exotic birds

'You can visit a port of entry (Los Angeles is one of the largest) and find quantities of brightly-plumaged birds arriving DOA.'



Species endangered: The toucan... and the Molecan cockatoo...

By John Gleber

The facts about the flourishing bird import business today divide themselves into three categories of their damming to the practice.

• The horror of the transport: Birds are now captured on a remote island, packed into the most feid, unsanitary conditions imaginable during the holding period and the actual travel time en route to their final market, and unforunately, the birds die during quarantine period. The birds are crowded into small cages without adequate ventilation, often without food and water. The flights are long, and the birds are never conditioned to sobriety. They can gate the discomfort. You can visit a port of entry land Los Angeles is one of the largest in the country and find quantities of brightly-plumaged birds arriving DOA.

For the economics of the bird business is such that massive numbers of specimens, even the

most popular and sought after, can die in transit, and the shipper and the dealer both still have to pay for the bird. It is difficult to enforce effective humane methods either on shippers, who think only in terms of quantity and cashing in on the current boom, or dealers, who know that they are selling at a price which will continue to soar. Federal law states that an importer may be prosecuted if "a substantial percentage of the shipment is dead on arrival." The chance of prosecution unlikely and the chance of conviction even more so.

Then, too, the Fish and Wildlife Service is undermined and the birds are often undetrained. In busy ports, the onrush of constantly arriving shipments, the maintenance of quarantine areas and the paperwork involved for eventual release is overwhelming. Probably not as interesting as the bird business illustrates this state of affairs better than the 15,000 Senegalese finches brought into Los Angeles' port of entry in

April 1977. By the time the 30-day quarantine period was over, 8,330 birds of the original 15,000 were dead. Unbelievably, the U.S. Fish and Wildlife Service did not find it to be a case that "merited prosecution."

It is well worth keeping in mind that I'm speaking here of shipments regulated by law. I'm speaking of the birds that are being imported, not the birds that are being smuggled. The next time someone pictures a toucan, a parrot, a multi-headed imported parrot, a gorgeous cockatoo, an eccentric toucan, try to remember you are looking at a survivor of a terrifying experience.

It is ironic that this trend is sweeping the country just as we are beginning to come to terms with a rudimentary understanding of the value of ecological natural resources. An animal species cannot survive wholesale capture, which in this case amounts to slaughter. Many, many birds are already in many areas where they are being exterminated. It is important that native populations be kept healthy in their own habitats. We now know that it is

dangerous to wipe out a species, for we are gradually understanding each species' role in the life system. Our glimmers of knowledge must not be destroyed by selfishness and greed, which breeds ecological destruction. The present state of the bird business and its policies of oversight highlight all the mindless abuse of our environment. We should be leaving behind us a better world.

• The spread of disease and the peril of escaped birds: The importer and the dealer are largely ignorant of the U.S. laws governing the bird trade system developed by the U.S. Department of Agriculture worked to prevent the spread of Newcastle Disease — which is a viral disease of birds which wreaks havoc on the bird and gastrointestinal systems — in the domestic poultry industry. Imports were temporarily banned in March of this year because of "serious problems with quarantine facilities," according to Dr. Frank J. Mulhern, administrator of the Animal and Plant Health Inspection Service at the

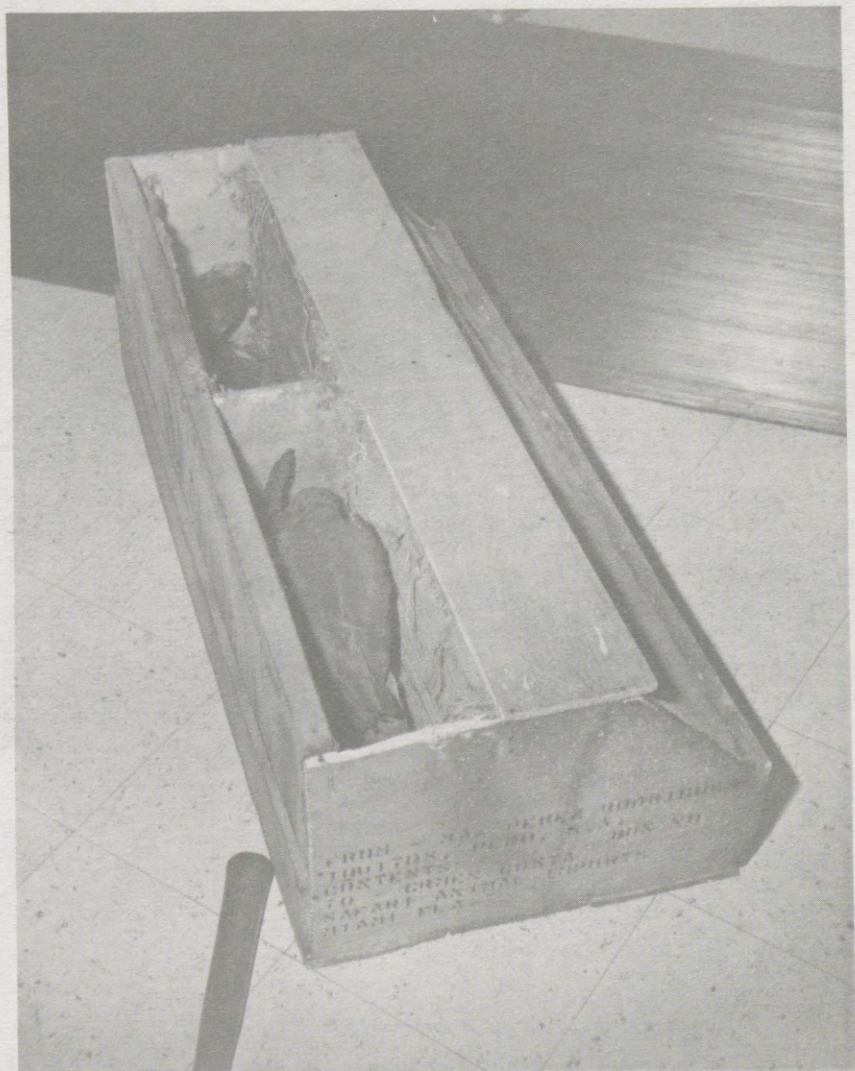
Allied to the spread of disease are the dangers of imported birds which either escape into the wild or are released into nature" by well-meaning but shortsighted owners. Such birds can pose threats to domestic bird populations and endanger our own threatened species, as well as diseases to wild bird populations, domestic poultry and man.

Each outbreak of infectious disease costs us money. The Department of Agriculture has had "Emergency Newcastle Funds" since 1972, and this fund now has cost the citizenry more than \$10 million. Twelve million domestic fowl were destroyed by the Department of Agriculture after infection from imported birds spread throughout the country. The possibility of possible exposure to the exotic Newcastle Disease, can be

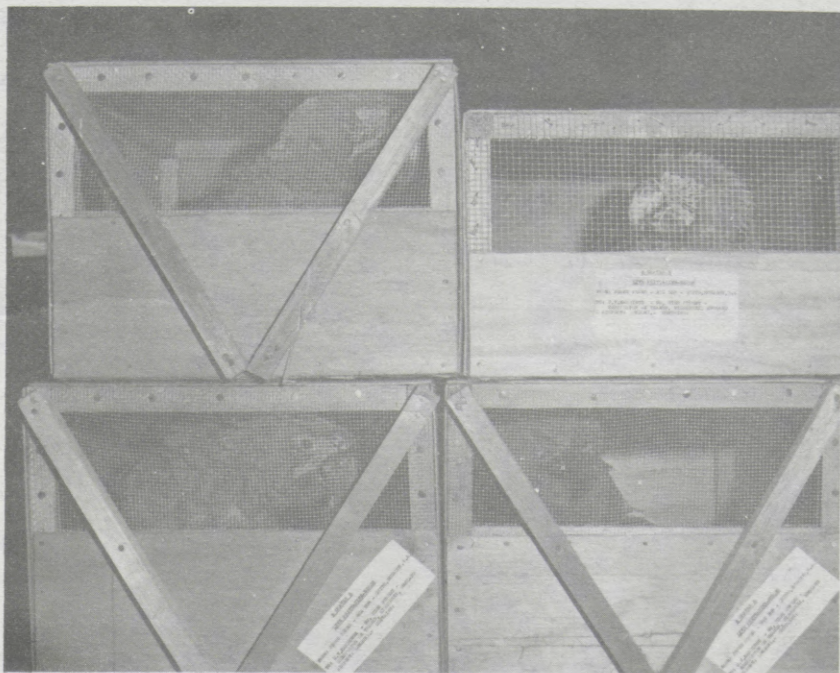
heartbreaking for the owners. • People and birds: Domestic bird breeding, as in all pet breeding, can be controlled effectively enough to lead to a fair degree of protection of the birds involved. Prohibiting bird importation is the only possible way to ensure that wild bird populations have a chance to remain stable, that disease does not spread, and that birds will not suffer under the intolerable shipping conditions that are now the norm. When we admire the beauty of birds, let us be inspired to protect them from the barbarity of their importation based on extermination and cruelty.

Our treatment of the helpless mirrors our own sense of values. When we knowingly accept the barbarity of something as mindless as wild bird importing, we lose something of our own worth as human beings.

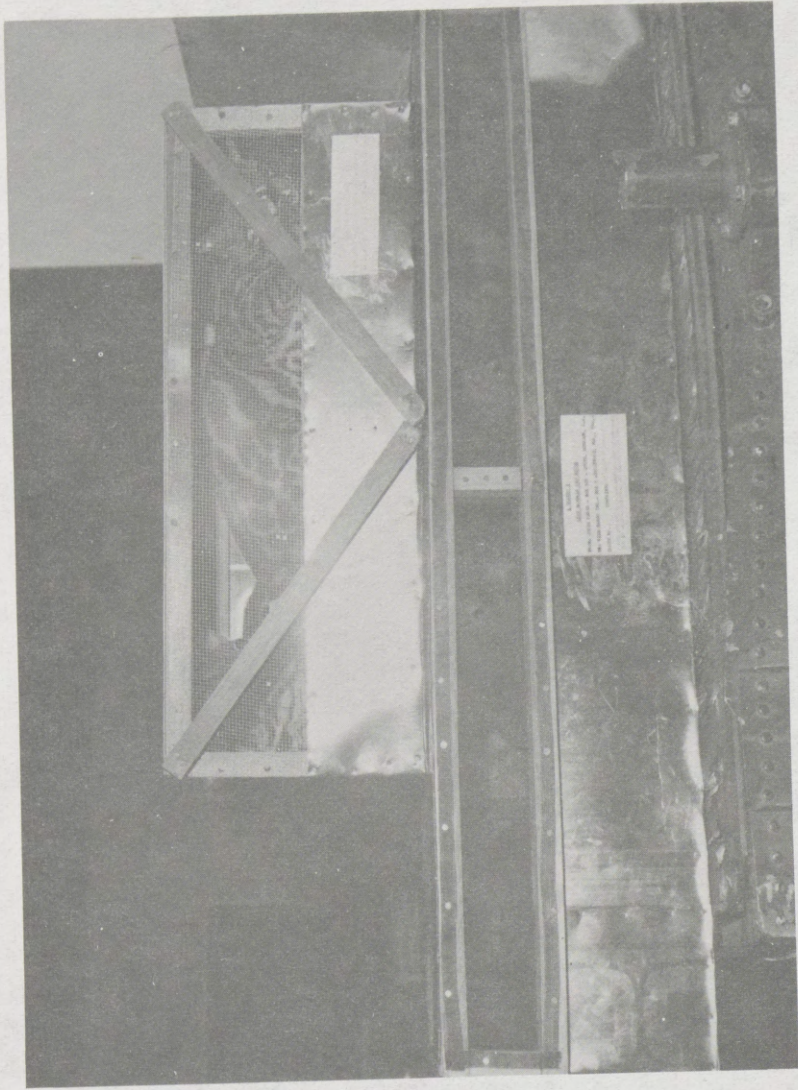
John Gleber is with the Animal Welfare Institute of Washington, D.C.



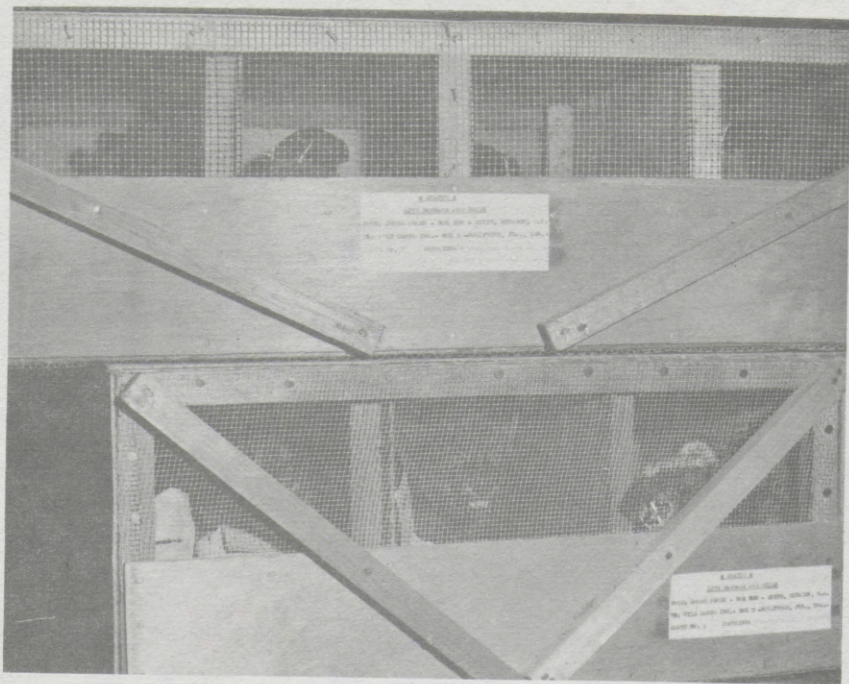
Smuggled parrots in a hidden compartment of a crate labeled squirrels. Parrots are smuggled in a variety of ways. One smuggler was caught with parrots stuffed into a mattress after having been "tranquilized" with tequila



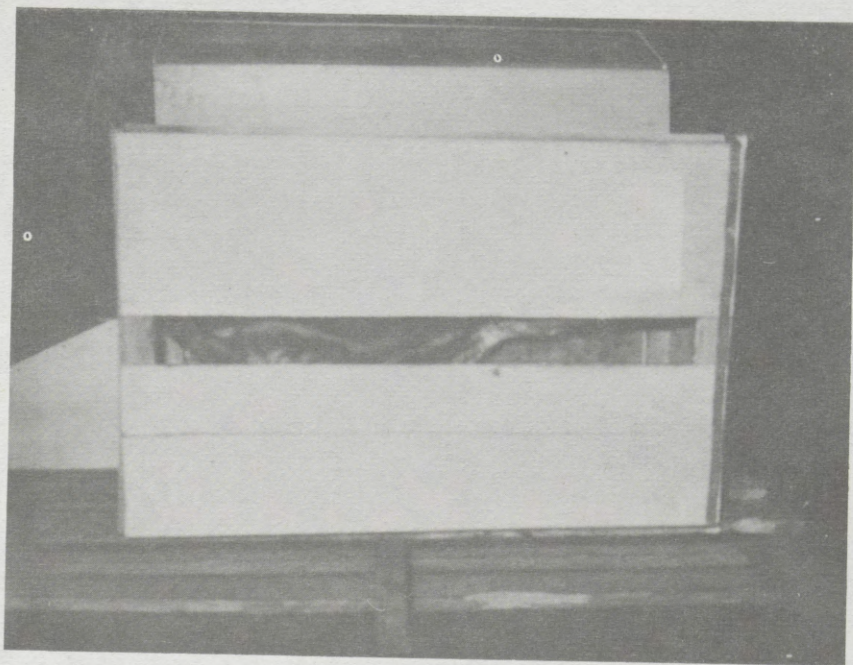
Parrots in crates which are nailed shut preventing the possibility of giving them water



Eleven capuchin monkeys in a crate 9" high, 14" deep, 39½" long. Three ocelots in a crate 9" x 14" x 24"



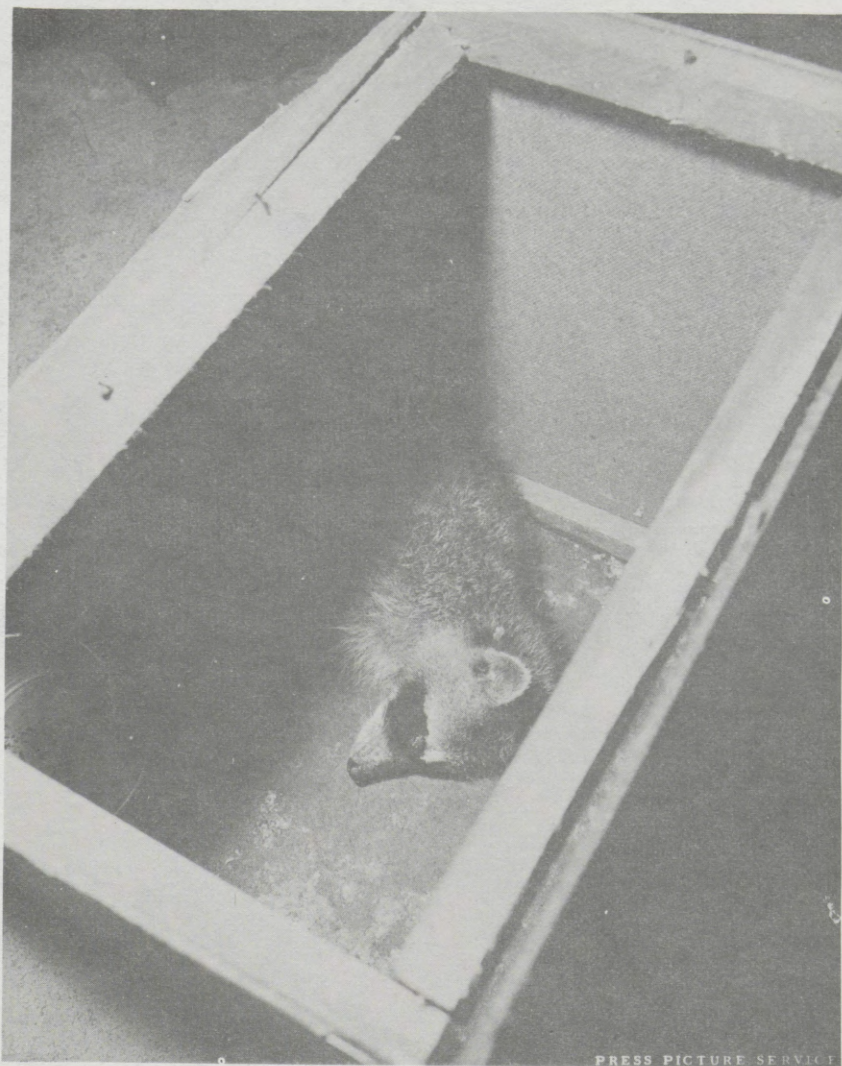
A grisson and two jaguarundis in crates nailed shut. Desperate with thirst. Four compartments each 9'' x 7½'' contain (a) a kinkajou, (b) an olingo, (c) a falcon, (d) four emerald toucanettes



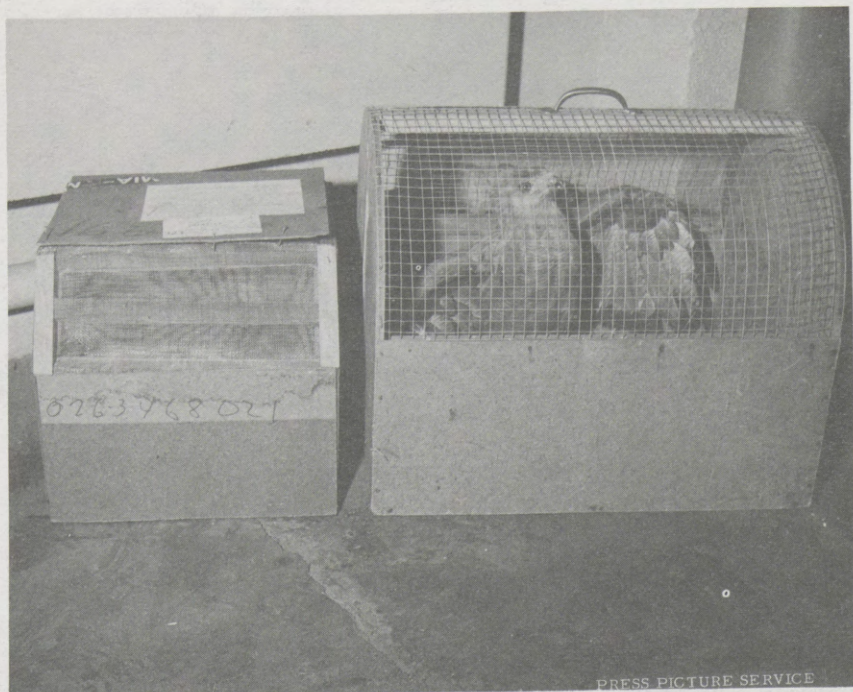
A tapir boxed tightly



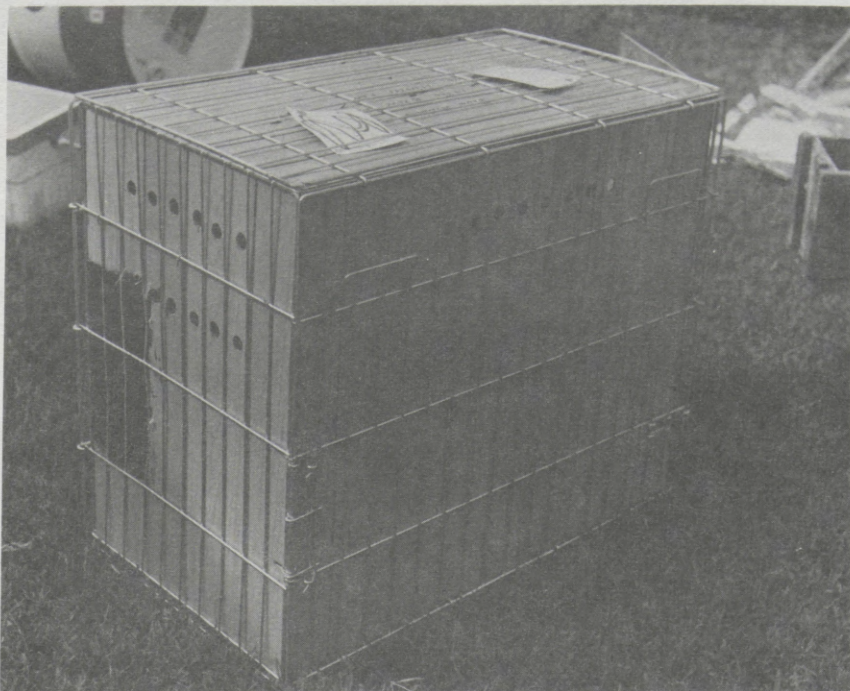
Interior of aircraft filled with wildlife crates



Dead on arrival. A baby raccoon from Barranquilla, Colombia, at Detroit Metropolitan Airport



Falcon stretching his wings and neck after having been removed from crate in which he was forced to crouch throughout the journey. The pet dealer refused the entire shipment



Crate in which two timber wolf pups were shipped from Canada to Miami without food or water. Each pup had 10'' x 36'' x 36'' of space. Both animals died

Statement by Henry L. Heymann
representing International Primate Protection League
on Bill for revision of Lacey Act before
Senate Sub-Committee on Resource Protection
November 6, 1979

My name is Henry Heymann. I am the Washington Representative of the International Primate Protection League, also known as IPPL. I appreciate the opportunity to testify before this committee, particularly since my organization has been seeking for several years to make the section of the Lacey Act pertaining to the importation of wildlife, exported or taken contrary to the laws of a foreign country, an effective instrument for the protection of primates and other wildlife.

Unfortunately we have not met with any success. For example, in 1973, at least 67 siamangs and 43 gibbons entered the U.S. from Singapore, even though neither is native to that country or bred there for export. The IPPL compiled these figures on the basis of Department of the Interior import documents. The animals came from the neighboring countries of Thailand, Indonesia and Malaysia to which they are native and which prohibit or severely limit their export. During 1973, no siamangs and a total of only two gibbons were imported directly from these countries into the U.S. These 67 imports were made by five large dealers, who certainly should have known what they were doing.

The section of the Lacey Act pertaining to the importation of wildlife contrary to the laws of a foreign country was simply inoperable in the case of Singapore. In addition to primates, many other species, protected by law in their countries of origin, were imported from Singapore to the U.S. These included many animals of the cat family, such as leopards,

clouded leopards and tiger skins. American conservationists, posing as potential U.S. buyers, were offered a wide variety of protected species by Singapore animal dealers. In one case, this included a Java rhinoceros, which would have been extremely difficult to sneak by U.S. authorities. When the "buyers" mentioned that such imports were illegal according to U.S. law, the dealers laughed and said U.S. laws imposed no difficulties.

In 1975, the IPPL found that a California researcher had imported gibbons from Thailand, which had been obtained on the Bangkok black market and smuggled out with the use of false papers. The IPPL had complete evidence to prove this, but Interior would not prosecute. The researcher had worked with gibbons in Thailand and must have known of their protected status under Thai law. Thus it appears that he knew that he was violating Thai law and thus was liable to prosecution under the culpability clause of the Lacey Act 18 USC 43 (c).

The Cottontop marmoset, a South American monkey, is found only in Colombia. (NOTE: A taxonomically close species, Saguinus geoffroyi (Rusous naped), is found in Panama, but has not been exported to any extent since it is not used in biomedical research as the Saguinus oedipus (Cottontop marmoset) is. Source - Dr. Russell Mittermeyer, Chairman IUCN Primate Steering Committee and Dr. Katherine Milton, Smithsonian Tropical Research Institute.) Colombia has banned their export since 1974 and the ban is still in effect. Nevertheless, the IPPL found on the basis of Department of Interior import documents that 685 Cottontop marmosets were imported from Paraguay into the US through Miami in 1976. Despite an IPPL request for investigation, Interior took no action in regard to this evident gross violation of the Lacey Act.

After continuous effort over a protracted period, we obtained from Interior an explanation for the non-enforcement of the Lacey Act. Interior maintained that a prosecution under the Act was extremely difficult to obtain since it required proof that the violator had knowledge of the foreign law, which he had broken. Interior described the standards of culpability imposed by the Act as "among the most stringent found in U.S. law."

This weakness is taken care of in the proposed bill by the imposition of strict liability in Section 4, which provides for a fine up to \$500. Given the enormous and increasing profits being made from illegal traffic in wildlife, we believe the figure of \$500 is too low. The next higher civil penalty of up to \$10,000 requires the same proof that Interior has been unable to obtain under the present Lacey Act. In fact, the wording in the bill for the imposition of the higher fine is taken directly from the present Lacey Act, namely, it must be proven that the accused "in the exercise of due care should know that he is violating" any provision of the Act.

We suggest that the \$500 fine in Section 4 be raised at a minimum to \$1000. This would provide a more suitable penalty in the case of a clear violation, such as the case of the California researcher, which I have described. To meet the case of the person who innocently violates the law, such as a tourist, Interior could still impose a lesser fine, or simply confiscate the wildlife as it has been doing with tourist violations of the Endangered Species Act.

IPPL has found that another reason for the gross violation of the Lacey Act has been Interior's failure to request documentation from the importers. Part 14.41 of Title 50 of the Code of Federal Regulations states:

"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."

The regulations define foreign documentation as:

"(a) Official permits or other documents showing legal taking, possession, transportation, and sale issued by an appropriate agency or official of the country of origin, and where applicable from the country of export;..." 50 CFR 14.42."

Interior has pointed out to us that the requesting of documents is discretionary and therefore does not have to be implemented. We urge that the bill under consideration include language that the owner, importer or consignee shall be required to produce foreign documentation showing that the laws of the country of origin and the country or countries of re-export have not been violated. This would not be a new departure. It would bring the Lacey Act in line with Section 527 of the Tariff Act of 1930, which requires that certain wildlife imports be accompanied by a certificate showing their legality.

The Lacey Act covers the subject of inhumane shipment of wildlife making it "unlawful", according to 18 USC 42 (c), "for any person, including any importer, knowingly to cause or permit any wildlife to be transported to the United States under inhumane or unhealthful conditions..." 18 USC 42 (c) (2) states "the presence ... of a substantial ratio of dead, crippled, diseased or starving wild animals ... shall be deemed prima facie evidence of the violation of this sub-

section." Similar to the import provisions of the Lacey Act, the IPPL has sought in vain for years to obtain enforcement of the Act's humane provisions. Violation of these provisions constitute a virtual chamber of horrors. On Dec. 12, 1974, two siamangs were shipped to Los Angeles by Christopher Wee of the Singapore Pet Farm on Pan American Airlines. Both arrived dead. According to the recipient, they were frozen to death. On July 1, 1974, six otters were shipped on Pan Am from Bangkok to Los Angeles. On arrival four were dead evidently from thirst. On May 11, 1973, eight gibbons were shipped from Vientiane to Clovis, New Mexico. Two arrived dead from freezing. On March 25, 1973, a shipment of sixty baboons was sent from Dakar to Detroit. The carriers were Air France and United Airlines. Eighteen were alive on arrival in Detroit. From a handwritten notation on the Import Declaration (Form 3-177), it appears that only eleven arrived alive at the final destination, Ferndale, Michigan.

On August 12, 1970, two gibbons were shipped from Bangkok to the Herpetological Research and Exchange at San Carlos, California. According to the invoice from the Bangkok Wildlife Company, Ltd., which was attached to the Form 3-177, the gibbons were shipped in snake crates. This meant that the animals almost certainly did not receive food or water since the handlers would have expected the crates to contain snakes. However, probably even worse, a gibbon never lies down. Thus the animals were encased in an unnatural position. This alone, taking into account the high intelligence of gibbons, which belong to the ape family, must have meant that the animals underwent extreme mental and physical torture.

The reason for the lack of enforcement of the humane provisions of the Lacey Act and the resultant cruelty, according to Treasury and Interior, which are jointly charged with their enforcement, is that the courts in the few cases brought to trial have found that a "substantial ratio" of the animals were not dead or crippled etc. In short, the law floundered on the definition of "substantial ratio". To correct this deficiency we urge that the bill under discussion amend Part 42 (c) (2) of Title 18 of the USC so that the lack of a substantial effort to ship the animal in a humane manner by providing sufficient space, ventilation, food and water shall be deemed prima facie evidence of violation.

I have here a newspaper clipping regarding a shipment of monkeys from Indonesia in September in which 625 were shipped and over two-thirds perished. They were so tightly packed that many of them screamed until their throats swelled and halted their breathing. Others died directly from suffocation, their eyes were bulging from their sockets and they had bitten off their tongues. The shipment was made by the Soviet Airlines flying to Sweden. I give this simply as an example that inhumane shipments are continuing.

In summary, we urge that the fine under the strict liability clause of the bill under discussion be raised from \$500 to at least \$1000. This is necessary to deter violation in a period when the profits from the smuggling of wildlife are increasing rapidly. An additional need to hold down the illegal importation of wildlife is to make it mandatory that the owner, importer or consignee produce foreign documentation showing that the laws of the country of origin and the country or

countries of re-export have not been violated. Thirdly, we request that 18USC(c)(2), which covers inhumane shipments under the Lacey Act, be amended to read that "lack of a substantial effort to ship the animal in a humane manner by providing sufficient space, ventilation, food and water shall be deemed prima facie evidence of violation."

I thank the Chairman and the members of the committee for the opportunity to testify in this important matter. I will be glad to answer any questions.



Department of Justice

STATEMENT

OF

JAMES W. MOORMAN
ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES DIVISION

BEFORE

THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON RESOURCE PROTECTION
UNITED STATES SENATE

CONCERNING

S. 1882, "TO AMEND THE BLACK BASS AND LACEY ACTS"

ON

NOVEMBER 6, 1979

Mr. Chairman and Members of the Committee:

My name is James Moorman. I am the Assistant Attorney General in the Land and Natural Resources Division of the Department of Justice. I would like to thank you for asking me to present the views of the Department of Justice on S. 1882, the "Lacey Act Amendments of 1979."

This invitation could not have come at a more appropriate time. For the past year the Department of Justice has become increasingly involved with the problem of illegal trade in wildlife. On October 2, Attorney General Civiletti announced the formation of a new Wildlife Enforcement Section in my Division which will be staffed by eight attorneys stationed in Washington.

This staff will enable us to supervise wildlife investigations, work with local United States Attorneys' offices and try significant cases. For the first time, the Department of Justice will have the resources to deal effectively with the problem of illegal trade in wildlife. The amendments before you today will allow us to use these resources most productively in enforcing the current provisions of the Bass and Lacey Acts.

Some 10 to 25% of all wildlife shipments into the United States today are in violation of these Acts. Last year, the United States received 10,000 shipments of wildlife species listed on the Convention of International Trade in Endangered

Species. These imports included 91 million animals and hundreds of thousands of birds and reptiles.

The value of illegal wildlife trade is estimated to be \$50 to \$100 million or more every year. But its potential cost to the United States agricultural and pet industries and to American taxpayers is even greater.

Wildlife is often imported with false documents including false health certificates, which make a mockery of our quarantine laws. Imported wildlife frequently carry exotic diseases which can affect domestic pets, poultry, livestock and fish.

The most important of these diseases to date has been exotic Newcastle disease, which is transmitted to domestic poultry and other birds by imported birds. In 1971, the Federal Government destroyed 12 million fowl in flocks exposed to this disease. In 1979, 14,000 pet birds exposed to the disease had to be destroyed. These outbreaks of Newcastle disease cost the taxpayer \$58,000,000. Department of Agriculture officials estimate that if the disease becomes permanently established in the United States, the yearly losses would be \$230 million or more. The taxpayer will also foot the bill to protect formerly common species which the wildlife trade threatens to drive toward serious endangerment and even extinction.

But there are other costs which are not calculated in dollars and cents. Grisly tales abound of the illegal

wildlife trade's acts of cruelty and its wanton destruction of the natural environment: We know that flocks of birds have been blasted from trees with buckshot, so that the few who survive can be sold. Entire nesting areas are destroyed by the common practice of cutting down trees and shooting adult birds to harvest the more profitable young birds. Adult chimpanzees, gibbons and other species are also slaughtered in order to capture their young.

Not only are the illegal wildlife trade's harvesting methods brutal, but its transporting practices are equally so. During transportation, it is estimated that as many as 90% of captured animals die lingering and painful deaths from freezing, overheating, thirst, starvation, overcrowding, or suffocation.

Investigations have led us to conclude that those involved with this illegal trade earn profit margins comparable to those earned by some drug dealers. For example, the evidence adduced at a trial of a Philadelphia reptile dealer revealed that he illegally purchased a species of reptile in a foreign country for \$10 a pair and sold them for \$550 a pair.

This illegal trade also causes a flourishing of white-collar crime, which requires a disproportionate amount of investigatory resources. As such, it deserves the resources and strict laws which are used to combat other areas of white-collar crime. The criminal element involved and the financial incentives provided by this trade can only be countered with exceptionally strong disincentives. The proposed Lacey Act Amendments of 1979 are an extremely important step in this direction.

The Lacey and Black Bass Acts make it illegal to import or otherwise trade in wildlife taken, transported, or sold in violation of state or foreign laws. Since state and foreign laws regulate trade in thousands of species, the Lacey and Black Bass Acts are in many ways our most important wildlife protection laws. And they are the laws most frequently violated by traffickers in wildlife.

You have just heard witnesses from the Department of Interior explain the weaknesses of the current Lacey Act and how the amendments strengthen that law. The Department of Justice is most interested in the value the amendments' penalty structure will have for us in our job of enforcing the Lacey Act.

The current Lacey Act includes civil liability penalties for knowing violations and for violations involving a lack of due care. It also includes a criminal penalty for knowing and willful violations, which most courts have interpreted as a specific intent violation. By specific intent I mean that the defendant must have had specific knowledge that he violated the Lacey Act itself.

The amendments add to this structure a strict liability forfeiture provision and a strict liability civil penalty. The amendments also increase both the civil penalty applicable when a person fails to exercise due care, and the criminal penalty when a person commits a knowing violation of the Act. As a consequence of the amendments, the Lacey Act penalty scheme would be

very similar to that presently in effect under the Endangered Species Act.

Strict Liability

Under the current Act, a violator does not have to forfeit his illegal shipment unless the government can prove he knowingly violated the Lacey Act or failed to exercise due care. The proposed strict liability forfeiture section of the amendments would allow us to protect various species from harmful illegal trade by withdrawing illegal shipments from the marketplace even when the violation itself is inadvertent. Under the proposed strict liability civil penalty section a judge would be able to impose a fine of up to \$500 upon a technical violator. The proposed penalty provision's flexibility and the low limit of the fine adequately protect citizens who unwittingly violate the law. At the same time these sections of the law provide the incentive to know the law.

Due Care Civil Penalties

In addition to including a strict liability civil penalty, the amendments increase the due care civil penalty for failure to exercise due care in importing, exporting, transporting, acquiring, or otherwise handling wildlife in violation of the Act. The penalty would be increased from \$5,000 to \$10,000 per violation, but would make no other change in the current Act's due care provision.

Due care means that degree of care which a reasonably prudent person would exercise under the same or similar circumstances. As a result it is applied differently to different

categories of persons with varying degrees of knowledge and responsibility. For example, zoo curators, as professionals, are expected to apply their knowledge to each purchase of wildlife. If they know that a reptile is Australian and that Australia does not allow export of that reptile without special permits, they would fail to exercise due care unless they checked for those permits. On the other hand, the airline company which shipped the reptile might not have the expertise to know that Australia does not normally allow that particular reptile to be exported. However, if an airline is notified of the problem and still transships the reptile, then it would probably fail to pass the due care test.

Criminal Violations

Turning to criminal provisions, the proposed amendments increase the status of criminal violations of the Lacey Act from that of a misdemeanor to that of a felony. This revision is necessitated by the fact that violations of the Lacey Act are being committed by large-scale commercial dealers involved in significant criminality that would normally be considered felonies in other contexts.

Inadvertent violators of the law need not fear being labeled "felons." By the very terms of the bill, as with most criminal statutes, criminal sanctions cannot be invoked unless a person knowingly violates the law.

The amendments also bring the culpability standard into line with most other criminal laws by changing what was

in effect a double specific intent standard to a single specific intent standard. In other words, it will no longer be necessary for the government to prove that a person knew of the existence of the Lacey Act itself as well as the foreign or state law that was violated. Under the amendments, the government will have to prove only that the person knew his activities were illegal under foreign or state law. Specifically, the government will still be required to prove that:

- (1) the wildlife was taken in country A;
- (2) country A forbids the taking of wildlife;
- (3) the defendant knew country A forbids the taking of the wildlife; and
- (4) the defendant nevertheless imported the wildlife into the United States.

Thus, the amendments retain a culpability requirement which insures that innocent violators of the Act will not be prosecuted.

During hearings on the Lacey Act amendments before the House Subcommittee on Fisheries, Wildlife, Conservation and the Environment, representatives of the pet industry argued that the 80-year-old Lacey Act unconstitutionally delegates legislative power and assimilates foreign and state laws which do not relate to fish or wildlife. In fact, the Third Circuit Court of Appeals, in United States v. Molt, recently held that the first argument is patently frivolous

and ruled that the current Lacey Act provides sanctions only when the defendant violates a state or foreign law relating to fish or wildlife.

Several individuals have also questioned the use of the word "knowingly" rather than the word "willfully." We regard that objection as insignificant since we believe there is no legal distinction between these terms as used in the statute.

Finally, the pet industry questions the advisability of incorporating civil and criminal misdemeanor violations and making them into felony violations. This is not unusual in the criminal law. The Customs law, 18 U.S.C. § 545, for example, incorporates all civil and criminal laws related to importing goods and makes their violation a felony. The standard which we think should be applied to this issue is one of determining the significance of the criminality involved from a federal viewpoint. The criminal conduct involved in the trade of wildlife in violation of state and foreign law is so significant as to virtually mandate a felony penalty. Without such a stiff penalty, we believe that the law will prove ineffective in deterring the illegal conduct of the wildlife trade's most vicious practitioners.

STATEMENT BY WILLIAM GREEN, DIRECTOR OFFICE OF INVESTIGATIONS
U.S. CUSTOMS SERVICE

Mr. Chairman, and members of the Subcommittee: the Customs Service and the Treasury Department would like to thank you for inviting us to present our views at this hearing.

The Customs Service has been responsible for enforcing or assisting in the enforcement of the fish and wildlife import and export laws since the turn of the century. Many of the major fish and wildlife cases pending in court today originated as Customs seizures, or because of Customs investigations into the smuggling or illegal importation of fish and wildlife.

Although Customs fish and wildlife investigations have increased in recent years, the August presidential message has resulted in an even greater expansion of the program and its designation as a high priority national program.

This priority is appropriate to a trade which is a multi-million dollar industry. The legal and illegal traffic in wildlife has been increasing in tremendous numbers each year. Wildlife Magazine reports that legal imports of animal hides and skins have soared from under one million in 1973 to over thirteen million in 1978; wildlife products have gone from approximately 4 million items in 1973 to 187 million in 1978; and live animals imports last year numbered 2 1/2 million reptiles and amphibians and 368,000 birds. Customs seizure and investigative records indicate that illicit imports are also coming in at alarming rates. Unfortunately, much of the illicit trade is in rare or endangered species which are protected by law in their native habitats. In many cases, natives capture the wildlife in cruel ways such as destroying nesting trees and killing adults so that the young wildlife may be caught.

They are commonly sold through local middlemen to "brokers" and dealers in Asian or South American cities who then sell them to "importers" who bring them into the U.S., Japan, or Europe. The mark-ups are frequently astronomical since everyone is making a profit. In many cases, the importers cram the specimens into pockets, small containers, suitcases, crates or even automobile trunks where many of them die -- perhaps as many as nine or ten for each one which arrives alive. In one case, birds were concealed under the hood of an automobile arriving from Mexico.

Birds are sometimes drugged or given alcoholic beverages to keep them silent. Because of the poor oxygen circulation, many die of asphyxiation. Many others die of exotic diseases.

The tragic part, of course, is that many of these specimens are disappearing from their natural habitat and not all, I am told, breed in captivity. Thus, the smuggler is not only breaking the law, but he is helping to bring many species closer to extinction.

In addition, some of the wildlife -- birds especially -- carry numerous diseases which can damage or destroy domestic poultry, cattle and other industries.

Gentlemen, Customs is not dealing with amateurs, but with professionals. The criminals who import this wildlife have little or no regard for health or quarantine laws intended to protect humans and domestic industries. In some cases, my investigators have found that dealers actually substituted birds in quarantine so that the rare birds -- which can carry dangerous diseases -- were replaced by less expensive

(and less harmful) species during quarantine. Another violator tampered with serum vials used to test for exotic Newcastle disease and a third, a supposedly reputable zoo officer, solicited false birth certificates for rare monkeys from a foreign seller.

In 1971, 12 million fowl had to be destroyed because of exposure to exotic Newcastle disease. In 1979, 14,000 pet birds were destroyed for the same reason. The cost of destroying the birds cost the taxpayer millions of dollars.

Because of these dangers, the Department of Agriculture, the Department of Justice, the Fish and Wildlife Service and the Customs Service--are presently combining their efforts in several investigations around the country involving the large scale illegal importation of birds -- including parrots and other exotic birds which carry harmful diseases.

The indiscriminate capture of wildlife can upset the balance of nature and may have severe unforeseen consequences on the environment. The elimination of one species may cause others -- perhaps harmful -- to multiply.

In our San Diego office alone, eleven commercial bird smugglers have been convicted and several others are under investigation. The Los Angeles office has several on-going cases involving thousands of birds which were imported into the U.S. by means of false or fraudulent documents.

A major part of the illicit traffic in live wildlife involves reptiles and birds. In 1975, Customs special agents in Philadelphia began an investigation involving the smuggling or fraudulent importation of

reptiles by a Philadelphia wholesaler. The Customs agents and an Assistant U.S. Attorney travelled to Australia, Fiji, Papua-New Guinea, Thailand and Singapore to gather evidence. They interviewed the native poachers who captured the animals, local government officials, and some of the "Kingpins" of the illegal animal trade in Southeast Asia. To date, that investigation -- which appears to involve the largest international reptile smuggling ring -- has resulted in six criminal convictions (with more expected soon), and the identification of 35 other persons (including several zoo officials) who are involved in the illicit reptile and amphibian traffic. Many of the reptiles are very rare -- so rare in fact that American experts had never seen some live specimens; yet when the smugglers became suspicious that they were under investigation, they buried the specimens alive in a New Jersey marsh, hoping to kill and hide the evidence. Customs agents were later able to dig up the frozen remains and preserve them for trial.

Ignorance of foreign law was not a factor inasmuch as some of the potential buyers had corresponded with foreign governments and had learned that, because of the rarity of the specimens, no licenses were being issued. Despite the unavailability of foreign licenses, orders for the animals were placed so that the Philadelphia wholesaler could purchase them on a future trip. Other purchasers, apparently hoped to avoid delays by buying specimens from the smugglers. The smugglers misinvoiced and misdescribed the specimens to avoid detection.

The 1975 investigation yielded information which has directly led to 9 related convictions. In addition, civil penalties were assessed against

some of the zoos and curators involved. In addition, many other leads are being pursued around the country, and by some of the foreign governments whose laws on wildlife protection were violated.

The magnitude of the problem is reflected in some of our other cases. In October 1977 and January 1978, two French Polynesians and an American were arrested in connection with the illegal importation of 18 rare - almost extinct -- Tahitian Lories. The birds' wings had been clipped and the birds had been carried in hand baggage and then stuffed into the pockets of the two Polynesians to avoid Customs detection. The first 10 had been offered for sale at \$38,000.

Even though the Lories were captured alive they could not be returned to French Polynesia because the French feared that their exposure to U.S. diseases (which were not present in Polynesia) might infect native birds. The birds were sent to England and Hawaii for quarantine and are now owned by the U.S. Government. They are displayed in the San Diego Zoo, where they are breeding in captivity.

The Customs Service, in conjunction with the Royal Canadian Mounted Police and H.M. Customs and Excise, England recently completed a two-year investigation involving the illegal importation and subsequent sale of rare and exotic birds. Six persons were charged in indictments handed down by a Federal Grand jury in May of this year. One of the birds was a rare Bolivian Harpy Eagle which had been imported into the U.S. from South America through England and Canada. The other birds included some exotic ducks and geese which were falsely declared to Customs both as to value and origin. Information received during that investigation should lead to other wildlife conspiracy indictments in the near future.

In another case, our Detroit office seized 235 live cockatoos which were allegedly from the Peoples Republic of China. In fact the birds were from Indonesia where they are a protected species requiring a special permit for export.

Unfortunately, not all of Customs cases involve live wildlife. Some of the cases involve trafficking in wildlife products such as skins and furs.

In February 1979, Mexican officials requested U.S. Government assistance in stopping fur smuggling operations involving illegal Mexican aliens and the owner of a large Texas ranch. Customs and Fish and Wildlife officers obtained and served a search warrant which resulted in the seizure of 17,540 furs with an alleged domestic value in excess of \$1 million.

The subsequent trial resulted in the main defendant's agreement to plead guilty. Because of evidentiary problems and the cost of storing the furs the Government only forfeited 50 per cent of the furs, including 1,556 from the Mexican lynx, an endangered species whose furs allegedly sell for \$15,000 in Europe. The main defendant was fined \$10,000 and received a suspended sentence. The non-endangered species furs yielded \$100,000 at public sale.

Not every Customs case involves importations. The Fish and Wildlife Service and U.S. Customs participated in a joint investigation into the illegal exportation of 2,500 American alligator skins. The alligators had been caught by trappers in Louisiana.

The skins were crated and shipped to Japan and France via New York, where they were falsely invoiced as "machine parts." As a result of the investigation, four individuals and three corporations were fined a total of \$84,500. Two individuals received short prison terms. The foreign countries involved have expressed an interest in investigating the intended recipients for violations of foreign law.

Customs and the other Federal agencies have expanded their wildlife related enforcement programs during the past few years.

Officials in charge of ports designated as ports of entry for wildlife have adopted procedures which have lead to increased compliance with Wildlife laws and a higher rate of detections of violations. These procedures included:

- °distribution of publications to members of the public to educate them in fish and wildlife requirements;
- °contracting with professional zoologists to assist Customs in inspecting certain wildlife shipments;
- °contacting representatives of foreign governments and obtaining copies of applicable wildlife laws;
- °giving special wildlife training to Customs special agents;
- °assigning Special Agents to investigate and develop intelligence on wildlife violations; and
- °improving liaison with other Federal agencies and establishing joint wildlife task forces.

In one such joint operation, representatives of the National Marine Fisheries Service, the Customs Service, Fish and Wildlife Service and

the Department of Justice have formed a task force to look into serious wildlife violations involving large scale trafficking in wildlife products from an endangered species. Because the investigations are still underway, I cannot give you any details. However, I can tell you that indictments and arrests are expected soon.

Unfortunately, despite the fact that many of the importers involved in the cases I have just discussed were convicted of felonies under the Customs laws, they were convicted of misdemeanors under the various fish and wildlife laws. Very few received prison sentences. Other individuals -- domestic dealers -- escaped the more severe criminal sanctions under the Customs laws and received only "slaps on the wrist" under the wildlife laws -- particularly the present Lacey Act. Changes are needed in the Lacey Act to give the offenders the punishments they deserve. The penalties should be commensurate with the degree of culpability. The Customs Service therefore endorses S.1882 since it presents a comprehensive and uniform approach to the problem.

TESTIMONY OF MARSHALL MEYERS
COUNSEL
PET INDUSTRY JOINT ADVISORY COUNCIL
AND
RESEARCH ANIMAL ALLIANCE

Mr. Chairman and members of the Committee, my name is Marshall Meyers and I am appearing today as counsel for two organizations -- the Pet Industry Joint Advisory Council (PIJAC) and the Research Animal Alliance (RAA). We are grateful for being provided an opportunity to testify on problems we view as inherent in the existing Lacey Act (18 U.S.C. §43) as well as in the proposed amendments to that Act and the Black Bass Act (16 U.S.C. §582, contained in Senate Bill S. 1882).

Our testimony is limited to legal issues -- we are not here today to engage in debate over highly charged, emotional, often unsubstantiated allegations or the merits of trade. We too, are opposed to poaching and needless habitat destruction. There is a place for controlled harvesting of renewable resources; there is a place for captive breeding; there is a place for relocating translocated species; there is a place for trade whether it be for pets or biomedical purposes.

We support certain changes contemplated in S. 1882, such as the consolidation of the Black Bass Act into the Lacey

Act, the simplification of the statutory language, and the provisions for review of the civil penalties. We are, however, opposed to employment of a statute replete with vagueness and ambiguities. We are also opposed to a statute which imposes strict civil and/or criminal penalties on citizens for the acts of persons not under their control, especially when one is a subsequent purchaser in due course two or three steps removed from the initial, alleged violation. We are further opposed to a statute which incorporates by reference every law and regulation in the world affecting wildlife and fishes whether or not said law specifically involves wildlife conservation or protection. Moreover, we are opposed to expansion of penalties in an already vague statute permitting such wide discretion in the administration of the statute -- a statute which can be utilized to harass, close down businesses, and achieve what otherwise could not be done if proper Constitutional due process safeguards were included.

Prior to overhauling the Lacey Act, we suggest that serious consideration of the legislative intent and the due process safeguards is warranted. More extensive hearings are needed when, and if, the administration demonstrates existing remedies are inadequate and that the inadequacy is not the result of poor management. Laws should not be amended for the sake of reflecting activity.

To place our position in proper perspective, I shall preface our comments with some background information on the organizations I represent and their experience with the Departments of Interior and Treasury regarding wildlife "enforcement."

The Pet Industry Joint Advisory Council (PIJAC) consists of twenty pet associations and approximately 750 individual and company memberships. The Pet Industry is extensive, employing many thousands in every state as well as in several foreign countries. The membership of PIJAC and its member organizations consists of sole proprietorships, small companies as well as large corporations engaged in pet supplies and food manufacturing, livestock importation and breeding, wholesale distribution, and retailing. Live animals are sold in tens of thousands of stores throughout the United States to afford the general public an opportunity to acquire pets; the related products are sold in more than a half million stores across the nation. PIJAC's members breed, acquire, import, transport and market virtually every species of live animal, not only for pets, but also for zoological specimens and for biomedical research.

The Research Animal Alliance is an association of commercial institutions, laboratory animal breeding and importing firms, academic institutions, nonprofit research

foundations and individuals concerned with, and dependent upon, the utilization of animals in clinical and non-clinical research and testing as well as product safety testing. The members also include persons involved in the purchase, importation, exportation, and/or captive breeding of wildlife -- wildlife essential to research and to clinical, lifesaving testing.

The animals with which we are concerned, in large measure, are not listed on Appendix I to the Convention on the International Trade in Endangered Species of Wild Fauna and Flora. A small number of the animals are contained in Appendix II to the Treaty. The vast majority of the animals are not listed as protected species here or abroad. Many species are nonetheless regulated by export permits, excise taxes, head taxes, import/export declarations, humane welfare laws, etc.

We want to emphasize that we are involved with live animals, birds, fishes, reptiles, etc. -- we are not dealing in skins, parts or products derived from wildlife. That is where the real problem lies -- items which can be easily concealed and items where volume is significant. Live animals are not the primary problem, but we are visible -- we are the emotional target.

In view of this background, I wish to address today four major problem areas which seriously concern the research animal and pet industry community relative to the proposed Lacey Act amendments:

1. The strict liability provision making U.S. citizens strictly and personally accountable for acts of individuals over whom they have no control, regardless of whether the U.S. citizen knows the facts of the situation or that a law has been violated.
2. The provision that a violation of any foreign, American Indian Tribal law, regulation or treaty constitutes a violation of the Lacey Act, leaving the Act vulnerable to the charges of (a) being unconstitutionally vague, overbroad, and ambiguous, and (b) of representing an improper delegation of legislative power.
3. The elimination from the criminal penalty of the requirement that the defendant has "willfully" violated the statute, so that a U.S. citizen could be convicted of a criminal violation if he knows the facts of a particular situation but is ignorant of the particular jurisdiction's laws or regulations and thus unaware that the

particular facts constitute a violation of that jurisdiction's laws -- effectively undermining and potentially eliminating the requirement of specific criminal intent from the criminal sanction.

4. The provision for up to eight different forms of penalty, several of which have been substantially upgraded, at least six of which are discretionary, and most of which are unaccompanied by sufficient standards to guide their administration -- creating the potential that the Act will be arbitrarily administered, will be used to harass unfavored businesses, and will be challenged as being unconstitutionally vague and ambiguous.

In the remainder of my testimony, I will elaborate upon these problem areas and highlight them with specific examples of problems which have already arisen under this Act's or similar wildlife laws', administration; there is no reason to believe the broader, all engulfing, multi-penalty amendments will lessen the abuses.

While this is not the proper occasion for an extensive legal analysis of the issues raised, we feel these issues must

be addressed and clarification provided before further Lacey Act amendments are adopted.

The first legally questionable area and perhaps most patently unjust is the proposed Section 4(a)(1) strict liability provision. This provision in effect holds any individual liable for a civil penalty of up to \$500 if he imports, exports, transports, sells, receives, acquires or purchases any fish or wildlife taken, possessed, transported or sold in violation of any law or regulation of any State, Indian tribe, foreign country, or the United States. A civil penalty can be imposed despite the U.S. citizen's lack of knowledge of the facts of the particular case or total ignorance that any law has been broken. In effect, the U.S. citizen is held accountable for acts of individuals of whom he may have no knowledge and over whom he has absolutely no control.

The following are but a few examples of the acts of foreigners or other persons not under an importer's control for which the importer can be held strictly accountable under the proposed amendments: citizens found guilty until proven innocent. If, in the discretion of Interior, Commerce and/or Customs, the recipient should have known such error occurred or might occur half way around the world, the penalty can escalate to a mere \$10,000:

- . The exporter fails to label a shipping container in compliance with U.S. regulations even though provided written instructions by the importer
- . The exporter includes more specimens than ordered and declared on the shipping documents
- . The exporter substitutes species for those ordered
- . The exporter undervalues the shipment on export documents to lower the control of currency or his local taxes
- . The exporter includes a sample or species not ordered
- . The exporter miscounts the number of specimens
- . The documents from the originating country are incomplete
- . The exporter transports the species to the airport in violation of local humane laws or some other law regulating transportation
- . The foreign governmental agent signed, but failed to date and/or affix the "seal" in the appropriate place

- . The airline inadvertently removes a label or loses the paperwork accompanying the shipment

Imposition of the civil penalty is, of course, discretionary under the proposed amendments. However, it is not at all clear, in light of specific incidents which have occurred in the past, that it would be justly administered. A few examples of Interior's and/or Customs' "activities" illustrate this point:

A shipment of 21 boxes containing 1,172 finches, parakeets and canaries arrived in Los Angeles. Each box clearly indicated it contained live birds; but each box did not disclose how many and which species were contained therein. Box No. 1 contained a bill of lading indicating the number of species and subspecies, and a precise inventory. The boxes were otherwise marked in conformance with the regulations. None were endangered, threatened or protected species. Clearance of the shipment was denied; entry into the United States was barred while the birds languished in quarantine awaiting deportation or execution. Interior refused to permit marking the boxes while under a sealed quarantine; yet Interior demanded that the importer properly mark the boxes prior to deportation. They then refused, however, to permit properly-

labeled boxes to be "deported" beyond the 12-mile limit, or the 200-mile limit and re-imported. As the Judge hearing the case noted, "none of the proposals appear to satisfy the bright-eyed and bushy-tailed government agents here who are set to enforce the law to the letter." Tr.22, April 11, 1977, Joy Bird Imports, Inc. v. U.S., No. CV 77-1212-IH, United States District Court, Central District of California. Only after a temporary restraining order and an injunction hearing, could a compromise be achieved and the birds be cleared for entry. And the importer could have been and may still be slapped with a Lacey Act violation.

Despite any protestations to the contrary, importers of ornamental (tropical) fishes are held accountable under the Black Bass Act for the labeling misdeeds of exporters. On October 10, 1979, three Los Angeles firms were assessed respective fines of \$6,000, \$7,200 and \$10,000. They involved 30, 36, and 54 cartons, respectively, of tropical fishes, which were not marked to indicate name and address of the consignor/consignee. The customs house brokers presented the shipments for clearance; Interior, as part of a new Strike Force procedure, automatically cleared them; and Customs, as the new Enforcer, permitted entry and subsequently issued notices of

penalty after the evidence was destroyed.^{1/} These importers are now subjected to a far more rigorous appeal procedure under Customs' procedures; payment of penalties as a condition precedent to appeal is often involved; yet these importers were and are powerless to control the actions of their suppliers in Columbia and the Phillipines.

The administration of the Lacey, Black Bass and Endangered Species Acts breeds contempt. In February 1979, a shipment of reptiles was received by a Florida importer. Upon opening the container, after it had been cleared by Interior, it was discovered that four more reptiles were included than were listed on the export documents permitting

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1. For some inexplicable reason, Interior has abdicated its statutory responsibility in Los Angeles; Customs is making all of the decisions on how to enforce wildlife laws and regulations. Interior automatically clears live animal shipments and turns them over to Customs to uncover a "technical" violation. This holds importers open to far more severe penalties by using Customs' procedures and penalties. Customs can enforce more technicalities for which they can justify shipment seizures, assessment of civil fines in excess of the value of the shipment, and tie one up in costly legal maneuvers for years. They search for any technicality, no matter how insignificant, cause undue delays, and in some instances, needless and unnecessary mortality.

exportation of 700 specimens. The importer promptly notified Fish and Wildlife of the miscount. Five months later, the importer was cited for an Endangered Species Act violation and assessed a \$100 civil penalty. Apparently, Interior determined honesty was worth something and did not assess the maximum \$500 "strict" liability penalty, or attempt to assert the "due care" standard used for the \$10,000 jackpot. Under the proposed amendments, Interior could also assess an automatic penalty and impose forfeiture.

Under the proposed amendments, Interior or Customs would have the option of levying civil penalties up to \$10,000 for a wide variety of incidents totally beyond the control of legitimate businessmen (since the importer, in exercising due care, should have known that a violation was involved) -- a convenient method for financially breaking importers for acts beyond their control.

I don't wish to imply at this point that the strict liability provision would generally be administered unjustly. Nonetheless, it is an extremely powerful tool to place in the hands of government officials, in light of recent trends. Interior, for example, has made it abundantly clear that it intends to liquidate importers and exporters of wildlife and fishes. This statement may sound extreme. It is not. This negative attitude toward the wildlife industry, which permeates

Interior and Customs and recently spread to Justice, finds its genesis in the Nixon Administration. It has been manifested in increased regulation and the resultant paperwork coupled with admittedly improper seizures, lengthy inspections to count each individual specimen by inspectors unable to identify the species involved, unnecessary delays significantly increasing the time live animals are in transit, administrative paperwork delays, inconsiderate and occasionally insulting treatment, and blatant assertions that animal importers will be out of business within two years.

The upsurge in these and similar activities by government officials depicts a program of harassment, not one of even-handed enforcement of a national wildlife policy. The proposed revision of the Lacey Act to incorporate a strict liability provision, absent clear and explicit Congressional direction, will provide Interior, Customs and Justice with increased opportunities for such harassing activities.

Additionally, the imposition of absolute liability for the acts of foreigners or others over whom one has no control is blatantly unjust. Despite the lack of knowledge or fault, penalties up to \$500 can be imposed, the item can be seized and held, all holding costs payable by the U.S. citizen if a

penalty is levied, and the item may be subject to total forfeiture. If Interior believes the person should have known -- in the exercise of due care -- of the existence of a law or regulation, liability could be levied up to \$10,000 per violation.

To bring it a little closer to home, Mr. Chairman, consider what would happen if one day you arrived home to your wife's ire because she had been cited under the Lacey Act and fined \$500 after receiving as a gift a caiman purse purchased by your daughter -- a purse imported from a French manufacturer which undervalued the value and/or utilized a skin not properly tagged or exported from the U.S. In addition, the purse had been seized by government officials. Furthermore, if your wife had requested your daughter to purchase the purse, and, because of recent write-ups in the media, she allegedly should have known a violation was implied by the mere use of such material in a purse, she could then become subject to a fine up to \$10,000. And what would your daughter say when she is cited?

A fundamental principal of fairness and justice under due process is the requirement that a legislature must define a crime with such explicit definiteness that persons of common intelligence will not have to "guess at its meaning and differ as to its application..."^{2/} There must be ascertainable standards of guilt. Each criminal statute must provide due notice that a specific act or course of conduct has been made criminal -- criminal responsibility should not attach when one cannot reasonably understand that a contemplated conduct is proscribed. Clarity in criminal statutes to avoid the void-for-vagueness doctrine is essential. The Supreme Court has clearly set forth the dangers inherent in vague and ambiguous statutes, such as the Lacey Act, which do not clearly warn of the types of conduct prohibited.

2. Connally v. General Construction Co., 269 U.S. 385, 395 (1926)

The Court said:

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fairwarning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." Grayned v. City of Rockford, 408 U.S. 104, 108-109. (1972)

The Lacey Act, as well as the proposed amendments, are not sufficiently definite either as to prohibited acts or as to penalties to guide either persons of common intelligence, the enforcement agencies or the courts. The assimilation of any foreign country's laws and regulations regardless of how promulgated, obscure, or arcane a law, rule or regulation may be, does not satisfy long established standards.

Are non-conservation laws and regulations affecting wildlife, such as excise or other revenue measures, subsumed under the Lacey Act? Is a local business franchise tax violation attributable to a subsequent purchaser? Does the transport provision encompass invalid drivers licenses?

Or are only those laws and regulations specifically related to the taking, possession, importation, exportation, receipt, etc., of endangered wildlife subsumed?^{3/}

One Federal District Court Judge rules only laws relating to endangered species are assimilated. This position was subsequently upheld by the U.S. Court of Appeals in May, 1979. That Court, however, emphasized the foreign law must be for the protection of wildlife and not simply "endangered species," a slightly broader construction.^{4/}

The Departments of Justice and Interior in that case, however, contended every law, rule, or regulation of every kind and description of "any foreign country" whether it be the politburo of the U.S.S.R. or a tribal council in some obscure

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3. In United States v. Molt, the Judge implicitly recognized that a broad reading of the Lacey Act incorporating any foreign law regardless of its connection to endangered wildlife, as the government advocated before him and continues to advocate before the Third Circuit Court of Appeals, would be so broad as to be an unfair and unconstitutional burden placed on defendants. The Judge explained:

"We do not believe that Congress intended to attach substantial criminal sanctions to any violation of foreign law irrespective of its character and content. Such an interpretation of the Act would produce bizarre results. For example, a literal interpretation of subsection (b) (4) (A) of the Act would result in the criminal culpability of one who received wildlife from a third party knowing that they had transported the wildlife in a foreign country by driving a car without a driver's license." 452 F. Supp. 1200, 1203.

4. United States v. Molt, 599 F2d 1217 (3rd Cir. 1979)

principality, and irrespective of the absence of legislative safeguards employed by that body, irrespective of notice, and irrespective of the fact that many of these laws, rules and regulations are not codified, published, or translated or even readily available to nationals, let alone foreigners -- are subsumed. And this is their position despite the fact that many jurisdictions lack viable systems to publish changes in a timely or accurate fashion.^{5/} Reporter systems similar to the Statutes at Large, U.S. and State codes annotated, the Congressional Record, the Federal Register, West's Reports, etc. are the exception, not the rule.

Such edicts, statutes and regulations are not easily ascertainable even by or from the U.S. Government. In response to an inquiry regarding information about the laws and regulations of several foreign countries, Interior responded:

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5. Nor can Interior itself publish information in a timely fashion. On July 25, 1979, Interior released a list prepared on May 10, 1979, identifying the foreign authorities designated to issue permits under the Endangered Species Convention. Furthermore, Interior, in January 1979, compelled an importer to obtain documents from a foreign management authority which according to the Federal Register did not exist. Interior was a mere year or two behind in revising its own regulations and lists.

"...It has been our experience that the laws of foreign governments are subject to frequent change. Any information we might provide you today could easily be outdated next week. Therefore, we suggest that you contact directly those countries in whose laws you are interested and request copies of their laws. In addition, you may wish to contact the New York consulate of each government who may be able to provide you the information you seek."

That advice came from C.R. Bavin, Chief, Division of Law Enforcement, in an April 1976, letter.

The implication of Mr. Bavin's advice is that U.S. citizens must ferret out, on a shipment by shipment basis, precisely which laws, rules and regulations are applicable as a condition precedent to dealing in foreign commerce -- an unreasonable and unconstitutional burden.^{6/} It is an incredible chore for average citizens -- your constituents.

Furthermore, interpretations of foreign laws, rules and regulations by local tribunals possibly differing with

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6. At the state and local level, one encounters serious difficulties in ascertaining if proscriptions and/or prescriptions exist. Most states do not publish their regulations in a series similar to the Code of Federal Regulations. Many have no systematic method for incorporating amendments into existing statutes and/or regulations and republishing them without a disclaimer that "certain amendments or additions to these statutes and regulations may not be included herein." One must contact, therefore, each governmental agency conceivably involved to determine if a regulation exists. In addition to the State's Fish and Game Commission, one must contact the State's Public Health Office, Department of Agriculture, Environmental Control Agency, etc., and then there are other political subdivisions to contend with.

interpretations by a U.S. Court^{7/} and especially Interior's or Customs' inspectors at local ports,^{8/} would also be required. The Lacey Act, therefore, would prohibit all trade inasmuch as no one could locate and interpret all the applicable foreign prohibitions, legal interpretations, etc., with any degree of certainty. Persons have no way of knowing in advance what conduct is or might be interpreted to be proscribed by the world-wide encompassing Lacey Act.

7. United States v. Molt, 452 F.Supp. 1200, 1204-1205
(E.D. Pa. 1978)

8. Ad hoc, hip pocket justice often is administered at the local ports. Inspectors arbitrarily render binding interpretations of applicable laws and regulations and misidentify species. Field appeals are non-existent since Interior claims only the "Director" can make a determination. Thus, local port inspectors are prosecutor, judge and jury.

Most dealers do business in a variety of countries; they do business via mail, cable and telephone; they do not make on-site acquisitions; they are not present when the species are taken, bred or born, be it in the wild or in captive breeding facilities; they rely upon assertions and statements of their suppliers that local laws and regulations have been satisfied. Why should a substantially different burden be placed upon them than on other forms of regulated, international trade? And if so, then the Lacey Act should explicitly define which foreign pronouncements have been elevated and made part of our Federal criminal "justice" system, especially when a local civil penalty can be automatically elevated here to a felony status.

And how are such persons to be afforded fair notice in 1979, that a Federal Court would find in 1984 that the Lacey Act subsumed a particular foreign law or regulation? The answer is simple: the Lacey Act is Interior's law to rule the world. The law is overly broad, indefinite and vague. It violates every tenant of due process assumed, not subsumed, in the Fifth and Fourteenth Amendments.

Another substantial issue which Congress must face is the likelihood that the defacto assimilation of foreign,

Indian tribal, and other laws and regulations represents an unconstitutional délegation of Congress' legislative powers. The Act provides no standards to guide government officials or the courts as to which foreign or other laws and regulations should be assimilated and treated as violations of the Lacey Act. Are all laws and regulations assimilated? Only laws related to fish and wildlife? Or only laws related to endangered species? Or, in fact, only laws which do not violate the U.S. Constitution?

To avoid arbitrary and potentially discriminatory administration, or excessively narrow construction of the Lacey Act and its amendments, Congress needs to make its intent crystal clear relative to these critical issues.

A third problem area and further example of lack of clarity in the statute and of the serious upgrading of the penalties lies in the elimination from the criminal penalty of the requirement that the defendant has "willfully" violated the statute. Under the existing Lacey Act, civil penalties are only assessable if a person "knowingly" violates the Act, whereas criminal penalties can be imposed only if a person "knowingly and willfully" violates the Act. As interpreted by existing case law under the Act, this

means that civil penalties can be imposed on persons violating the Act with knowledge of the facts of a situation as distinguished from knowledge of the law, and criminal penalties can be imposed only upon those persons violating the Act with knowledge of the law as well as of the facts. United States v. Jonas Brothers of Seattle, Inc., 368 F.Supp. 783 (1974).

This interpretation is reinforced by the Model Penal Code's construction of "knowing violation":

"When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence." §2.02(7)

Under the proposed amendments, however, criminal penalties may be imposed against anyone who simply "knowingly" (vs. "knowingly and willfully") violates the Act, and the penalties have been raised to the felony level: up to \$20,000 or five years imprisonment, or both per violation, each violation being a separate offense.

The result appears to be a substantial undermining if not the virtual elimination of the requirement of specific criminal intent from the Act. Mere knowledge of the fact that an animal has been shipped without a particular health certificate can suffice to trigger the criminal penalty, even though the U.S. importer may be unaware that the law of

the exporting country requires that a health certificate be included. Thus, a U.S. citizen can be convicted of criminal violation if he knows the facts of the situation but is ignorant of the particular country's laws relating to those facts.

In addition, because of the varied construction of the word "knowing", an individual could be convicted of a criminal violation of the Act simply if he is aware that there is a high probability that the law has been violated. To trigger such extensive penalties, it seems only just that the individual be required to have actual and personal knowledge that he is violating a foreign law or regulation and thus the Lacey Act. The issue to be raised at this time is whether the Congress is "knowingly and willfully" making these serious alterations.

Another problem area we foresee is in the administration of the numerous penalties provided for in the proposed amendments. The proposed amendments embody at least eight different forms of penalty:

- . A strict civil liability penalty up to \$500.
- . A civil penalty of not more than \$10,000 for any violation, if the individual in the exercise

of due care should have known he was violating the Act, each violation being a separate offense.

- . A criminal penalty of not more than \$20,000 per violation or imprisonment for not more than five years or both per violation, if the individual "knowingly" violates the Act, each violation counted as a separate offense. (Mandatory)
- . The suspension, modification or cancellation of hunting, fishing, importing, exporting or quarantine station operating permits or licenses, if the violation was criminal.
- . The forfeiture of all fish or wildlife connected with any violation of the Act.
- . The forfeiture of all vessels, vehicles, aircraft or other equipment used to aid in violating the Act.
- . The assessment of costs incurred in the storage, care, and maintenance of any fish or wildlife to any person assessed a civil penalty or convicted under the Act. (Mandatory, although under Section 6(b), the Secretary may permit posting of bond or other surety in lieu of holding the fish or wildlife, rendering this penalty optional)

- . The seizure and holding of any fish, wildlife, property or items seized pending disposition of civil or criminal proceedings, although the Secretary may permit posting of bond or other surety thereof -- an optional enforcement action which may be viewed as a penalty because of the potential costs of procuring bonding or surety.

Six of these eight different penalties are discretionary. The majority of them lack standards to guide their application. A prime example is the "due care" standard, which states:

"Any person who in the exercise of due care should know that he is violating any provision of this Act, or any regulation issued hereunder, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation."

What is the level of "due care" which is required to be exercised by the average consumer buying a pet bird, or a fur coat? Is the prospective purchaser expected to be aware that certain types of birds or skins are protected species? Even if it's been published in the Federal Register? Or a local wildlife law was violated? Is, in fact, the law (or minimally, the \$10,000 fine), meant to be applicable to the final purchaser at all?

What about the common carrier, i.e., an airline or trucker, transporting the fish or wildlife or their end products? Is it the responsibility of the carrier to inspect every package

or shipment to ensure that the contents match the packaging label? Are they to count each specimen to assure an accurate count of 10,000 goldfish, 40,000 parakeets or 1,000,000 brine shrimp or earthworms? Or that the permits conform not only to U.S., but also foreign, laws and regulations? Or to maintain lists of all the protected species of all the countries and instruct their agents to be on the outlook for such species or their byproducts? What is the carrier, in the exercise of due care, really expected to do? How far must the carrier go to avoid potential liability under the due care standard? And what carrier will be willing to carry legitimate trade, once it has been penalized a few times for carrying items it "should have known" were transported, taken, possessed, or sold in violation of the laws and/or regulations of some country, province, or hamlet.

And what about the importer? Is the importer honestly expected to be knowledgeable of all the laws and regulations of every foreign country with whom he is dealing, even when those laws are uncodified or practicably unavailable or disregarded? Even lawyers find this difficult. Is he not entitled to rely upon the exporters with whom he is contracting, unless he has some reason to know that an illegal transaction is involved? What is really expected of the

importer "exercising due care"? Should he hire an attorney to monitor the particular country's laws and regulations, so he can remain updated? Is the importer expected to be a knowledgeable fish and wildlife expert, knowledgeable that a particular type of bird or non-human primate does not range in a particular area and thus must have been imported illegally from a neighboring jurisdiction? Is he expected to hire a local investigator to investigate the practices of every exporter with whom he deals to ensure for himself that the exporter is conducting his business properly? What affirmative actions are realistically required of the importer to protect himself under the due care standard?

And what about the wholesaler or retailer? Is the retailer expected to be as knowledgeable as the importer, or somewhat less so?

What standards will the laboratory technician or researcher be held to when receiving a non-human primate essential to polio vaccine production and safety testing, or hepatitis or cancer research? Is anyone allowed to rely on the supposition that they have purchased an animal in good faith from a law abiding person?

Who's going to decide -- the Congress, the agencies, or the courts?

Compounding the seriousness of the lack of standards just described is the fact that most of the penalties have been seriously upgraded, e.g., the criminal penalty from \$10,000 and one years imprisonment to \$20,000 and five years imprisonment, while removing the requirement of "willful" violation, making it much easier to obtain conviction under the criminal sanction through removal of the defense that the individual had no knowledge that a law had been violated.

Nor is it clear what is contemplated by "each violation shall be a separate offense." Does one violation attach to a single shipment? Or does a separate violation attach to each specimen in a shipment? Or do three separate violations attach when an animal is exported, transported and imported in violation of law? To avoid vagueness, the law should clearly define what constitutes "each violation" as a "separate offense."

These facts, in combination, make the Act subject to a constitutional vagueness challenge on the basis that an individual reading the Act would have insufficient warning as to the nature and extent of the punishment likely to be imposed for specific conduct. As mentioned earlier, the number and optional nature of the multiple penalties

increases the likelihood of unconstitutionally uneven or arbitrary enforcement, even to the point of harassment.

We have experienced departmental harassment under the existing provisions of the Lacey and Black Bass Acts. Recipients as well as shippers are cited and fined months after the incident and after the evidence has been destroyed. Needless to say, it is excessively expensive to challenge administratively or judicially a \$100 to \$200 fine, so they pay. The few who do challenge undergo a unique experience -- Interior keeps lowering the fine. If the challenge continues -- Interior vanishes.

With the proposed revisions, you are providing Interior with the ultimate weapon. Interior will be able to impose \$10,000 fines per violation (per specimen?) as a means of tying up importers in litigation and breaking them financially. The Department has the best of all worlds. The first appeal is administrative where the Department can never lose. Then the Courts. The cost of preserving one's constitutional rights becomes prohibitive.

Mere criticism of the quality of enforcement of the existing Acts and the anticipated problems with the proposed amendments is insufficient. To avoid some of the problems described today, we urge that this Committee consider several

proposals which hopefully will reduce the likelihood of arbitrary, capricious and abusive administration:

1. A manual should be prepared to ensure maximal, uniform administration of the Act by all agencies so as to ensure that the intent of the law with regard to wildlife is carried out and to reduce administrative irregularities. Such a manual should be made readily available to all local inspectors and to the public at large.
2. The standards for administering the numerous penalties need to be clearly defined, e.g.:
 - the standards of due care be applied at various functional levels -- importers, carriers, wholesalers, retailers, consumers -- including a listing of the types of affirmative actions expected of them in the exercise of "due care".
 - whether the strict liability provision is meant to apply at all levels, especially the purchaser two or three steps removed from the importation.

- the elements which the government must prove to obtain criminal prosecution under the "knowingly violates" vs. the "knowingly and willfully violates" standards -- whether actual or personal knowledge of the violation of a foreign law or regulation is required or whether mere knowledge of the facts of the situation suffices.
- the types of violations for which an importer may be held strictly accountable, i.e., when the exporter mislabels or includes more species than ordered and declared.
- the definition of how violations are counted in the phrase "each violation shall be a separate offense" -- whether a separate violation is counted for each specimen in the shipment, each package, or each shipment.

3. Clarification is needed as to which laws and regulations are subsumed under the Act: all laws and regulations or only conservation laws and regulations related to the protection of fish and wildlife; or only laws and regulations related to endangered species?
4. Clear definition is required as to the responsibility of the importer, carrier, etc., to report violations of which he becomes aware and a clarification of his liability, if any, if he does so report the violation.
5. Consideration should be given as to whether the importer, carrier, etc., should be reimbursed for extra expenses suffered if it is subsequently shown that a shipment was seized or delayed or penalty imposed in violation of the Act's provisions or administrative guidelines, or simply for harassment.
6. To help alleviate the adequate notice issues, the Interior should be required to publish in the Federal Register and maintain on a current basis by species and by country, the applicable foreign laws and regulations, the violation of

which constitutes a violation of the Lacey Act.

7. Interior should publish an index of administrative decisions, statements of policy, administrative manuals and instructions and other documents related to fish and wildlife regulation, as called for in the Freedom of Information Act.
8. Clarification should be made as to who is administering the Act -- that is, whose review process is to be implemented -- Customs' or Interior's?
9. A time limitation should be prescribed for administering the citation process to ensure expeditious action, the non-destruction of evidence, and the preservation of due process.
10. Interior should be provided the much needed flexibility to promulgate container marking and labeling regulations to eliminate any confusion as to mandatory or permissive

standards existent in current laws.^{9/}

11. Interior, Customs and Justice should be provided sufficient guidance to avoid the misplacement of enforcement emphasis at the point of importation. If the intent of Congress is to stop the importation of endangered species or species which will threaten U.S. commercial species or fish and wildlife, then the enforcement emphasis should be directed there. If the intent is to stop the massive importation of the by-products of endangered species ~~such as~~ ^{SKINS} ~~fish~~, which are being intentionally mislabeled to avoid detection, enforcement emphasis should be placed there and not directed at minor miscounts in the number

9. Interior's 1976 proposed regulations resolving tropical fish box marking problems have never been finalized due to Interior's contention that all fish containers, not just those containing black bass or other such game fish, are regulated. Strict construction of the Black Bass Act results, when challenged, in grants of motions to dismiss. See U.S. v. R.E. Wingate, No. 76-20M, and U.S. v. Ross Socolof, No. 76-204M United States District Court, Middle District of Florida, June 18, 1976, and November 18, 1976, respectively.

of specimens included in a shipment of non-endangered species. "Normal business practice" should be officially recognized to include such matters as minor labeling errors, inclusion of extra specimens of non-endangered species to protect the exporter against attrition and other similar matters over which the U.S. importer has no control. The spirit of the law, and not the letter, must be emphasized. (If the law is intended to stop major smuggling, enforcement resources should be so targeted.) Picayunish harassment for minor matters stirs inflation, breeds contempt for the government, and engenders the non-cooperation of honest businessmen. Sufficient data on local enforcement activities should be maintained to ensure proper administration of the Act.

In conclusion, we urge that the Committee not assimilate the proposed changes as a mere merger of two laws and simplification of language. The changes are substantive; they involve fundamental constitutional doctrines. The intent of Congress relative to these amendments should be made explicit, definite,

and precise to protect all citizens, not just those in
the pet and biomedical communities.

November 6, 1979

STATEMENT OF THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES
CONCERNING PROPOSED LEGISLATION TO STRENGTHEN CONTROL OVER THE IMPORTA-
TION AND EXPORTATION OF FISH AND WILDLIFE BEFORE THE SENATE SUBCOMMITTEE
ON RESOURCE PROTECTION, NOVEMBER 6, 1979

Mr. Chairman, I am John S. Gottschalk, Legislative Counsel of the International Association of Fish and Wildlife Agencies. The Association is a voluntary organization of state, provincial, and federal wildlife agencies of Canada, the United States, and Mexico. Our objectives are to foster the wise use of the fish and wildlife resources through better laws, improved administration of those laws, and greater public understanding of the need for conservation of fish and wildlife resources.

My testimony today is largely a repetition of that presented at the hearings before the House Subcommittee on Fisheries and Wildlife Conservation and the Environment on October 17, 1979. The Association supports the administration's proposal to strengthen the states' capability to deal more effectively with introductions of fish and wildlife. In the strong view of the Association, federal legislation of this kind, which reinforces the fish and wildlife conservation programs of the several states, is the most effective approach toward developing a strong national system of fish and wildlife protection.

The principal part of the proposed legislation deals with a problem that has become increasingly acute in recent years -- the introduction of actually or potentially damaging species into states in contravention of the laws of those states. The mechanism of achieving greater control over these unwanted imports is through amendments of the Black Bass Act and the Lacey Act that make it a federal offense to import a species into a state in violation of that state's laws. To add to the formal record, two resolutions adopted by the Association in support of this kind of legislation before you are attached to this statement.

It would probably be no exaggeration to say that the Lacey Act and the Black Bass Act have become, over the years, two bastions of conservation law. They make it a federal offense to "export" fish or wildlife from a state if the animal was taken in violation of that state's laws. For example, the amendments to the Lacey Act that extended its provision to reptiles in 1969 did much to curtail the illicit interstate traffic in poached alligator hides. The result was that the alligator population of Louisiana was well on its way to recovery before the effects of the Endangered Species Act of 1973 began to be felt.

Today, we have a different problem than these two acts were designed to cope with, that is, the protection of native wildlife in its native haunts. Many people enjoy wildlife and fish as pets; others have a continuing curiosity and desire to improve on nature by trying to establish exotic species in the wild. Consequently, native habitats have been invaded as a result of accidental or deliberate introductions. Fortunately, many species are unable to survive in a new environment and most of the escapes fail to become established. Some species such as the ring-necked pheasant and the brown trout have become acclimatized and contribute to the value and variety of the North American fauna. Still others, however, have survived to the detriment of native species. The legislation before you cannot solve all the problems related to species introductions, but it will greatly strengthen the hands of the state agencies in controlling the commercial distribution of undesirable species.

After consultation with their counterparts in several states, the officials of the U.S. Fish and Wildlife Service have incorporated a

number of strengthening amendments in the proposed recodification that will have the effect of reinforcing the administration of the revised acts. We support the stronger penalties, strict liability, reward, and marking requirements as proposed by the Fish and Wildlife Service.

In the hearings before the House Subcommittee, the discussion of the "strict liability" provisions of the proposed changes evoked considerable apprehension as to the effect of the strengthened language on the "innocent citizen", that is, the person who unwittingly breaks a law of which he is unaware. We believe these concerns about overzealous enforcement are unmerited. In the first place, the new and stronger language will make it very unlikely that the commercial importer or exporter will engage in commerce in prohibited species. Therefore, the chances of the purchaser becoming an innocent victim are slight. The penalties, if any, would be assessed under civil actions, with penalties subject to mitigation or remission by the Secretary. Experience suggests that the Secretary will not direct his enforcement efforts against the ordinary citizen, but rather toward the person who attempts to commercialize the trade in illicit fish and wildlife. To leave the penalty provisions as they are would provide the unscrupulous commercial operator with a major loophole that would destroy the effect of this law in curbing willful and detrimental violations.

We are, however, concerned about the proposal to extend the new act to encompass regulations adopted by Indian tribes. The controversy over Indian rights to a wide range of resources -- lands, minerals, water, as well as fish and wildlife, both on existing tribal lands in reservations and on lands long since out of reservation status is well known. The applicability of Indian fish and wildlife regulations

to non-Indians is now under review in the courts. If the law is extended to include violations of tribal wildlife regulations and there are differences between state regulations and those on Indian lands, a citizen might find himself in jeopardy if he were to attempt to transport fish or wildlife taken according to regulations in an Indian reservation but contrary to state law. At the same time, we recognize that this amendment would strengthen enforcement of tribal regulations. We call this matter to your attention in the belief that the legal and practical aspects of this change have not been adequately considered.

Thank you for this opportunity to present these comments.

Resolutions of the International Association
of Fish and Wildlife Agencies Related to the
Control of Commerce in Fish and Wildlife

Resolution 8

UNLAWFUL IMPORTATION OF FISH

WHEREAS, commercial live fish dealers operating within the jurisdiction of one state, may and have, imported undesired fish species into another state; and

WHEREAS, though such importations may be in violation of the recipient state's statutes, action against the vendor may be difficult or impossible;

NOW, THEREFORE, BE IT RESOLVED that the International Association of Game, Fish and Conservation Commissioners urges its member states to take appropriate action to prevent live fish dealers within their boundaries from violating statutes of other states; and

BE IT FURTHER RESOLVED, that the International Association of Game, Fish and Conservation Commissioners requests the United States Fish and Wildlife Service bring immediate action against such violators as contravening the provisions of the Federal Black Bass Act.

Adopted at the 65th Convention
September 10, 1975

Resolution 10

EXOTIC FISH CONTROL

WHEREAS, the importation of exotic fish species has had serious adverse impacts on native fauna; and

WHEREAS, no appropriate protocol governing procedures for determining the impacts of exotic fish species outside of their native range has yet been developed; and

WHEREAS, the only Federal law that restricts interstate fish transportation, the Black Bass Act, lacks sufficient force to provide for responsible control over interstate transportation of exotic fish species;

NOW, THEREFORE, BE IT RESOLVED, that the International Association of Fish and Wildlife Agencies requests the Secretary of the Interior to consult with the state wildlife agencies and to determine needed authority for desirable control over interstate shipment of exotic fish species; and to prepare suitable strengthening amendments to the Black Bass Act, or new legislation, that would permit appropriate control over the interstate shipment of exotic fish species.

Adopted at the 66th Convention
September 24, 1976

STATEMENT OF ROBERT O. WAGNER ON BEHALF OF THE AMERICAN
ASSOCIATION OF ZOOLOGICAL PARKS AND AQUARIUMS

MR. CHAIRMAN:

My name is Robert O. Wagner. I am the Executive Director of the American Association of Zoological Parks and Aquariums (AAZPA). Thank you and the members of the Senate Subcommittee on Resource Protection for the opportunity to submit written testimony for the record regarding proposed legislation to amend the Lacey and Black Bass Acts (18 U.S.C. Sec. 43 and 16 U.S.C. Sec. 52, respectively).

The AAZPA represents virtually every zoological park, aquarium, wildlife park and oceanarium in the United States and nearly all of their professional staff members. Our organization also represents the more than 250,000 zoological and aquarium society members who offer support to our institutional members. Thus, the AAZPA is the largest professional organization in the world representing zoological parks and aquariums.

The AAZPA applauds the administration's attempts at thwarting the illicit trade in wildlife and wildlife products, and we support many of the provisions contained in the proposed Lacey Act Amendments of 1979. However, there are a few provisions included which we believe are not in keeping with sound wildlife management practices or the enhancement and survival of wildlife species. I will speak to these at a later time in this testimony.

Mr. Chairman, Article IV, Section 3 and 4 of the Articles of Incorporation of our Association reads in part as follows:

"The purpose of AAZPA is to aid, foster and engage in the exchange of zoological specimens for scientific and preservation purposes, cooperating with government agencies for the health and welfare of animals and to respect conditions and regulations established by any

country in the protection of its animal life;
and to foster sound captive animal management practices
and actively participate in the international efforts
of wildlife preservation...."

Accordingly, we agree with the Council on Environmental Quality's (CEQ) 1978 Report - Recommendations on Simplifying, Coordinating and Codifying Federal Law, prepared under the direction of the President's 1977 Environmental message, which stated that consolidation of the Lacey and Black Bass Acts into a single comprehensive statute dealing with illegal trade in fish and wildlife will "eliminate inconsistencies, achieve a uniform approach toward all wildlife species and simplify the administration and enforcement of federal wildlife law."

Although the AAZPA endorses the Administration's efforts to curb the illegal interstate and foreign traffic in birds, wildlife products and other wildlife taken or possessed in violation of state or foreign law, we believe certain provisions included in the Lacey Act Amendments of 1979 deter, rather than encourage, sound wildlife conservation. During the 1900 congressional debate on the original Lacey Act legislation, Congressman Lacey stated that the original Lacey Act was to be directed towards the "pothunter," and the proper role of the federal government was to "dry up the illegal wildlife trade market of the wildlife poacher."

Mr. Chairman, although the proposed amendments to the Lacey and Black Bass Acts address increased civil and criminal penalties for the illegal activities of the wildlife poacher, we believe the legislation also includes provisions which are inherently

inequitable, thereby potentially penalizing the innocent final purchaser of wildlife, who later learns that the transaction was illegal. For example, there are possibilities for strict civil or criminal penalties against United States citizens for the acts of persons not under their control. More importantly, provisions exist for penalties being leveled against a recipient of wildlife who may be two or three steps removed from the initial violation. A \$500 fine may be imposed on an individual who has absolutely no knowledge that a wildlife law has been violated. It is important to state for the record that AAZPA has been unsuccessful in its attempts to obtain from the United States regulatory agencies the wildlife laws of all foreign nations so that we could distribute this information to our members. Mr. Chairman, the Association has just completed the publication of the AAZPA MANUAL OF FEDERAL WILDLIFE REGULATIONS, which contains more than 800 pages and which cost the Association an estimated \$45,000. This substantial expense was necessary to apprise our members of U.S. regulations regarding wildlife and was done by us because the federal government does not possess, or at least does not make available, such a compilation. Assuming that U.S. wildlife regulations require such a massive publication, just imagine what would be required to amass all the extant wildlife laws and regulations of all the nations of the world. In some cases, wildlife laws of nations are obscure and are extremely difficult, if not impossible, to obtain.

The response that the Association receives in its requests for such information from the various regulatory agencies is vague at best. The government responds, "exercise due care

not to receive, acquire or buy any wildlife which has been taken, transported or sold unlawfully." In response to the obvious follow-up question - What can a potential receiver of wildlife species do to insure that he is not receiving a species taken in violation of some nation's wildlife law, the government responds in the same fashion, "...exercise due care...." Mr. Chairman, it occurs to me that the regulatory agencies have a responsibility to provide information on the wildlife laws of foreign nations to zoological parks, aquariums and other responsible organizations and individuals who may have an interest in the legal importation and exportation of wildlife species; and we respectfully urge that this committee request the U.S. Fish & Wildlife Service and/or the Land and Natural Resource Division of the Department of Justice to begin a program of assembling such laws and making them available.

While AAZPA strongly supports the increased criminal penalties proposed to be levied against persons found to be guilty of violations, we respectfully request that the proposed legislation for civil penalties be amended to include a sliding-scale amount which is appropriate to the severity of the violation or based upon the value of the shipment involved.

Another major concern of the AAZPA involves the "chain of culpability" question. We do not believe that the proposed legislation adequately defines the chain of culpability standard. The marking of wildlife containers or packages is but one example. The legislation mandates that any container or package carrying fish or wildlife must be plainly marked, labeled or tagged. Should a zoological institution receive an improperly marked container, the institution, according to the proposed amendments, would be

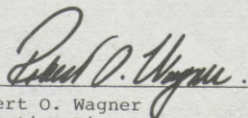
equally as liable as the originator of the shipment, even though the recipient had no knowledge that the shipper had improperly marked the container.

In addition, the legislation, as presently drafted, holds airline and freight companies accountable for acts of individuals over whom they have no control. Consequently, carriers of wildlife run the risk of having their cargo, plane or vehicle seized, even though they had no knowledge that a wildlife law had been violated. AAZPA views these culpability standards as arbitrary, capricious and ambiguous and a potential detriment to the survival and well-being of wildlife in transit. It appears inappropriate that a carrier could be penalized for transporting animal specimens without any knowledge that an illegal act was being committed. It is imperative to the survival of many species that they be transported as expeditiously as possible; and the present culpability standards may, in our opinion, have serious consequences in conserving and protecting wildlife in transit. The present culpability standards could be a deterrent in the shipping of wildlife specimens, as many carriers may no longer accept any wildlife shipments for fear of prosecution.

In summation, AAZPA supports amendments to the Lacey Act which consolidate existing federal wildlife laws into one comprehensive statute, the increase of criminal penalties and efforts to hinder the poaching of wildlife by controlling the illegal international trade. However, we respectfully request the Subcommittee to carefully reconsider the strict liability and chain of culpability provisions of the proposed legislation. The legislative intent of the Lacey Act is quite clear. It is apparent that Congress did not intend for U.S. citizens to be held liable

for the illegal acts of individuals over whom they have no control.

Thank you for the opportunity to present AAZPA's written comments.

A handwritten signature in cursive script, reading "Robert O. Wagner", is written over a horizontal line.

Robert O. Wagner
Executive Director
American Association of Zoological
Parks & Aquariums

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November 30, 1979

The Honorable John C. Culver
 Chairman, Subcommittee on Resource
 Protection
 United States Senate
 Washington, D.C. 20510

Dear Chairman Culver:

The National Food Processors Association (NFPA), on behalf of its seafood processing membership which cans and freezes a major portion of the nation's seafood products, appreciates this opportunity to address S. 1882, a bill to amend the Black Bass and Lacey Acts. NFPA would like to express our concerns regarding the proposal for inclusion in the record of this legislation.

Testimony to date on S. 1882, and on its companion bill H.R. 5604, has focused primarily on the effect of the proposed amendments on importers of wildlife, wildlife products, tropical fish and segments of the American pet industry. Little attention has been given to the effect of these amendments on the commercial fishing and fish processing industry. Our industry members are concerned both by the unique but uncertain effects of these amendments on processors and by the general questions raised, but as yet unanswered, in prior testimony.

Historically, seafood processors have experienced difficulty, adverted to in testimony by Mr. Lynn Greenwalt of the U.S. Fish and Wildlife Service, with regulations under the Black Bass Act regarding container marking and shipping procedures which have not reflected industry practice. (50 C.F.R. § 14.82 (1978). */ Proposed revisions to these requirements were published in 1976 but have never been finalized to our knowledge. Our industry is concerned generally by the proposed amendments to the Black Bass and Lacey Acts, which would impose stiffer penalties, under a confused, but apparently relaxed burden of proof, for violations of regulations which might be no more realistic than current regulations.

*/ Statement of Lynn A. Greenwalt, Before the Senate Committee On Environment and Public Works, Subcommittee On Resource Protection, on S. 1882, Nov. 6, 1979 at page 18.

Despite problems with existing regulations, the Department of Commerce, which possesses expertise through NMFS on this subject, should be responsible for administering the marking requirements for containers of fish moving in interstate or foreign commerce. Accordingly, Congress should make clear that "the Secretary" in Section 3(d) of S.1882 refers to the Secretary of Commerce. It is also vital that "package or container" be defined in the legislation, and that an exemption be made here for seafoods in consumer packages - such as canned salmon, tuna, frozen packaged shrimp and crab - which are labeled in accordance with the laws of the United States.

The seafood processing industry shares doubts already expressed in testimony regarding the ambiguity, uncertainty and unfairness of certain aspects of the proposed amendments. Witnesses supporting this bill have admitted the difficulty of compiling current records of the state and foreign laws to be imported by these amendments; yet industry members are expected to be cognizant of such laws and to act at their peril, under American law, for possible violations. The fact that foreign law is imported into domestic law under the current Black Bass and Lacey Acts does not justify extending, in effect, those provisions by lowering standards of proof for criminal convictions and adding various strict liability penalties under the Acts. Indeed, the problems inherent in such legislation possibly suggest the need for a different approach to the perceived inadequacies of current legislation. This bill may compound those inadequacies by imposing stiffer penalties, tempered only by the promise of prosecutorial discretion. Although some discretion is a necessary part of any enforcement scheme, it should not be relied upon to cure fundamental weaknesses in a federal criminal statute. We also join others in opposing incorporation under the statute of unspecified Indian tribal regulations.

Great doubt currently exists, even after testimony in both the House and Senate, regarding the Administration's position on critical provisions of the bill. We are still uncertain what kind of intent and proof is required for criminal convictions under the amendments. Administration witnesses appearing before the House Subcommittee on Fisheries, Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries have stated that the proposed bill will change the Act from a specific to a general intent statute. Before the Senate, the Administration witnesses offered the view that the amendments would change the Act from a "double

specific intent" statute to one requiring "single specific intent." */ We are frankly confused by this jargon, and are concerned that the Administration witnesses may well be confused also.

It would be most helpful if the testimony of the witnesses had gone beyond legal terminology to the heart of the questions presented: What must a person know to be guilty of a crime? How far down the chain of commerce is liability to be imposed? The Administration has supported these changes in large part because of alleged enforcement difficulties under current law (which it has only documented by anecdotes and slides). Unless they have simply sought to broaden indefinitely potential liability, which would be irresponsible and unacceptable, the Administration should have the answers to these questions and be prepared to defend the limits these changes would establish.

Justice Department witnesses before the Senate testified that the government would have to prove, even under the amendments, that a defendant knew of the existence of a foreign law and knew that he had violated it, before successfully prosecuting that person under the proposed criminal provisions. However, some of those same witnesses conceded that the language of the proposal does not make this intent clear. This level of uncertainty, which characterizes the whole proposal, prevents us from fully responding to the bill as considered by your subcommittee. We are prepared to offer our view on any bill coming before the subcommittee which permits reasoned analysis and commentary. But we cannot hit, whether to praise or constructively criticize, a moving target until it comes to rest.

It is very possible that there is a need to reevaluate enforcement of the Lacey and Black Bass Acts and to provide legislation better to implement their laudable goals. However, raising penalties, lowering burdens of proof, and imposing strict liabilities may not be the appropriate revisions, even if the amendments could clearly articulate those changes. Commercial fishing and fish processing are very different from the wildlife and pet industries in terms of commercial harvest and distribution, and sovereignty over these resources is subject to greater uncertainty than in the case of land resources. In light of these differences, we question the

*/ Statement of James W. Moorman, Assistant Attorney General
Department of Justice, Before the Senate Committee on Environment
and Public Works, Subcommittee on Resource Protection On S.1882,
Nov. 6, 1979 at pages 6-7.

desirability of major legislation lumping these issues together.

We are equally concerned with the unnecessary breadth of provisions such as those in Section 4(c) relating to suspension, modification or cancellation of federal fishing licenses or permits, and Section 8 concerning the interrelationship of state laws. Also the Section 5(a) strict liability forfeiture could impose burdens on the processing industry far disproportionate to the gravity of inadvertent error. As the proposal is drafted, an operator could lose fishing vessels, processing plants and other equipment, in addition to the fish, which is much too severe a penalty.

In summary, the seafood processing industry views S.1882 with a great deal of caution and apprehension. We are concerned about the increased liability and enforcement provisions, but also about the general breadth and uncertain implications of the proposal. The very important container marking requirements have not been adequately addressed, and the industry does not believe that the statement by Mr. Greenwalt that regulations may accommodate industry practices is sufficient for comfort regarding future business transactions. NEPA reiterates our appreciation of your consideration of these comments and would be pleased to discuss further any questions that may arise during their review.

Sincerely,

M. Kathryn Nordstrom

M. Kathryn Nordstrom
Director, Government Relations
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COMMENTS
OF THE
NATURAL RESOURCES DEFENSE COUNCIL, INC.
ON THE
LACEY ACT AMENDMENTS
OF 1979
S. 1882

Presented to the
SUBCOMMITTEE ON RESOURCE PROTECTION,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Eric A. Goldstein, Esq.
Faith Thompson Campbell, Ph.D.

November 15, 1979

I. INTRODUCTION AND SUMMARY

The Natural Resources Defense Council, Inc. (NRDC) is a public interest legal and scientific organization dedicated to protecting endangered natural resources and improving the quality of the human environment. For several years, NRDC has been active on a variety of domestic and international issues involving the preservation of wildlife, including species endangered or threatened with extinction. We appreciate this opportunity to share with you our views on the proposed amendments to the Lacey Act which are the subject of the Subcommittee's hearing.

Over the past year, the Natural Resources Defense Council has carefully examined the workings of the Lacey Act. We have researched the Act's legislative history. And we have spoken with Customs agents, Fish and Wildlife personnel and assistant U.S. attorneys familiar with wildlife prosecutions. Our inquiry centered on the section of the Lacey Act designed to protect against violation of foreign wildlife protection laws.

Our research over the past year has led us to two major conclusions. First, the scope of the illegal wildlife trade problem is enormous and is continuing to grow. Second, one step that could help stem the illegal trade is a

strengthening of the penalty provisions in the Lacey Act.

Accordingly, we support the proposed amendments that are before this Subcommittee. And we discuss these issues in more detail in the following sections.

II. THE LEGISLATIVE INTENT OF THE LACEY ACT

The Lacey Act is a very important statute. It was the nation's first wildlife protection law aimed at regulating wildlife trade generally, rather than protecting only individual species. Originally passed in 1900, the Act prohibited commerce in wildlife taken, possessed, transported or sold in violation of state law.

In 1935, a significant amendment extended the scope of the Act to make unlawful the importation, sale or possession of wildlife taken in violation of federal and foreign laws. We were unable to find legislative history behind the 1935 amendment. But the intent of those changes and the concerns of Congress were clarified when the statute was amended again in 1969. Congress amended the Lacey Act in 1969 as part of a wildlife initiative that included passage of endangered species legislation. The 1969 amendment expanded wildlife species to be afforded protection under Lacey and strengthened the Act's enforcement and penalty

provisions.^{1/}

The Senate report that accompanied the 1969 legislation evidenced a deeply felt Congressional concern for the protection of wildlife from extinction.^{2/} The amendment, it was hoped, would aid wildlife protection by helping to relieve the demand for wildlife and wildlife products by shrinking the United States market.^{3/} And the stronger penalty provisions included at that time were intended to deter significant commercial traffic in illegally taken wildlife.

III. PROBLEMS IN PREVENTING ILLEGAL WILDLIFE TRADE

Implementation of the Lacey Act amendments, has failed to a large degree to fulfill the Congressional objectives; the statutory amendments have been unable to stem the flow of illegal wildlife into the United States. Imports into the United States for 1976 included 400,000 live reptiles, 200,000,000 live fish, 32,000,000 skins and hides, and 91,000,000 items manufactured from wildlife products.^{4/} Approximately 450,000 live birds were imported in 1977.^{5/} In most categories, these figures reflect a significant increase in wildlife trade since 1973. There is no indication moreover that the soaring importation rate has

reached its peak.

There is no easy way to accurately determine how many wildlife species and their products were brought into the U.S. in violation of foreign law. But indications are that the number is significant. Fish and Wildlife agents and Custom officers with whom we informally interviewed in telephone conversations last spring reported that major commercial dealers have escaped prosecution under the Lacey Act and other statutes. An independent study of the international trade in birds revealed a widespread pattern of bird importations in violation of foreign law.^{6/} Recognizing the seriousness of the situation, President Carter, in his 2nd environmental message to Congress, called for stepped-up enforcement of laws against the "massive illegal trade" in wildlife.^{7/}

The growing illegal trade in wildlife products has resulted from a variety of factors. First, the U.S. enforcement effort has been hampered by a critical shortage of manpower. Cutbacks in the number of agents assigned to the nation's wildlife ports of entry are having a dramatic effect on the ability of government agencies to perform their legally obligated responsibilities.

Second, enforcement of the Lacey Act provision that prohibits wildlife imports in violation of foreign law has

been hampered since the U.S. inspectors and agents lack up-to-date manuals summarizing exactly what the foreign laws require. Third, U.S. enforcement personnel lack guides to assist them in differentiating between prohibited species and permitted species. These three problems, combined with the failure to license wildlife importers and exporters, has led to critical deficiencies in the nation's wildlife protection program.

In the past, these weaknesses in the detection of illegal wildlife shipments have been compounded by problems in enforcement and prosecution. Lacey Act prosecutions were slowed by the failure of government prosecutors to devote adequate resources to the task, and by burdensome standards of proof which further discourage prosecutions. Moreover, even in cases which did go to trial and for which convictions were obtained, the penalties imposed hardly acted as effective deterrents in view of the large profits realized by major commercial dealers.

During the past year, however, the Justice Department has created a new unit that holds the promise of strengthening the U.S. wildlife protection program. It has created a separate unit and charged it with enforcing the nation's wildlife statutes. With this new allocation of enforcement resources, a strengthening of the Lacey Act itself would be especially timely.

IV. THE PROPOSED LACEY ACT AMENDMENTS

Passage of the proposed Lacey Act amendments would mark important step forward in protecting foreign wildlife from exploitation through trade. The amendments would address the fundamental deficiency in the existing statute by easing the burden of proof requirements necessary for conviction. Our interviews with Customs agents, Fish and Wildlife inspectors and assistant U.S. attorneys indicated the strict burden of proof requirements in the existing statute represented the most difficult obstacle to successful prosecution.

We highlight below sections of the proposed amendments that we feel are particularly valuable:

- Section 2(a) of the proposed amendment expands the category of species covered by the Act to include fish (in effect, incorporating the Black Bass Act into the Lacey statute). Both the domestic and ornamental fish trade, although they have received comparatively little attention from government agencies or the conservation community, could pose significant threats to U.S. and foreign fish stocks. We strongly support this provision, which should ease administrative and enforcement difficulties by creating a single statute

which applies to all species.

- Section 3(e) prohibits the making of any false records in connection with any wildlife import or export transaction. This provision could be a valuable tool in assisting the federal government in prosecuting violators of wildlife statutes. In many respects, convicting illegal wildlife importers is as difficult as convicting white-collar felons. This section would ease the situation by insuring that violators do not escape prosecution by covering up illegal shipments in a web of phony documents.

- Section 4(a) provides a strict liability civil penalty for the violation of any provision of the Lacey Act. This section is the cornerstone of the proposed revision. It would enable the assessment of relatively minor penalties without imposing difficult standards of proof on enforcement agencies. As a result, the prospects for the assessment of heavier civil penalties and conviction after criminal prosecution for second and subsequent offenders will be significantly enhanced.

-- Section 4(b) provides criminal penalties of up to \$20,000 and up to 5 years in prison for knowing violations of the act. These penalties are appropriate for defendants who, with knowledge that they are violating federal wildlife protection laws, do so anyway. The illegal wildlife trade is a big business involving millions of dollars. The seriousness of these crimes warrants felony treatment for large commercial defendants.

-- Section 4(c) holds persons convicted of violations under the act liable for storage and maintenance costs. A major problem with Lacey Act prosecutions to date has been the high cost of storing and caring for seized or forfeited wildlife. This provision addresses that problem by placing costs for wildlife care and maintenance where it belongs -- on the persons who originally imported the product in violation of the law, not on the government.

-- Section 6(d) provides for rewards to persons who furnish information leading to criminal convictions, civil assessments, or forfeiture of property in connection with the violation of the Lacey Act. This provision will strengthen enforcement of the Act by

encouraging private individuals to assist the government in enforcing the Lacey Act provisions. This provision is important in view of the critical manpower shortages facing the government agencies in regard to Lacey Act enforcement. In this area, the government needs all the help it can get.

There remains a fundamental weakness in the proposed Lacey Act amendments -- the failure to include protection for the world's wild and exotic plants. Trade in rare and exotic plants is booming these days. Spurred by a strong demand which leads some collectors to pay up to \$65,000 for a single plant, ^{people} are digging up wild plants by the thousands. Cyads, orchids, cacti, and carnivorous plants are in particular demand. While a recently published catalogue listed some 175 dealers specializing in native wild plants, the extent of the domestic trade taken from the wild can only be guessed.

The current patchwork of protective legislation has failed to achieve its purpose. One reason is that those laws regulating plant trade do so for only a relatively few listed species. The Endangered Species Act, for example, lists some forty plants, about half of which have already

suffered from over-exploitation by collectors. But the Act does not prohibit the harvest of these plants, only their sale in interstate and foreign commerce. There are weaknesses too in the plant coverage afforded by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES protects a larger number of plants, but only once they have entered international trade. Finally, protection under state law has been spotty and even states with protective legislation often lack adequate enforcement resources.

The need then exists for a cooperative federal, state and foreign enforcement program to conserve rare and exotic plants and prevent their exploitation. The comprehensive Lacey Act amendments are ^{an} appropriate place for implementing such a program. Accordingly, the draft Lacey Act amendments should be amended to include the protection of plant species.*

A second problem concerns enforcement of the new Lacey Act amendments. Section 6 appears to skirt the issue

* Specifically, a new subsection should be added to section 2 of the Act to define the term plant. We suggest the following language: The term "plant" means any member of the plant kingdom excluding cultivars, and includes their roots, seeds and other parts, whether alive or dead, and whether or not propagated artificially. The proposed amendments should also be modified by inserting the word "plant" following the word "wildlife" in sections 3(a) through 3(d).

of what agencies have responsibility for Lacey Act implementation. The Act should carefully spell out that both the Interior Department and the Treasury Department share legal obligations to enforce the Act.

V. CONCLUSION

The proposed Lacey Act amendments, in sum, deserve the approval and support of this Subcommittee. The problem of illegal wildlife trade is pressing. And these amendments could help to ease the serious enforcement problems the government faces today. In short, this is the right bill at the right time.

FOOTNOTES

1. Act of Dec. 5, 1969, Pub. L. No. 91-135, §7(a), 83 Stat. 279 (codified at 18 U.S.C. §43)(Supp. 1978).
2. S. REP. No. 91-526, 91st Cong. 1st Sess., reprinted in [1969] U.S. CODE CONG. & AD. NEWS 1413.
3. 1969 U.S. CODE CONG. & AD. NEWS 1425 (1969).
4. Remarks of Clark R. Bavin, Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service, at the Western Association of Game and Fish Commissioners' 57th Annual Conference, Tuscon, Arizona, July 12, 1977, at 4,6.
5. U.S. Department of Agriculture figures for birds received at U.S. ports of entry in 1977.
6. Grata Nilsson, The Bird Business: A Study of the Importation of Birds into the United States. (Animal Welfare Institute, Washington, DC).
7. "President Pledges Energy Crisis Won't Alter Environmental Goals," New York Times, August 3, 1979 at A24.

1 mollusk, crustacean, arthropod, coelenterate, or other
2 invertebrate, whether or not bred, hatched, or born in
3 captivity, and includes any part, product, egg, or
4 offspring thereof.

5 (b) The term "person" includes any individual,
6 partnership, association, corporation, trust, or any
7 other entity subject to the jurisdiction of the United
8 States.

9 (c) The term "Secretary" means, except as other-
10 wise provided in this Act, the Secretary of the Interior
11 or the Secretary of Commerce, as program responsibil-
12 ities are vested pursuant to the provisions of Reorgani-
13 zation Plan Numbered 4 of 1970 (84 Stat. 2090).

14 (d) The term "State" means any of the several
15 States, the District of Columbia, the Commonwealth of
16 Puerto Rico, the Virgin Islands, Guam, Northern Mar-
17 iana Islands, American Samoa, and any other territory,
18 commonwealth, or possession of the United States.

19 (e) The term "taken" means captured, killed, or
20 collected.

21 (f) The term "transport" means to move, convey,
22 carry, or ship by any means, or to deliver or receive
23 for the purpose of movement, conveyance, carriage, or
24 shipment.

1 SEC. 3. PROHIBITED ACTS.—It is unlawful for any
2 person to—

3 (a) Import, export, transport, sell, receive, ac-
4 quire, or purchase any fish or wildlife taken or pos-
5 sessed in violation of any law, treaty, or regulation of
6 the United States or any Indian tribe;

7 (b) Import, export or transport, sell, receive, ac-
8 quire, or purchase in interstate or foreign commerce
9 any fish or wildlife taken, possessed, transported, or
10 sold in violation of any law or regulation of any State
11 or foreign country;

12 (c) Within the special maritime and territorial ju-
13 risdiction of the United States (as defined in section 7
14 of title 18, United States Code), possess any fish or
15 wildlife taken, possessed, transported, or sold in viola-
16 tion of any law or regulation of any State, Indian tribe,
17 or foreign country;

18 (d) Import, export, or transport in interstate or
19 foreign commerce any container or package containing
20 any fish or wildlife unless such package or container
21 has previously been plainly marked, labeled, or tagged
22 as specified in accordance with regulations prescribed
23 by the Secretary;

24 (e) Make any false record, account, document,
25 label, or identification concerning any fish or wildlife

1 imported, exported, or transported in interstate or for-
2 eign commerce;

3 (f) Assault, resist, or impede any person enforcing
4 this Act.

5 (g) Attempt to commit, solicit another to commit,
6 or cause to be committed, any offense defined in this
7 section.

8 SEC. 4. (a) CIVIL PENALTIES.—(1) Any person who
9 violates any provision of this Act, or any regulation issued
10 hereunder, may be assessed a civil penalty by the Secretary
11 of not more than \$500 for each such violation. Any person
12 who in the exercise of due care should know that he is violat-
13 ing any provision of this Act, or any regulation issued here-
14 under, may be assessed a civil penalty by the Secretary of
15 not more than \$10,000 for each such violation. No penalty
16 may be assessed under this subsection unless such person is
17 given notice and opportunity for a hearing with respect to
18 such violation. Each violation shall be a separate offense.
19 Any civil penalty may be remitted or mitigated by the Secre-
20 tary.

21 (2) Hearings held during proceedings for the assessment
22 of civil penalties shall be conducted in accordance with sec-
23 tion 554 of title 5, United States Code (80 Stat. 384). The
24 Secretary may issue subpoenas for the attendance and testi-
25 mony of witnesses and the production of relevant papers,

1 books, and documents, and may administer oaths. Witnesses
2 summoned shall be paid the same fees and mileage that are
3 paid to witnesses in the courts of the United States. In case
4 of contumacy or refusal to obey a subpoena served upon any
5 person pursuant to this paragraph, the district court of the
6 United States for any district in which such person is found,
7 resides, or transacts business, upon application by the United
8 States and after notice to such persons, shall have jurisdic-
9 tion to issue an order requiring such persons to appear and
10 give testimony before the Secretary or to appear and produce
11 documents before the Secretary, or both, and any failure to
12 obey such order of the court may be punished by such court
13 as a contempt thereof.

14 (3) Any person against whom a civil penalty is assessed
15 under this section may obtain review thereof in the appropri-
16 ate district court of the United States by filing a notice of
17 appeal in such court within 30 days from the date of such
18 order and by simultaneously sending a copy of such notice by
19 certified mail to the Secretary. The Secretary shall promptly
20 file in such court a certified copy of the record upon which
21 such violation was found or such penalty imposed, as pro-
22 vided in section 2112 of title 28, United States Code. The
23 findings and order of the Secretary shall be set aside by such
24 court if they are not found to be supported by substantial
25 evidence, as provided in section 706(2) of title 5, United

1 States Code. If any person fails to pay an assessment of a
2 civil penalty after it has become a final and unappealable
3 order or after the appropriate court has entered final judg-
4 ment in favor of the Secretary, the Secretary may request
5 the Attorney General of the United States to institute a civil
6 action in an appropriate district court of the United States to
7 collect the penalty, and such court shall have jurisdiction to
8 hear and decide any such action. In such action, the validity
9 and appropriateness of the final order imposing the civil pen-
10 alty shall not be subject to review.

11 (b) CRIMINAL PENALTIES.—Any person who knowing-
12 ly violates any provision of this Act or any regulation issued
13 hereunder shall, upon conviction, be fined not more than
14 \$20,000 or imprisoned for not more than five years or both.
15 Each violation shall be a separate offense.

16 (c) PERMIT SANCTIONS.—The Secretary may also sus-
17 pend, modify, or cancel any Federal hunting or fishing li-
18 cense, permit, or stamp or any license or permit authorizing
19 a person to import or export fish or wildlife or to operate a
20 quarantine station for imported wildlife issued to any person
21 who is convicted of a criminal violation of any provision of
22 this Act or any regulation issued hereunder. The Secretary
23 shall not be liable for the payments of any compensation,
24 reimbursement, or damages in connection with the modifica-

1 tion, suspension, or revocation of any licenses, permits,
2 stamps, or other agreements pursuant to this section.

3 SEC. 5. FORFEITURE.—(a) All fish or wildlife imported,
4 exported, transported, sold, received, acquired, or purchased
5 contrary to the provisions of this Act or any regulation issued
6 pursuant thereto, and all vessels, vehicles, aircraft, and other
7 equipment used to aid in the importing, exporting, transport-
8 ing, selling, receiving, acquiring, or purchasing of fish and
9 wildlife contrary to the provisions of this Act, or any regula-
10 tion issued pursuant thereto, shall be subject to forfeiture to
11 the United States.

12 (b) All provisions of law relating to the seizure, forfeit-
13 ure, and condemnation of property for violation of the cus-
14 toms laws, the disposition of such property or the proceeds
15 from the sale thereof, and the remission or mitigation of such
16 forfeiture, shall apply to the seizures and forfeitures incurred,
17 or alleged to have been incurred, under the provisions of this
18 Act, insofar as such provisions of law are applicable and not
19 inconsistent with the provisions of this Act; except that all
20 powers, rights, and duties conferred or imposed by the cus-
21 toms laws upon any officers or employee of the Treasury
22 Department may, for the purposes of this Act, also be exer-
23 cised or performed by the Secretary or by such persons as he
24 may designate.

1 (c) Any person convicted of a violation under this Act,
2 or assessed a civil penalty, shall be liable for the costs in-
3 curred in the storage, care, and maintenance of any fish or
4 wildlife in which he has an interest seized in connection with
5 such violation.

6 SEC. 6. ENFORCEMENT.—(a) The provisions of this Act
7 and any regulations issued pursuant thereto shall be enforced
8 by the Secretary, the Secretary of Transportation, or the
9 Secretary of the Treasury. Such Secretary may utilize by
10 agreement, with or without reimbursement, the personnel,
11 services, and facilities of any other Federal agency or any
12 State agency for purposes of enforcing this Act.

13 (b) Any person authorized under subsection (a) to en-
14 force this Act may carry firearms; may make an arrest with-
15 out a warrant for any criminal violation of this Act if he has
16 reasonable grounds to believe that the person to be arrested
17 has committed such violation; and may execute and serve
18 any subpoena, arrest warrant, search warrant, or other war-
19 rant of civil or criminal process issued by any officer or court
20 of competent jurisdiction for enforcement of this Act. Any
21 person so authorized, in coordination with the Secretary of
22 the Treasury, may detain for inspection and inspect any
23 vessel, vehicle, aircraft, or other conveyance or any package,
24 crate, or other container, including its contents, upon the ar-
25 rival of such conveyance or container in the United States or

1 the customs waters of the United States from any point out-
2 side the United States or such customs waters, or, if such
3 conveyance or container is being used for exportation pur-
4 poses, prior to departure from the United States or the cus-
5 toms waters of the United States. Such person may also in-
6 spect and demand the production of any documents and per-
7 mits relating to the package, crate, or container as required
8 by the country of natal origin, birth or reexport of the fish or
9 wildlife. Any fish, wildlife, property, or item seized shall be
10 held by any person authorized by the Secretary pending dis-
11 position of civil or criminal proceedings, or the institution of
12 an action in rem for forfeiture of such fish, wildlife, property,
13 or item pursuant to section 6 of this Act; except that the
14 Secretary may, in lieu of holding such fish, wildlife, property,
15 or item, permit the owner or consignee to post a bond or
16 other surety satisfactory to the Secretary.

17 (c) DISTRICT COURT JURISDICTION.—The several dis-
18 trict courts of the United States, including the courts enu-
19 merated in section 460 of title 28, United States Code, shall
20 have jurisdiction over any actions arising under this section.
21 The judges of the district courts of the United States and the
22 United States magistrates may, within their respective juris-
23 dictions, upon proper oath or affirmation showing probable
24 cause, issue such warrants or other process as may be re-

1 quired for enforcement of this Act and any regulation issued
2 thereunder.

3 (d) REWARDS.—The Secretary or the Secretary of the
4 Treasury shall pay out of any moneys in the Treasury not
5 otherwise appropriated a reward to any person who furnishes
6 information which leads to a criminal conviction, civil penalty
7 assessment, or forfeiture of property for any violation of this
8 Act or any regulation issued hereunder. The amount of the
9 reward, if any, is to be designated by the Secretary or the
10 Secretary of the Treasury, as appropriate, but shall not
11 exceed the amount of the penalty, fine, or forfeiture collected
12 in a case in which the person was an informant. Any officer
13 or employee of the United States or any State or local gov-
14 ernment who furnishes information or renders service in the
15 performance of his official duties is ineligible for payment
16 under this subsection.

17 SEC. 7. ADMINISTRATION.—(a) The Secretary after
18 consultation with the Secretary of the Treasury is authorized
19 to issue such regulations as may be necessary to carry out
20 the provisions of this Act.

21 (b) The Secretary may enter into such contracts, leases,
22 cooperative agreements, or other transactions with any Fed-
23 eral or State agency, public or private institution, or other
24 person, as may be necessary to carry out the purposes of this
25 Act.

1 SEC. 8. COORDINATION WITH OTHER LAWS.—All fish
2 or wildlife transported into any State for use, consumption,
3 sale, or storage therein shall upon arrival in such State be
4 subject to the operation and effect of the laws of such State
5 to the same extent and in the same manner as though such
6 fish or wildlife had been produced in such State and shall not
7 be exempt therefrom by reason of being introduced therein in
8 original packages or otherwise.

9 SEC. 9. There are hereby authorized to be appropriated
10 such sums as may be necessary to carry out the purposes of
11 this Act.

12 SEC. 10. (a) EFFECT ON POWER OF STATES.—Nothing
13 in this Act shall be construed to prevent the several States
14 from making or enforcing laws or regulations not inconsistent
15 with the provisions of this Act.

16 (b) The Black Bass Act of May 20, 1926, as amended
17 (41 Stat. 846, 16 U.S.C. 851–856) is hereby repealed.

18 (c) Section 5 of the Act of May 25, 1900 (31 Stat. 188,
19 16 U.S.C. 667e), is hereby repealed.

20 (d) Sections 43, 44, 3054, and 3112 of title 18, United
21 States Code are hereby repealed.

22 (e) Nothing in this Act shall be construed as repealing,
23 superseding, or modifying any provisions of Federal law
24 other than as specifically stated in subsections (b), (c), and (d)
25 of this section.

1 (f) It shall be an affirmative defense to prosecutions
2 under this Act for violations of the law of a foreign nation
3 that the fish or wildlife was taken on the high seas (as defined
4 in 90 Stat. 335, 16 U.S.C. 1802(13)) and that the United
5 States does not recognize the jurisdiction of the foreign
6 nation over such fish or wildlife.

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