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APPROVED
JUL 12 1976

8 7/12/76

THE WHITE HOUSE
WASHINGTON
July 8, 1976

ACTION
Last Day: July 13

Posted
7/12/76
Archives
7/12/76

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON

SUBJECT:

S. 229 - Endangered Species Act
amendments

Attached for your consideration is S. 229, sponsored by
Senators Kennedy and Brooke.

The enrolled bill amends the Endangered Species Act of
1973 to exempt sperm whale oil and scrimshaw legally
obtained prior to the enactment of the Act from the
prohibitions on the sale of endangered species and
their parts and products in interstate and foreign
commerce.

A detailed discussion of the provisions of the enrolled
bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I
recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 229 at Tab B.





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 7 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 229 - Endangered Species Act
amendments
Sponsors - Sen. Kennedy (D) Massachusetts and
Sen. Brooke (R) Massachusetts

Last Day for Action

July 13, 1976 - Tuesday

Purpose

Amends the Endangered Species Act of 1973 to exempt legally obtained sperm whale oil and scrimshaw from existing prohibitions on their sale in interstate and foreign commerce.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of Commerce	Approval
General Services Administration	Approval
Council on Environmental Quality	No objection
Department of Justice	Defers to Interior



Discussion

Under the Endangered Species Act, as amended in 1973, the Secretaries of the Interior and Commerce are charged with the conservation, protection, restoration, and propagation

of threatened and endangered species of fish, wildlife, and plants. In this regard, the Act fixed strict prohibitions on the import, export, and interstate sale of endangered species parts or products.

During the course of implementing and administering the Act, Interior and Commerce became aware of certain inequities and other provisions that warranted modification or clarification. Of greatest concern was the fact that upon enactment of the 1973 Act, it became illegal to import, export, or sell in interstate commerce, parts or products of endangered species which previously had been in the legal possession of various individuals or companies. In practical terms, this involved three situations: (1) sperm whale oil sold or to be sold by the General Services Administration to certain private companies; (2) stocks of scrimshaw held by scrimshanders and other artisans who use this whale bone and teeth in their craft; and, (3) all other endangered wildlife and back-inventories of their products, including captive circus animals.

To deal with this situation and certain other technical problems arising out of the Act, Interior, with concurrence from Commerce, recommended a series of amendments which form the basis for the provisions in S. 229.

As enacted, the enrolled bill would:

- exempt from restrictions on the sale in interstate or foreign commerce of endangered species and derivative products such sperm whale oil and scrimshaw, subject to certain procedural safeguards, as may have been held in inventory prior to December 28, 1973, the effective date of the Endangered Species Act;
- permit the interstate exchange of endangered species and their parts and products by museums and certain other cultural organizations without violation of the Act;
- provide for the disposition by the government of forfeited endangered species and their parts and products;

- provide the same authority to make arrests as was available under the original Endangered Species Act and certain other acts and which was apparently inadvertently omitted when the Act was revised in 1973;
- modify or clarify the applications of certain notice and hearing requirements fixed by the Act.

In its letter on the enrolled bill, Interior noted, with respect to the exemption for sperm whale oil and scrimshaw, as follows:

"The Department of the Interior recommended an exemption for endangered wildlife legally held at the time of enactment of the 1973 Act, not just whale parts and products. Tortoise, spotted cats and reptilian products exist in this country in commercial quantities, and the Fish and Wildlife Service has some indication of commercial stocks in other endangered species parts and products lawfully acquired prior to the 1973 Act. While this Department would prefer to have all individuals in possession of such items, regardless of the extent or volume of their holdings, treated in the same manner under exemptions to the 1973 Act, this Department favors the granting of exemptions for scrimshaw and sperm whale oil and does not object to this section of the bill."

James M. Frey
Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 7

Time: 615pm

FOR ACTION:

George Humphreys *GH*
 Max Friedersdorf *MF*
 Ken Lazarus *KL*
 CIEP *CI*
 Paul Leach

cc (for information):

Jack Marsh
 Jim Cavanaugh
 Ed Schmitts

FROM THE STAFF SECRETARY

DUE: Date: July 8

Time: 530pm

SUBJECT:

S. 229-Endangered Species Act amendments

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
 For the President



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 7 - 1976

Dear Mr. Lynn:

This responds to your request for our views on the enrolled bill S. 229, "To amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act."

We recommend that the President approve the enrolled bill.

S. 229 would exempt sperm whale oil and scrimshaw legally obtained prior to the enactment of the Endangered Species Act of 1973 from the prohibitions imposed by the Act on the sale of endangered species and their parts and products in interstate and foreign commerce. In addition, S. 229 provides for several minor amendments to the 1973 Act which are of a "housekeeping" nature.

This bill is basically in accord with the recommendations of the Administration and this Department as transmitted by the Department's legislative proposal to both the Senate and the House, proposing certain amendments to the Endangered Species Act. The following section by section analysis sets forth the specific provisions of the bill, noting which provisions are not in accord with our recommendations.

1. Section 1 of S. 229 waives the requirement that each State be allowed 90 days to submit its comments and recommendations on any regulations issued by the Secretary of the Interior or the Secretary of Commerce in regard to an emergency posing a significant risk to the well-being of any endangered or threatened species. The amendment leaves untouched the procedural safeguard that limits the force and effect of any such emergency regulations to 120 days. The Department of the Interior recommended this amendment and concurs with it.

2. Section 2 allows an exemption to the prohibitions contained in the 1973 Act for sperm whale oil and derivatives thereof and scrimshaw which were legally obtained and held in the United States prior to December 20, 1973, allowing them to be sold in interstate or foreign commerce. Regulations and procedures governing the sale of such items are contained in the legislation. The bill has no retroactive effect and does not exonerate anyone from being prosecuted for a violation of a provision of the 1973 Act if the violation occurred before the enactment of S. 229.



The Department of the Interior recommended an exemption for endangered wildlife legally held at the time of enactment of the 1973 Act, not just whale parts and products. Tortoise, spotted cats and reptilian products exist in this country in commercial quantities, and the Fish and Wildlife Service has some indication of commercial stocks in other endangered species parts and products lawfully acquired prior to the 1973 Act. While this Department would prefer to have all individuals in possession of such items, regardless of the extent or volume of their holdings, treated in the same manner under exemptions to the 1973 Act, this Department favors the granting of exemptions for scrimshaw and sperm whale oil and does not object to this section of the bill.

3. Section 3 of S. 229 clarifies the intent of the notice and review requirements to apply to all applications for an exemption or permit. The Department of the Interior recommended this amendment.

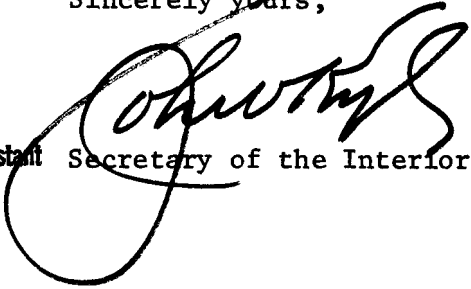
4. Section 4(1) permits duly authorized enforcement agents to make arrests without a warrant if the agent has reasonable grounds to believe that the person to be arrested is committing the violation in the agent's presence or view. This authority was in the Endangered Species Act of 1969, is found in all other wildlife legislation, and was in the bills which were the basis of the Act. It appears to have been inadvertently omitted in the drafting process and was an amendment recommended by the Department.

5. Section 4(2) authorizes the Secretary to dispose of endangered species parts or products which have been forfeited to and stored by the government. The Department recommended such a provision; however, S. 229 restricted it by prohibiting sale. We believe sale may be a valid means of disposal under certain circumstances and therefore oppose enactment of section 4(2). In no case would endangered species or their products be sold if the sale would lead to increased pressure on wild populations. The Secretary should have discretionary authority to sell, loan, transfer, donate, destroy or declare surplus as he deems proper items forfeited under this Act.

6. Section 5 excludes from the definition of "commercial activity" the exhibition of commodities by museums or smaller cultural or historical organizations. The effect of this amendment is to allow the interstate exchange of displays between such organizations without violating the Act. The Department of the Interior by administrative regulation on September 26, 1976, further defined the term "industry and trade" as it is used in the Act's definition of the term "commercial activity." The new Department of the Interior definition narrows the scope of those activities which are prohibited by the Act, that is, activities involve "the actual or intended transfer of wildlife or plants from one person to another in the pursuit of gain or profit." This definition is broader

than the amendment in the sense that it would probably permit other persons or institutions to make nonprofit transfers. However, the amendment was necessary because the Department of Commerce has not adopted the same definition as the Department of the Interior. In explaining the bill on the floor, Congressman Leggett stated that the amendment was not intended to limit the Department of the Interior's definition. This being the case, we have no objection to this amendment.

Sincerely yours,


Assistant Secretary of the Interior

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

2 JUL 1976



THE ASSISTANT SECRETARY OF COMMERCE
Washington, D.C. 20230

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning S. 229, an enrolled enactment

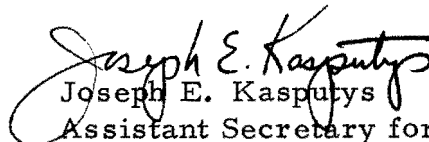
"To amend the Endangered Species act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act."

S. 229 amends the Endangered Species Act of 1973, so as to authorize the Secretary of Commerce to grant exemptions for a period of up to three years for the sale of "pre-Act endangered species parts", limited to scrimshaw and sperm whale oil and its derivatives. This authority will allow time for those holding such products to dispose of their present inventories. Sufficient safeguards are provided to prevent additional taking or trade in endangered species. The bill also includes language that preserves our ability to prosecute persons who violated the Act by trading in prohibited parts or products prior to the exemptions contained in S. 229.

This Department recommends approval by the President of S. 229.

It is anticipated that S. 229 could result in increased cost amounting to approximately \$150,000 and six people for fiscal year 1977. This same level of funding and people will be needed through fiscal years 1978 and 1979.

Sincerely,


Joseph E. Kasputys
Assistant Secretary for Administration

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

WASHINGTON, DC 20405



JUL 6 11 32 AM '76

July 1, 1976

OFFICE OF
MANAGEMENT AND BUDGET

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

By letter of June 30, 1976, you requested the views of the General Services Administration (GSA) on enrolled bill S. 229, "To amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act."

Section 2 of the bill provides in part that the contracts entered into by GSA with private companies for the disposal of approximately 23,400,000 pounds of sperm oil are valid notwithstanding the prohibition set forth under section 9(a)(1)(F) of the Act. GSA requested that language be placed in the bill to make clear the validity of such contracts and to assure that they will be performed by the parties as contemplated.

GSA supports enactment of the enrolled bill.

Sincerely,


JACK ECKERD
Administrator

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

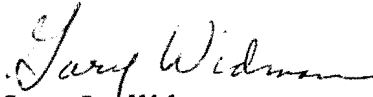
July 6, 1976

MEMORANDUM FOR JAMES M. FREY
ASSISTANT DIRECTOR FOR LEGISLATIVE REFERENCE
OFFICE OF MANAGEMENT AND BUDGET

ATT: MS. RAMSEY, RM. 7201 NEOB

SUBJECT: S. 229 - Enrolled, "To amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act."

The Council on Environmental Quality did not support this bill in its final form because of the difficulty of effective enforcement. However, because the bill contains some safeguards for preventing sale of illegally imported products, we do not object to the signing of this bill in its present form.


Gary L. Widman
General Counsel

Department of Justice
Washington, D. C. 20530

July 6, 1976

Honorable James T. Lynn
Director, Office of Management
& Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill, S. 229, "To amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act."

The first paragraph of S. 229 makes only a technical cross-reference amendment to 16 U.S.C. 1533(f)(2)(B)(ii). Section 2 of the bill provides authority to the Secretary of the Interior to exempt two classes of endangered species products, sperm whale oil and scrimshaw, from certain prohibitions of the Endangered Species Act, including criminal prosecution, and further specifies the procedure to be followed by persons seeking such exemptions. Section 3 of the bill authorizes the Secretary to waive the 30-day notice requirement in issuing permits in hardship exemption cases where an emergency situation threatens the health or life of an endangered animal. Section 4 corrects an apparent oversight in the Act by authorizing enforcement personnel to arrest without a warrant persons committing violations in their presence or view, and also provides the Secretary with authority to dispose of forfeited property. Section 5 exempts exhibition of commodities by museums and other similar cultural or historical organizations from the "commercial activity" definition contained in 16 U.S.C. 1532(1).

Sections 3 and 4 of the bill embody provisions we have previously reviewed with approval. We have no comment on Section 5 of the bill and defer any judgment to the Department of the Interior.

We believe Section 2 of the bill may be unconstitutional. That section makes exemptions to the Act available to two classes of products, sperm whale oil and finished scrimshaw product, that were lawfully held on the effective date of the Act. No justification or explanation for the favorable treatment afforded to these two classes appears from the face of the bill. We are informed by the Department of the Interior that the legislative history of this bill also does not, in Interior's opinion, provide a rational basis for such classification, nor explain why exemptions should not be afforded to all endangered species products if they are granted to any.

The Department of Justice defers to the Department of the Interior as to whether this bill should receive Executive approval.

Sincerely,

A handwritten signature in cursive script, reading "Michael M. Uhlmann". The signature is written in black ink and is positioned above the typed name and title.

MICHAEL M. UHLMANN
Assistant Attorney General

U. S. GOVERNMENT PRINTING OFFICE: 1969-330750

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 7

Time: 615pm

FOR ACTION:

George Humphreys
Max Friedersdorf
Ken Lazarus
CIEP
Paul Leach

cc (for information):

Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: July 8

Time: 530pm

SUBJECT:

S. 229-Endangered Species Act amendments

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*I recommend
approval -
Schultz*



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 7

Time: 615pm

FOR ACTION:

George Humphreys
Max Friedersdorf
Ken Lazarus
CIEP
Paul Leach

cc (for information):

Jack Marsh
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FROM THE STAFF SECRETARY

DUE: Date: July 8

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SUBJECT:

S. 229-Endangered Species Act amendments

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

No objection -- Ken Lazarus 7/8/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

July 8, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *mf*
SUBJECT: S. 229 - Endangered Species Act amendments

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed.

Attachments

THE WHITE HOUSE
WASHINGTON

7/8/76

TO: Bill Kendall/Charlie Leppert

FROM: Jane Greenleaf

Comments Please

BK - sign

CL - passed House by voice vote
recommend sign

RKW Sign

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 7 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 229 - Endangered Species Act
amendments
Sponsors - Sen. Kennedy (D) Massachusetts and
Sen. Brooke (R) Massachusetts

Last Day for Action

July 13, 1976 - Tuesday

Purpose

Amends the Endangered Species Act of 1973 to exempt legally obtained sperm whale oil and scrimshaw from existing prohibitions on their sale in interstate and foreign commerce.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of Commerce	Approval
General Services Administration	Approval
Council on Environmental Quality	No objection
Department of Justice	Defers to Interior

Discussion

Under the Endangered Species Act, as amended in 1973, the Secretaries of the Interior and Commerce are charged with the conservation, protection, restoration, and propagation

SCRIMSHAW ART PRESERVATION ACT OF 1975

APRIL 4, 1975.—Ordered to be printed

Filed under authority of the order of the Senate of March 26, 1975

Mr. MAGNUSON, from the Committee on Commerce,
submitted the following

REPORT

[To accompany S. 229]

The Committee on Commerce, to which was referred the bill (S. 229) to amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972, having considered the same, reports favorably thereon with a title amendment and an amendment in the nature of a substitute to the text of the bill and recommends that the bill as amended do pass.

PURPOSE

S. 229 is designed to preserve the art of scrimshaw, which originated during the nation's early years by New England whalers who etched designs in, and carved figures from whale bone and teeth as a means of passing the time during the long months spent away from home on whaling expeditions. As the nation grew and expanded westward, the popularity of scrimshaw grew as well, and today the art is practiced throughout the country, in areas such as the Pacific Northwest, the Southwest, Alaska and Hawaii. Today's artisans, in addition to practicing scrimshaw as it was originated in New England, have adapted the art and developed new innovations which reflect the heritage of other sections of the nation in addition to that of New England and which are not restricted to nautical motifs.

Due to the prohibitions of the Endangered Species Act of 1973, artisans are now prohibited from selling their finished scrimshaw products in interstate commerce. While other media, such as beef bone, could be legally utilized, most artisans have not had sufficient time to adapt their craft to other material. Thus, in order to assure the preservation of this art form, S. 229 permits the Secretary of Commerce, who administers the Endangered Species Act with respect to whales, to grant exemptions for a limited period of time for the sale

of finished scrimshaw products in interstate commerce. This legislation would permit scrimshanders sufficient time to both dispose of their present inventories and to adapt their art to a new medium, without encouraging an endless trade in products of endangered species.

BACKGROUND AND NEED

The Marine Mammal Protection Act, which was passed by the Congress on October 21, 1972, was designed to prevent the further slaughter and depletion of marine mammals throughout the world by removing the United States' market for the parts and products of these mammals. The Act prohibited the importation and sale in interstate and foreign commerce of such parts and products, although these prohibitions did not apply to marine mammals taken prior to December 21, 1972, the effective date of the Act.

In 1973 Congress passed the Endangered Species Act of 1973, which strengthened its 1969 predecessor by prohibiting not only the importation, but also the sale, of endangered species and their parts and products in interstate and foreign commerce. Unlike the Marine Mammal Act, however, the Endangered Species Act contains no retroactive exemptions for the interstate sale of parts and products of endangered marine mammals which were legally held under the 1972 Act. This inconsistency has resulted in a great deal of confusion in the enforcement of the laws and has created financial hardship for scrimshanders and other artisans who deal in carved whale bone and teeth. These individuals possess substantial inventories of legally acquired whale bone and teeth used in their craft but are prohibited from marketing their finished products under the 1973 Act. Since exemptions for the sale of these art objects cannot be granted administratively, legislation is needed to rectify the situation.

LEGISLATIVE HISTORY

During the 93d Congress, S. 3751 was introduced in the Senate on July 11, 1974 by Senator Edward M. Kennedy (D-Mass.) and Senator Edward R. Brooke (R-Mass.) and was referred to the Senate Commerce Committee on July 19. A revised bill, S. 4128 which was more limited in scope than S. 3751, was introduced by the same sponsors on October 10, 1974 and referred to the Senate Commerce Committee on October 19. No further action occurred with respect to either bill during the 93d Congress.

On January 17, 1975 Senators Kennedy and Brooke introduced S. 229, which was identical to S. 4128 of the 93d Congress. The bill was referred to the Senate Commerce Committee on January 17, 1975. After a comment period during which the public was asked to express its views on the bill, the Senate Commerce Committee reported an amendment to S. 229 in the form of a substitute bill. Following are the major new provisions in the amendment:

Delineation of Congressional Intent.—The amended version of S. 229 sets forth more clearly the intent of Congress in enacting the legislation—that is, to preserve the native American art of scrimshaw but not to promote or perpetuate the trade in products of endangered species. The Committee views this legislation as providing a transition period during which scrimshanders may sustain themselves through

the marketing of their finished products in interstate commerce, while at the same time adapt their art to other media which are legal for interstate sale.

Limited Exemption Period.—Under the amended version of the bill, the Secretary of Commerce may grant for two years after the effective date of the Act exemptions for the wholesale sale and shipment in interstate commerce of finished scrimshaw products and for a period of seven years after the effective date exemptions for retail sale for personal use of finished scrimshaw products. The designation of a time during which exemptions may be granted is preferable to the open ended provisions of the original bill which might have encouraged smuggling of endangered species in the future when a market for scrimshaw products would still exist, but legally acquired stocks would have been depleted.

Reporting Procedures.—The amendment reported by the Committee sets forth specific reporting procedures which must be met by any individual seeking such an exemption. Among those requirements are the submission to the Secretary of Commerce within 120 days of the effective date of the amendment of a complete and detailed inventory of all holdings of whale bone and teeth. The Secretary may grant exemptions only for holdings thus reported.

In addition, any individual applying for an exemption must submit to the Secretary all available sales records, reports and other documents to show that the holdings for which the exemption is being sought were legally acquired. While the bill itself contains no penalties for the submission of falsified records, it should be noted that federal law (18 USC 1001) prohibits the submission of falsified documents and data in any matter within the jurisdiction of any department or agency of the United States. Violation of such prohibition is punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

It should also be made clear that in order for stocks of whale teeth and bone to have been legally acquired prior to December 21, 1972, it is not enough that these materials were purchased prior to that date. Rather, they must have been imported prior to the date when the subject whale was placed on the Endangered Species List pursuant to the Endangered Species Act of 1969.

Special Task Force.—In order to guard against violations of the Act, particularly with respect to smuggling, that may be encouraged by the granting of exemptions under this amendment, the Secretaries of Commerce, Interior and Treasury are directed to create a special task force to provide an intensive enforcement effort with respect to whale bone and teeth. The efforts of this task force are to be concentrated in those areas of the country which are most likely to be susceptible to violations of the Act as a result of the exemptions granted.

The Committee expects this task force to constitute a genuine effort on the part of the agencies involved to seek out and punish violators of the Act.

In their formal comments on the bill, the Departments of Commerce and Interior have recommended broadening the scope of the exemptions authorized under the Act. The Committee has taken no position on the merits of these proposals, but it feels that any additional exemptions should first be closely examined in public hearings and that

it would be inappropriate to include them in these amendments, until a complete record has been developed showing that the same or similar narrow purposes would be served by further exemptions.

TEXT OF S. 229, AS REPORTED: To amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Scrimshaw Art Preservation Act of 1975".

SEC. 2. (a) The Congress finds and declares that—

(1) All forms of art and culture which reflect this Nation's heritage should be preserved, as the United States prepares for its bicentennial year.

(2) Scrimshaw is an art form which was developed during the Nation's early years by New England whalers and others; it has been practiced by skilled American craftsmen and artisans ever since.

(3) The perpetuation of this art of the culture and heritage of the United States is threatened by the prohibition enacted in 1973 against the marketing of whale bone and teeth.

(b) It is the purpose of the Congress in this Act to exempt scrimshaw and scrimshaw products from the prohibitions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 3. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended by (1) redesignating paragraphs "(10)" through "(16)" thereof as paragraphs "(11)" through "(17)" thereof; and (2) by inserting therein the following new paragraph:

"(10) The term 'scrimshaw' means an art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, the bones and teeth of marine mammals of the order Cetacea."

SEC. 4. Section 10(b) of the Endangered Species Act of 1973 (16 U.S.C. 1539(b)) is amended by adding at the end thereof the following two new paragraphs:

"(4) (A) The Secretary of Commerce may exempt persons from the prohibitions contained in subparagraphs (E) and (F) of section 9(a)(1) of this Act—

"(i) with respect to the wholesale movement or sale of finished scrimshaw products, if such products or the raw materials for such products were held lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than two years after the date of enactment of this provision; and

"(ii) with respect to the retail sale of finished scrimshaw products for personal use by the purchasers thereof, except that no such exemption shall be

granted or remain in effect more than seven years after the date of enactment of this provision.

Any such exemption may be granted by such Secretary upon such terms and conditions as he shall prescribe, including, but not limited to, requiring such persons to register inventories; to maintain complete sales records; to permit duly authorized agents of such Secretary to inspect any such inventories and records; and to prepare and submit to such Secretary any reports requested by him.

"(B) Any persons who seeks an exemption pursuant to any provision of subparagraph (A) of this paragraph shall—

"(i) submit to such Secretary, within 120 days after the date of enactment of this paragraph, a complete and detailed inventory, in such form and manner as such Secretary shall prescribe, of the quantity of bone and teeth of marine mammals of the order of Cetacea and of parts of and products from such bone and teeth, which are held or otherwise controlled by such person. The Secretary of Commerce shall grant an exemption pursuant to such subparagraph only for the holdings reported in such inventories;

"(ii) apply to such Secretary for such exemption, in such form and manner and with such submissions as such Secretary shall prescribe; and

"(iii) submit to such Secretary sales records, reports, and other documents and materials, to the extent necessary to establish that the holdings with respect to which an exemption is sought were acquired in accordance with subparagraph (A).

"(C) There shall be a rebuttable presumption, in any action brought under this Act for a violation of a provision of section 9(a) of this Act, that no exemption authorized by this paragraph is applicable. Any person who claims the benefit of any exemption granted pursuant to this paragraph shall have the burden of rebutting such presumption in such an action. Regulations promulgated by the Secretary of Commerce with respect to exemptions pursuant to this paragraph shall be in effect on the date of final publication, notwithstanding any other provision of this Act.

"(5) Within 120 days after the date of enactment of this paragraph, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of the Treasury shall establish an inter-agency task force to enforce the provisions of this Act applicable to the bone and teeth of marine mammals of the order Cetacea and parts of and products from such bone and teeth. This task force shall act in addition to, and not in lieu of, existing enforcement activities, and shall concentrate its activities in those regions and areas which are most susceptible to unlawful activity as a result of exemptions granted under

paragraph (4) of this subsection. The Secretaries of the Interior, Commerce, and the Treasury shall report jointly to the Congress and the President, within 12 months after the date of enactment of this paragraph, on the extent to which the provisions of this Act have been violated with respect to the bone and teeth of such mammals and with respect to the effectiveness of this task force in preventing such violations."

SECTION BY SECTION ANALYSIS

Section 2.

This section declares the findings of Congress in enacting the legislation, namely, that in preparation for the Nation's bicentennial, every effort should be made to preserve all forms of art and cultures which reflect the nation's heritage. Among those art forms to be preserved is scrimshaw.

Section 3.

This section defines the term "scrimshaw".

Section 4.

This section amends section 10(b) of the Endangered Species Act of 1973 by adding two new paragraphs (4) and (5) at the end thereof.

Subparagraph (4) (a) permits the Secretary of Commerce to grant, under such conditions as he may prescribe, exemptions to the Endangered Species Act of 1973 for the sale in interstate commerce of finished scrimshaw products. These exemptions may be granted for 2 years from the effective date of the bill for the wholesale sale and shipment of finished scrimshaw and for 7 years after the effective date for the retail sale for personal use of finished scrimshaw.

Subparagraph (B) sets down certain reporting requirements which must be met by any person seeking such an exemption.

Subparagraph (C) creates a rebuttable presumption that in connection with any action brought for violation of the Act, the exemption provided for in section 4 does not exist.

Paragraph (5) directs the Secretaries of Commerce, Interior, and Treasury to create a special task force for intensive enforcement of these amendments. The efforts of this task force are to be concentrated in those areas of the country which may be susceptible to violations of the Act as a result of the exemptions granted.

COST ESTIMATE

In accordance with Section 252 of the Legislative Reorganization Act of 1970, the committee estimates that there would be no significant additional cost to the Federal Government if the proposed legislation were enacted.

CHANGES IN EXISTING LAW

There would be no change in existing law if the legislation were enacted.

AGENCY COMMENTS

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 24, 1975.

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

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on S. 229, a bill "To amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972."

S. 229 would authorize the Secretary of Commerce to grant exemptions from the prohibitions of section 9(a)(1)(E) and (F) of the Endangered Species Act of 1973 to persons who lawfully held inventories of bone, teeth, or other parts or products of marine mammals of the order Cetacea prior to the effective date of the Marine Mammal Act of 1972. Exemptions thus granted would run with the article and apply to subsequent purchasers. In every action brought for a violation of the Endangered Species Act of 1973, there would be a rebuttable presumption that the exemption does not apply. Any person claiming the exemption in such a proceeding would have to bear the burden of establishing his right to it. The Secretary of Commerce could prescribe terms and conditions for the granting of an exemption, and any regulations published by the Secretary in connection with the exemption would be effective on the date of publication.

While we agree in principle with the proposed amendment, there are a number of other problem areas which have developed in the administration of the Act by this Department. We testified before the 93d Congress in regard to these. The Fish and Wildlife Service is currently studying the need for amendments to the Act, which would address these other problems. Since the Secretary of Commerce is responsible for administering the Endangered Species Act insofar as it relates to marine mammals of the order Cetacea, we defer to the views of the Commerce Department as to the need and availability of this particular bill.

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

Sincerely yours,

DOUGLAS P. WHEELER,
Acting Assistant Secretary of the Interior.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., March 20, 1975.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department with respect to S. 229, a bill to amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972.

S. 229 would amend Section 10(b) of the Endangered Species Act

of 1973 (87 Stat. 896; 16 U.S.C. 1539) by adding a new subsection (4) to exempt from the prohibited acts identified in clauses (E) and (F) of Section 9(a) (1) of the Act stocks or inventories of bone and teeth of marine mammals of the order Cetacea, including parts or products thereof, lawfully held within the United States on December 21, 1972.

The "grandfather clause", section 9(b) of the Endangered Species Act, now prohibits certain commercial activities with respect to endangered species held in the course of a commercial activity on the effective date of the Act. This prohibition has resulted in the inability of certain businesses to utilize existing endangered species or parts thereof legally held at the time the Act became effective.

The Department recognizes the injustice of the present situation with respect to those businesses affected and supports the intent of this legislation. However, we feel that S. 229 will only partially correct the problem by reason of its limited scope. We suggest that the bill be expanded to include all parts and products of marine mammals of the order Cetacea to alleviate the hardship caused various businesses which are unable to trade in interstate commerce any endangered species, or parts thereof, which were legally acquired and being held at the time the Act became effective. The objective of the Endangered Species Act is to prevent the taking of endangered species of fish and wildlife and to restrict trade that would lead to the killing of additional animals. The Department feels the amendment we are suggesting would insure both our commitment to the moratorium on taking additional animals and also our concern for the businessman.

We would like to have S. 229 amended further to ease the administrative burden of proving that the parts or products were acquired prior to the effective date of the Act. With regard to parts and products from those species under the jurisdiction of this Department, we believe that the ability of the Secretary to adequately enforce the Act as amended by S. 229 would be enhanced by modifying subsection 9(d)(2) to read as follows (brackets deleted; italic language added):

"(2) Any person required to obtain permission under paragraph (1) of this subsection *and any person who sells or offers for sale in interstate commerce any fish or wildlife listed pursuant to section 4 of this Act shall—*

"(A) keep such records as will fully and correctly disclose each portation or [exportation] *other acquisition* of fish, wildlife, or plants made by him and the subsequent *exportation, sale, or other* disposition made by him with respect to such fish, wildlife, or plants;

"(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of [imported] fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

"(C) file such reports as the Secretary may require."

We take no position with respect to any problems which this amendment may raise with respect to species under the jurisdiction of the Department of the Interior.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

General Counsel.

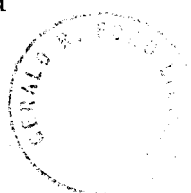
ENDANGERED SPECIES ACT AMENDMENTS

FEBRUARY 11, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 10229]



The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 10229) to amend the Endangered Species Act of 1973, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

That section 4(f)(2)(B)(ii) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)(2)(B)(ii)) is amended by striking out "subsection (b)(A), (B), and (C)" and inserting in lieu thereof "subsection (b)(1)(A)".

SEC. 2. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsections:

"(f)(1) As used in this subsection—

"(A) The term 'pre-Act endangered species part' means—

"(i) any sperm whale oil which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

"(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

"(B) The term 'scrimshaw product' means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

"(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

"(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

"(B) Any prohibition set forth in section 9(a)(1)(E) or (F) of this Act.

"(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

"(A) is received by the Secretary before the close of the one year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

"(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

"(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

"(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

"(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

"(A) any prohibition in section 9(a) of this Act which is exempted;

"(B) the pre-Act endangered species parts to which the exemption applies;

"(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the 3-year period beginning on the date of issuance of the certificate; and

"(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

"(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

"(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

"(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection.

to ensure that any such part so exempted is adequately accounted for and not disposed contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f) (2) (A) (i) of this Act.

"(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation."

SEC. 3. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is further amended—

(1) by striking out "subsection" in the first sentence of subsection (c) thereof and inserting in lieu thereof "section"; and

(2) by striking out the period at end of the second sentence of subsection (c) thereof and inserting in lieu thereof the following: "; except that such 30-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within 10 days following the issuance of the exemption or permit."

SEC. 4. Section 11(e) (3) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e) (3)) is amended—

(1) by inserting immediately before the words "execute and serve any arrest warrant," in the second sentence thereof the following: "make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may"; and

(2) by striking out the period at the end thereof and inserting in lieu thereof the following: ", but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe."

SEC. 5. Paragraph (1) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532(1)) is amended by striking the period and inserting in lieu thereof ", provided, however, that it does not include exhibition of commodities by museums or similar cultural or historical organizations."

Amend the title to read as follows:

A bill to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to improve management of the Endangered Species Act of 1973 and to allow for the limited disposal of pre-Act, legally-obtained endangered species parts and products.

More specifically, the bill makes a number of minor changes to clarify certain ambiguities, avoid lapses of coverage, and unnecessary administrative burdens, and to create greater consistency with other similar conservation legislation, the Marine Mammal Protection Act of 1972.

LEGISLATIVE BACKGROUND

The enactment of the Endangered Species Act of 1973, significantly strengthened the existing law to protect species which are endangered or becoming endangered. Further, it set strict prohibitions on the import and export and interstate sale of endangered species parts or products. The Act did not restrict the intrastate sales of endangered species parts and products.

During the implementation and administration of the Act, the Departments of Interior and Commerce have gained considerable experience and have recognized certain problems in working with statutory provisions.

Therefore, on October 1, 1975, the two Departments submitted by Executive Communication amendments to the Act to clarify and remedy the problem areas. These amendments were the general subject of discussion during oversight hearings which were held by the Subcommittee on Fisheries and Wildlife Conservation and the Environment on October 1, 2, and 6, 1975. Earlier, the Subcommittee had held hearings on several bills which amended the Act to provide for specific exemptions for pre-Act, legally obtained scrimshaw (H.R. 2057) and whale oil (H.R. 3456) from the prohibitions of the Act. These bills were held in abeyance until completion of the oversight hearings, at which time the discussion centered on whether specific or general exemption should be granted.

On October 20, 1975, the Administration amendments were introduced in the form of H.R. 10229. Inasmuch as the substance of the bill had been considered during five days of previous hearings, the Subcommittee considered the bill in open markup on November 6 and 7, whereafter it was reported to the Full Committee with amendments. The Full Committee held an open mark-up session on February 4, 1976, and ordered the bill reported with one additional amendment to the Subcommittee's amended version.

BACKGROUND AND NEED FOR THE LEGISLATION

In 1973 Congress passed the Endangered Species Act of 1973 which strengthened its 1969 predecessor by prohibiting not only the importation but also the sale of endangered species and their parts and products in interstate and foreign commerce. The Endangered Species Act,

however, contained no retroactive exemptions for the interstate sale of parts and products of endangered marine mammals which were legally held under the Marine Mammal Protection Act of 1972. As a result of this inconsistency between the two laws, a severe economic hardship was inflicted upon those individuals who were engaged in legitimate commercial activities and who were holding large inventories prior to the passage of the Act. Considerable testimony was presented to the Subcommittee during hearings which highlighted this problem with respect to scrimshaw and whale oil. Although the Committee felt that the commercial demand for endangered species should be eliminated and that the U.S. should take the lead by curtailing the demand of its citizens, at the same time the Committee felt that relief should be granted in these two instances.

In the case of scrimshaw, the Committee was concerned not only with the economic hardship caused by the Act but also with the preservation of the art of scrimshaw which was originated during the Nation's early years by New England whalers. These men etched designs in and carved figures from whale bone and teeth as a means of passing time during the long months spent away from home on whaling expeditions. As the Nation grew and expanded westward, the popularity of scrimshaw grew as well and today the artists practice throughout the country in New England and in areas such as the Pacific Northwest, the Southwest, Alaska and Hawaii. Today's artisans, in addition to practicing scrimshaw as it was originated in New England, have adapted the art and developed new innovations which reflect the heritage of other sections of the Nation and which are not restricted to nautical motifs.

Due to the prohibitions in the Endangered Species Act of 1973, many scrimshanders were forced to abandon their profession because the interstate market, which accounted for 85 to 95 percent of their sales, was now closed to them. Unable to dispose of their legally acquired stocks and unable to sell new scrimshaw except in intrastate commerce, these individuals turned to other professions. Although other media such as beef bone could be legally utilized, most artisans have not had sufficient time to adapt their craft to other materials. Thus, to permit these individuals to dispose of their legally acquired stocks and to assure the preservation of the art of scrimshaw, the Committee has established a special exemption from the Endangered Species Act for scrimshaw.

In respect to sperm whale oil, the legislation would permit the General Services Administration (GSA) to dispose of its stockpile of 14,739,520 pounds. This oil, which is derived from the endangered sperm whale and which is used primarily as a lubricant, was acquired between January, 1948, and June 1952, pursuant to the Strategic and Critical Materials Stockpiling Act. However, in late 1972 the Interdepartmental Materials Advisory Committee determined that sufficient substitutes existed for sperm oil and that it should not be considered a strategic material. This decision was concurred in by the Department of Defense.

At the time the stockpile was declared surplus to the Nation's needs, GSA had 23,400,000 pounds of oil in storage. Although some 8.7 million pounds have been disposed of, the prohibitions contained in the

Endangered Species Act have prevented GSA from contracting for further sale of the remainder.

The annual cost of storing this material is \$38,568 per year and the total cost of storage since the oil was declared surplus has been \$77,136. It is expected that the Government would realize a profit of approximately \$2.7 million from the sale of the sperm whale oil. To eliminate this burden on the taxpayers and to permit persons who are now holding legally acquired stocks of sperm oil to dispose of that oil, the Committee in H.R. 10229 has provided a special exemption for the sale of this oil.

The additional sections of the bill were considered to be "housekeeping" changes required for effective management of the endangered species program.

SECTION-BY-SECTION ANALYSIS

Section 1 amends section 4(f)(2)(B)(ii) of the Act to waive the requirement that each state be allowed 90 days to submit its comments and recommendations on any regulations issued by the Secretary of the Interior or the Secretary of Commerce in regard to an emergency posing a significant risk to the well-being of any endangered or threatened species. As presently written, the Endangered Species Act mandates this 90-day delay before the emergency regulations may become effective. It seemed to the Committee that a 90-day comment period was incongruous with the need for prompt action in emergency situations. It should be noted, however, that the Committee left untouched that section of the Act which limits the duration of the emergency regulations to 120 days.

Section 2 amends the Endangered Species Act by adding new subsections (f) and (g) at the end of section 10. The new subsection (f) establishes a mechanism for granting exemptions under the Act for certain pre-act endangered species parts.

Subsection (f)(1)(A) defines for the purposes of this subsection the term "pre-act endangered species part" to mean 1) any sperm whale oil which was lawfully held in the United States on December 20, 1973, the effective date of the Endangered Species Act; and 2) any finished scrimshaw product or the raw material for such product, if such product or the raw material was lawfully held in the United States on December 20, 1973.

Subsection (f)(1)(B) further defines scrimshaw product to mean any art form which involves the etching or designs upon or the carving of figures, patterns, or designs from any bone or tooth from any mammal from the order Cetacea.

Subsection (f)(2) authorizing the Secretary of Commerce, who pursuant to the Act has management responsibility for scrimshaw and sperm whale oil, to grant an exemption for the exportation from the United States and for the interstate sale of legally-held scrimshaw and sperm whale oil.

Subsection (f)(3) directs that any person seeking an exemption shall apply to the Secretary, however, no such application may be considered unless the application is received within one year, contains a complete and detailed inventory of all pre-act endangered species

parts for which the applicant seeks an exemption, is accompanied by appropriate documentation to prove that the parts were legally held on December 20, 1973, and contains such other information as the Secretary may require.

Subsection (f) (4) requires that any certificate of exemption issued by the Secretary shall specify the specific actions authorized by the permit, the parts and products to which the exemption applies, and the duration of the permit provided; however, that no permit may remain in effect for more than three years after issuance and any term or condition promulgated pursuant to section (f) (5) as the Secretary deems appropriate.

Subsection (f) (5) authorizes the Secretary to prescribe such regulations as he deems appropriate. Such regulations may set forth requirements that applicants register inventories, keep complete sales records, permit the inspection of such inventories and records, and file periodic reports with the Secretary. The Secretary may also impose conditions on any subsequent purchasers of any pre-act endangered species part covered by an exemption to insure that any such part is not disposed of contrary to the provisions of the Endangered Species Act.

Subsection (g), also added by section 2, provided for an affirmative defense where a prima facie violation of the Act is established whereby the holder must show that the permit or exemption is applicable, has been granted, and is valid and in force. A similar provision is found in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USC 855(b)) and the Act Prohibiting Foreign Fishing Vessels in the Territorial Waters of the United States (Bartlett Act) (16 USC 1082), and has been upheld in the Federal Court of Appeals.

Section 3(1) amends section 10(c) of the Endangered Species Act to clarify that notice of review of permit applications applies to the entire section 10 and not just subsection (c).

Section 3(2) makes a technical change in the Act by adding a new sentence to section 10(c) which provides that the 30-day comment period which must precede the issuance of any permit or exemption under the Act may be waived in an emergency situation where the health or life of an endangered animal was threatened and where no reasonable alternative is available to the applicant.

While the 30-day comment period has caused a lengthening of the time required to issue permits, it has apparently been generally accepted. However, there have been occasions during the past year where the health or life of an animal on the endangered species list has been threatened because of the lack of ability to waive the strict 30-day notice requirement.

The emergency waiver would not be available for the convenience of the applicant, or even to avoid serious economic loss to the applicant. It would be available only to protect the health or life of the endangered animal itself. The applicant would have to make a showing that no reasonable alternative was available. It should be noted, however, that an alternative would be considered reasonable even if it involved substantial economic loss to the applicant.

Section 4(1) amends section 11(e) (3) of the Act to permit duly authorized enforcement agents to make arrests without a warrant if the agent has reasonable grounds to believe that the person can be

arrested for committing a violation in his presence or review. This authority was in the Endangered Species Conservation Act of 1969, is found in all other wildlife legislation, and was in the bills which were the basis of this Act. It appears to have been inadvertently omitted in the drafting process. It is a traditional law enforcement authority, and is necessary in the proper enforcement of this Act with its broad scope of prohibitions.

Section 4(2) further amends section 11(e) (3) of the Act to authorize the disposal other than by general sale to the public of any endangered species, parts, or products which have been forfeited to and stored by the government, thus sparing the taxpayers another unnecessary storage cost. Without these amendments the government lacks the authority to dispose of the forfeited items. The legislation makes it clear, however, that these items may not be disposed of by sale to the general public, thereby reducing the enforcement burden upon the Departments of Commerce and Interior and reducing the likelihood of the introduction of smuggled products into this Nation.

Finally, Section 5 would exclude from the definition of "commercial activity" in section 3 of the Act the exhibition of commodities by museums or smaller cultural or historical organizations. The effect of this amendment is to allow the interstate exchange of displays between such organizations without violating the Act.

COST OF THE LEGISLATION

The Committee estimates that no additional costs would be incurred in carrying out H.R. 10229, as amended, in the current fiscal year or in any of the years following this fiscal year.

COMPLIANCE WITH HOUSE RULE XI

(1) With respect to the requirements of cause 2(1) (3) (A) of Rule XI, of the Rules of the House of Representatives, three days of oversight hearings were held on the subject matter of this legislation in October 1975. Some 34 witnesses were heard by the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

(2) With respect to the requirements of clauses 2(1) (3) (B) and (C), of Rule XI of the Rules, the bill does not provide new budget authority or increased tax expenditures, and it has received no estimate and comparison prepared by the Director of the Congressional Budget Office. Consequently, no such information is supplied to meet these requirements.

(3) With respect to the requirements of clause (2) (1) (3) (D), of Rule XI of the Rules, the Committee has received no report from the Committee on Government Operations on this subject.

(4) The Committee reports that enactment of H.R. 10229, as amended, would have no inflationary impact on prices and costs in the operation of the national economy.

DEPARTMENT REPORTS

The Department of the Interior transmitted to the Congress, as Executive Communication No. 1815, draft legislation which became

H.R. 10229 when introduced. This Executive Communication along with reports received from the Departments of the Interior, Commerce and State follow herewith:

[Ex. Comm. No. 1815]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 30, 1975.

HON. CARL B. ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Transmitted herewith are the Department of the Interior's proposed amendments to the Endangered Species Act of 1973 (P.L. 93-205; 87 Stat. 884).

We recommend that this proposal be referred to the appropriate Committee and that it be enacted.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior (and the Secretary of Commerce) to prevent the extinction of plants and animals. That authority included a broader responsibility to list species that are subject to provisions of the Act and also strengthen the Secretary's ability to protect and manage listed species.

The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystem species that are endangered with extinction or threatened with endangerment. Wherever possible the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is intended to prevent other species from becoming endangered or threatened.

Since enactment of the 1973 Endangered Species Act, we have become aware of a number of problems; certain provisions need clarification or modification to expedite management and to insure equity to those individuals impacted by the Act.

Enclosure: The draft bill is now H.R. 10229 as introduced.

Of great concern to the Department of the Interior is the situation where individuals legally possessed, prior to enactment of the 1973 Act, parts or products of endangered species for the purpose of sale or for other activities of a commercial nature. A similar situation exists with respect to live animals. For example, prior to enactment of the 1973 Endangered Species Act, zoos and circuses and various other types of live animal dealers regularly engaged in the sale and interstate transport of surplus or unneeded animals which were Federally listed as endangered. The Endangered Species Act of 1969 did not prohibit such commercial activity, but prohibited only the importation of species listed as endangered. With passage of the 1973 Act, such commercial activity was prohibited.

This Department fully supported this prohibition so as to reduce the demand for certain animals whose continued existence was, and is, in jeopardy. However, we recognize that such a prohibition has also caused economic hardship on many individuals who were engaged in legitimate commercial activities prior to passage of the 1973 Act.

It is our judgment that the commercial demand for endangered animals should be reduced, and the United States should take the lead by reducing the demand of its citizens. However, we believe that a gradual reduction of this demand would create less severe economic hardship for many legitimate commercial enterprises.

The amendments proposed in subsection (b) of the proposed legislation would resolve the problems with respect to live animals and their parts or products of endangered species. The remaining proposed amendments would: (1) eliminate the 90 day comment period in issuance of emergency regulations. Such regulations cease to be in effect after 120 days unless the standard regulatory procedure is applied. As provided for in the current law, such regulations may be promulgated only in the case of an "emergency posing a significant risk to the well being of any species of fish or wildlife" and only if the Secretary publishes in the Federal Register the "detailed reasons why such regulation is necessary;" (2) clarify that notice of review of permit applications applies to the entire section 10, not just subsection (c); (3) waive the 30 day notice requirement in issuance of a permit where the health or life of an animal on the endangered species list is threatened; (4) authorize law enforcement personnel to arrest, without a warrant, persons committing violations in their presence or view; and (5) provide the Secretary with authority to dispose of forfeited property.

We urge enactment of this proposed legislation in order to assure the efficient administration of the Endangered Species Act of 1973.

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

Sincerely yours,

NATHANIEL P. REED,
Assistant Secretary of the Interior.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., November 18, 1975.

HON. ROBERT L. LEGGETT,
*Chairman, Fisheries and Wildlife Conservation and the Environment
Subcommittee, Merchant Marine and Fisheries Committee, House
of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to the urgent request of Subcommittee counsel for the views of the Department of Commerce on the Subcommittee amendments to H.R. 10229, a bill "To amend the Endangered Species Act of 1973."

H.R. 10229 is an Administration bill that was developed jointly by the Department of Commerce and the Department of the Interior. While H.R. 10229 and the amendment each aim to improve management and promote equitable treatment for certain individuals affected by the Endangered Species Act, the relief provided in the amended version is unduly circumscribed. For that reason, we recommend adoption of the original bill.

The Subcommittee amendment would require submission of applications for exemptions within a year after regulations are promulgated

to put the amendments into effect. In addition, the exemptions granted under the amended bill would expire three years after the granting of an exemption. H.R. 10229 as introduced contains no such restrictions but would provide the Secretary discretion to limit the life of any exemption as appropriate. An arbitrary statute limitation may lead to inequitable administration. Furthermore, the amendment appears to contemplate the filing of applications for exemptions and the granting of certificates of exemption on a case-by-case basis. Such a process will undoubtedly increase the costs of administration and involve processing delays. Accordingly, we recommend adoption of the exemption procedures contemplated in H.R. 10229 as introduced. They are both fair and easy to administer.

The exemption granted by H.R. 10229 would apply to all parts and products of endangered species lawfully held in stock within the United States on December 28, 1973. The amendment would restrict the exemption to sperm whale oil (which includes spermaceti) and scrimshaw lawfully held within the United States on December 28, 1973, thereby removing the availability of the exemption from persons holding parts or products of endangered species other than those specified. The benefits of the exemption would be available to scrimshanders holding stocks or carved scrimshaw, but scrimshanders could not purchase raw materials for carving from suppliers having stock on hand. Indeed, the wording of the provision casts doubt on the ability of scrimshanders to carve and sell ivory that was in their possession as uncarved stock on December 28, 1973. We urge that the provision be expanded to encompass the exemptions included in H.R. 10229 as originally introduced.

The provision found in the original bill creating a rebuttable presumption that items were not lawfully held within the United States on the effective date of the Endangered Species Act is replaced in the amendment by a provision that any person claiming the benefit of an exemption would have the burden of proving its applicability, existence, and validity. We understand that the intent of both provisions is similar and is designed to ensure that in order to prove an offense under the Act, the Government is not required to prove that no exemption applies and that no permit was granted under the Act.

We note that the parenthetical phrase added to § 11(e)(3) of the Act by the amendment permits disposition of forfeited or abandoned property by the Secretary in a manner consistent with the purposes of the Act but specifically precludes sale to the general public. We believe the discretion of the Secretary is sufficiently circumscribed by requiring disposition consistent with the purposes of the Act, and we find no reason for precluding public sale by statute.

Finally, we note what we believe may be an oversight in the final line of page 5 of the amendment which refers to "section 4(f)(2)(A)(i)." We believe that the reference should be more appropriately "section 4(f)(2)(A)." Such a change would make the amendment consistent with the change of the word "subsection" in section 10(c) of the Act to "section."

The remaining provisions of the amendments are either identical to or closely parallel those contained in H.R. 10229.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

ROBERT B. ELLERT,
Acting General Counsel.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 18, 1975.

HON. LEONOR K. SULLIVAN,
Chairman, Merchant Marine and Fisheries Committee, House of Representatives, Washington, D.C.

DEAR MRS. SULLIVAN: This is in response to your request for our views on H.R. 10229 as reported with amendments by the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

We oppose enactment of section 2 as amended to exempt from certain prohibited acts of the 1973 Endangered Species Act sperm whale oil and scrimshaw lawfully held in the course of a commercial activity prior to December 28, 1973.

We see no justifiable reason for providing an exemption for certain whale parts or products and not for other whale parts or products such as ambergris. Further, we see no justifiable reason for singling out dealers in whale oil and scrimshaw from dealers in other endangered animals or their parts or products likewise impacted by the 1973 Endangered Species Act.

There are individuals who legally possessed, prior to enactment of the 1973 Act, live endangered species and parts or products of endangered species for the purpose of sale or for other activities of a commercial nature. The Endangered Species Act of 1969 prohibited only the importation of species listed as endangered. Sale, interstate transport, export and other activities of a commercial nature were not prohibited. With passage of the 1973 Act such activity became illegal.

Tortoise, spotted cat and reptilian products exist in this country in commercial quantities, and we have some indication of commercial stocks in other endangered species parts or products lawfully acquired prior to the 1973 Act. Regardless of the extent or volume, the individuals in possession of such items should have the same opportunities as those in possession of scrimshaw or whale oil. Indeed, we question the constitutionality of the Subcommittee's amendment discriminating between two different classes of people essentially in the same situation without some rationale for the distinction.

We urge reconsideration of this action by the full Committee. The amendments proposed by the Administration and introduced by you and Congressman Zeferetti on October 20, 1975, would provide equitable treatment to all individuals lawfully possessing for commercial purposes pre-Act live endangered species or parts or products of such species.

We have no objections to the enactment of sections 1, 3 and 4 of the Subcommittee's reported bill. We note that the provisions contained in

these sections are either similar or identical to sections (a), (c) and (d) of H.R. 10229 as introduced.

We hope these comments will be of value to you in consideration of this legislation by the full committee.

Sincerely yours,

DOUGLAS P. WHEELER,
*Deputy Assistant Secretary
for Fish and Wildlife Parks.*

DEPARTMENT OF STATE,
Washington, D.C., January 30, 1976.

HON. LEONOR K. SULLIVAN,
*Chairman, Committee on Merchant Marine and Fisheries, House of
Representatives, Washington, D.C.*

DEAR MADAM CHAIRMAN: This is in response to your communication of October 23, 1975, regarding the views of the Department of State on H.R. 10229, a bill "to amend the Endangered Species Act of 1973." H.R. 10229 would permit certain waivers of the provisions of the Endangered Species Act with regard to endangered species or their parts of products lawfully held on December 28, 1973, provided that such waivers are consistent with U.S. obligations under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (The Convention).

We understand that H.R. 10229 is not intended to alter or supersede any international legal obligations arising under the Convention. In this regard, we note the provisos in proposed subparagraphs 10(b) (4) and (5) that any exemptions granted pursuant to these provisions "shall not violate the Convention." Thus, a transaction otherwise eligible for an exemption under subparagraph 4 or 5 would not be so eligible if it was otherwise prohibited by the Convention. In such a case, if an exemption under Article VII of the Convention was not obtainable, then the provisions of the Convention regulating trade in specimens of that species would govern.

Other aspects of this legislation relate essentially to domestic matters which are outside the responsibilities of this Department. Accordingly, we defer to the views of other interested agencies regarding the desirability of its adoption.

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

Sincerely,

ROBERT J. McCLOSKEY,
Assistant Secretary for Congressional Relations.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be

omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ENDANGERED SPECIES ACT OF 1973

(87 Stat. 884; Public Law 93-205)

* * * * *
SEC. 3. For the purposes of this Act—
(1) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling[.]; *provided, however, that it does not include exhibition of commodities by museums or similar cultural or historical organizations.*

* * * * *
SEC. 4. (a) GENERAL.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

* * * * *
(f) REGULATIONS.—* * *

(2) (B) Neither subparagraph (A) of this paragraph nor section 553 of title 5, United States Code, shall apply in the case of any of the following regulations and any such regulation shall, at the discretion of the Secretary, take effect immediately upon publication of the regulation in the Federal Register:

* * * * *
(ii) Any regulation (including any regulation implementing section 6 (g) (2) (B) (ii) of this Act) issued by the Secretary in regard to any emergency posing a significant risk to the wellbeing of any species of fish or wildlife, but only if (I) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary, and (II) in the case such regulation applies to resident species of fish and wildlife, the requirements of [subsection (b) (A), (B), and (C)] *subsection (b) (1) (A)* of this section have been complied with. Any regulation promulgated under the authority of this clause (ii) shall cease to have force and effect at the close of the 120-day period following the date of publication unless, during such 120-day period, the rulemaking procedures which would apply to such regulation without regard to this subparagraph are complied with.

* * * * *
SEC. 10 * * *

(c) NOTICE AND REVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this [subsection.] *section*. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application[.]; *except that such 30-day period may be waived by the Secretary in an emergency situation where the health or life of an*

endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within 10 days following the issuance of the exemption or permit. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

* * * * *

SEC. 10. (e) * * *

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f) (1) As used in this subsection—

(A) The term "pre-Act endangered species part" means—

(i) any sperm whale oil which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 8(a)(1)(E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the 3-year period beginning on the date of issuance of the certificate; and

(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to ensure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

SEC. 11. (e) * * *

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be

arrested is committing the violation in his presence or view, and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act[.], but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

* * * * *



Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(f)(2)(B)(ii) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)(2)(B)(ii)) is amended by striking out "subsection (b) (A), (B), and (C)" and inserting in lieu thereof subsection (b) (1)(A)".

SEC. 2. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsections:

"(f) (1) As used in this subsection—

"(A) The term 'pre-Act endangered species part' means—

"(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

"(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

"(B) The term 'scrimshaw product' means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

"(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

"(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

"(B) Any prohibition set forth in section 9(a)(1)(E) or (F) of this Act.

"(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

"(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

"(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

"(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

"(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

REMOVED PAGE

“(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

“(A) any prohibition in section 9(a) of this Act which is exempted;

“(B) the pre-Act endangered species parts to which the exemption applies;

“(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate; and

“(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

“(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

“(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

“(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f) (2) (A) (i) of this Act.

“(6) (A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a) (1) (F).

“(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

“(7) Nothing in this subsection shall be construed to—

“(A) exonerate any person from any act committed in violation of paragraphs (1) (A), (1) (E), or (1) (F) of section 9(a) prior to the date of enactment of this subsection; or

“(B) immunize any person from prosecution for any such act.

“(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.”

SEC. 3. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is further amended—

(1) by striking out “subsection” in the first sentence of subsection (c) thereof and inserting in lieu thereof “section”; and

(2) by striking out the period at the end of the second sentence of subsection (c) thereof and inserting in lieu thereof the following: “; except that such thirty-day period may be waived by

the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit.”

SEC. 4. Section 11(e) (3) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e) (3)) is amended—

(1) by inserting immediately before the words “execute and serve any arrest warrant,” in the second sentence thereof the following: “make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may”; and

(2) by striking out the period at the end thereof and inserting in lieu thereof the following: “, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.”

SEC. 5. Paragraph (1) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532(1)) is amended by striking the period and inserting in lieu thereof “: *Provided, however,* That it does not include exhibition of commodities by museums or similar cultural or historical organizations.”

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*