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Ocean Dumping—A National Policy

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foreword

For your convenience, we have assembled the President's 1973 State of the Union Message on Natural Resources and the Environment and specific information on the legislative and other initiatives that it contains. As in *The President's 1972 Environmental Program*, we have included proposed legislation together with the letters of transmittal to the Congress and analyses of the bill. We have also included a brief description of other initiatives that do not require legislation or for which legislation is being prepared. We hope that these materials will be helpful to you in more fully understanding the problems of our environment and the President's proposals for their solution. Active participation by informed citizens is essential to the establishment of the laws and programs that are necessary to protect the environment.

We wish to thank the Department of the Interior and the Environmental Protection Agency for assisting us in the publication of this book.

Russell E. Train, *Chairman*
John A. Busterud
Beatrice E. Willard

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I
the president's state of the union message on natural resources and the environment

February 15, 1973

NATURAL RESOURCES AND THE ENVIRONMENT

Second in a Series of Presidential Messages to the Congress on the State of the Union. February 15, 1973

To the Congress of the United States:

With the opening of a new Congress and the beginning of a new Presidential term come fresh opportunities for achievement in America. To help us consider more adequately the very special challenges of this new year, I am presenting my 1973 State of the Union Message in a number of sections.

Two weeks ago I sent the first of those sections to the Congress—an overview reporting that "the basic state of our Union today is sound, and full of promise."

Today I wish to report to the Congress on the state of our natural resources and environment. It is appropriate that this topic be first of our substantive policy discussions in the State of the Union presentation, since nowhere in our national affairs do we have more gratifying progress—nor more urgent, remaining problems.

There was a time when Americans took our natural resources largely for granted. For example, President Lincoln observed in his State of the Union message for 1862 that "A nation may be said to consist of its territory, its people, and its laws. The territory is the only part which is of certain durability."

In recent years, however, we have come to realize that our "territory"—that is, our land, air, water, minerals, and the like—is not of "certain durability" after all. We have learned that these natural resources are fragile and finite, and that many have been seriously damaged or despoiled.

When we came to office in 1969, we tackled this problem with all the power at our command. Now there is encouraging evidence that the United States has moved away from the environmental crisis that could have been and toward a new era of restoration and renewal. Today, in 1973, I can report to the Congress that we are well on the way to winning the war against environmental degradation—well on the way to making our peace with nature.

Years of Progress

While I am disappointed that the 92nd Congress failed to act upon 19 of my key natural resources and environment proposals, I am pleased to have signed many of the proposals I supported into law during the past four years. They have included air quality legislation, strengthened water quality and pesticide control legislation, new authorities to control noise and ocean dumping, regulations to prevent oil and other spills

in our ports and waterways, and legislation establishing major national recreation areas at America's Atlantic and Pacific gateways, New York and San Francisco.

On the organizational front, the National Environmental Policy Act of 1969 has reformed programs and decision-making processes in our Federal agencies and has given citizens a greater opportunity to contribute as decisions are made. In 1970 I appointed the first Council on Environmental Quality—a group which has provided active leadership in environmental policies. In the same year, I established the Environmental Protection Agency and the National Oceanic and Atmospheric Administration to provide more coordinated and vigorous environmental management. Our natural resource programs still need to be consolidated, however, and I will again submit legislation to the Congress to meet this need.

The results of these efforts are tangible and measurable. Day by day, our air is getting cleaner; in virtually every one of our major cities the levels of air pollution are declining. Month by month, our water pollution problems are also being conquered, our noise and pesticide problems are coming under control, our parklands and protected wilderness areas are increasing.

Year by year, our commitment of public funds for environmental programs continues to grow; it has increased four-fold in the last four years. In the area of water quality alone, it has grown fifteen-fold. In fact, we are now buying new facilities nearly as fast as the construction industry can build them. Spending still more money would not buy us more pollution control facilities but only more expensive ones.

In addition to what Government is doing in the battle against pollution, our private industries are assuming a steadily growing share of responsibility in this field. Last year industrial spending for pollution control jumped by 50 percent, and this year it could reach as much as $5 billion.

All nations, regardless of their economic systems, share to some extent in the environmental problem—but with vigorous United States leadership, joint efforts to solve this global problem are showing results. The United Nations has adopted the American proposal for a special U.N. environmental fund to coordinate and support international environmental programs.

Some 92 nations have concluded an international convention to control the ocean dumping of wastes. An agreement is now being forged in the Intergovernmental Maritime Consultative Organization to end the intentional discharge of oil from ships into the ocean. This objective, first recommended by my Administration, was adopted by the NATO Committee on the Challenges of Modern Society.

Representatives of almost 70 countries are meeting in Washington this week at our initiative to draft a treaty to protect endangered species of plant and animal wildlife. The U.S.-USSR environmental cooperation

agreement which I signed in Moscow last year makes two of the world's greatest industrial powers allies against pollution. Another agreement which we concluded last year with Canada will help to clean up the Great Lakes.

Domestically, we can also be proud of the steady progress being made in improving the quality of life in rural and agricultural America. We are beginning to break away from the old, rigid system of controls which eroded the farmer's freedom through Government intrusion in the marketplace. The new flexibility permitted by the Agricultural Act of 1970 has enabled us to help expand farm markets and take advantage of the opportunity to increase exports by almost 60 percent in just three years. Net farm income is at an all-time high, up from $16.1 billion in 1971 to $19 billion in 1972.

Principles To Guide Us

A record is not something to stand on; it is something to build on. And in this field of natural resources and the environment, we intend to build diligently and well.

As we strive to transform our concern into action, our efforts will be guided by five basic principles:

The first principle is that we must strike a balance so that the protection of our irreplaceable heritage becomes as important as its use. The price of economic growth need not and will not be deterioration in the quality of our lives and our surroundings.

Second, because there are no local or State boundaries to the problems of our environment, the Federal Government must play an active, positive role. We can and will set standards and exercise leadership. We are providing necessary funding support. And we will provide encouragement and incentive for others to help with the job. But Washington must not displace State and local initiative, and we shall expect the State and local governments—along with the private sector—to play the central role in making the difficult, particular decisions which lie ahead.

Third, the costs of pollution should be more fully met in the free marketplace, not in the Federal budget. For example, the price of pollution control devices for automobiles should be borne by the owner and the user and not by the general taxpayer. The costs of eliminating pollution should be reflected in the costs of goods and services.

Fourth, we must realize that each individual must take the responsibility for looking after his own home and workplace. These daily surroundings are the environment where most Americans spend most of their time. They reflect people's pride in themselves and their consideration for their communities. A person's backyard is not the domain of the Federal Government.

Finally, we must remain confident that America's technological and economic ingenuity will be equal to our environmental challenges. We will not look upon these challenges as insurmountable obstacles.

Instead, we shall convert the so-called crisis of the environment into an opportunity for unprecedented progress.

Controlling Pollution

We have made great progress in developing the laws and institutions to clean up pollution. We now have formidable new tools to protect against air, water and noise pollution and the special problem of pesticides. But to protect ourselves fully from harmful contaminants, we must still close several gaps in governmental authority.

I was keenly disappointed when the last Congress failed to take action on many of my legislative requests related to our natural resources and environment. In the coming weeks I shall once again send these urgently needed proposals to the Congress so that the unfinished environmental business of the 92nd Congress can become the environmental achievements of the 93rd.

Among these 19 proposals are eight whose passage would give us much greater control over the sources of pollution:

—*Toxic Substances.* Many new chemicals can pose hazards to humans and the environment and are not well regulated. Authority is now needed to provide adequate testing standards for chemical substances and to restrict or prevent their distribution if testing confirms a hazard.

—*Hazardous Wastes.* Land disposal of hazardous wastes has always been widely practiced but is now becoming more prevalent because of strict air and water pollution control programs. The disposal of the extremely hazardous wastes which endanger the health of humans and other organisms is a problem requiring direct Federal regulation. For other hazardous wastes, Federal standards should be established with guidelines for State regulatory programs to carry them out.

—*Safe Drinking Water.* Federal action is also needed to stimulate greater State and local action to ensure high standards for our drinking water. We should establish national drinking water standards, with primary enforcement and monitoring powers retained by the State and local agencies, as well as a Federal requirement that suppliers notify their customers of the quality of their water.

—*Sulfur Oxides Emissions Charge.* We now have national standards to help curtail sulfur emitted into the atmosphere from combustion, refining, smelting and other processes, but sulfur oxides continue to be among our most harmful air pollutants. For that reason, I favor legislation which would allow the Federal Government to impose a special financial charge on those who produce sulfur oxide emissions. This legislation would also help to ensure that low-sulfur fuels are allocated to areas where they are most urgently needed to protect the public health.

—*Sediment Control.* Sediment from soil erosion and runoff continues to be a pervasive pollutant of our waters. Legislation is needed to ensure that the States make the control of sediment from new construction a vital part of their water quality programs.

—*Controlling Environmental Impacts of Transportation.* As we have learned in recent years, we urgently need a mass transportation system not only to relieve urban congestion but also to reduce the concentrations of pollution that are too often the result of our present methods of transportation. Thus I will continue to place high priority upon my request to permit use of the Highway Trust Fund for mass transit purposes and to help State and local governments achieve air quality, conserve energy, and meet other environmental objectives.

—*United Nations Environmental Fund.* Last year the United Nations adopted my proposal to establish a fund to coordinate and support international environmental programs. My 1974 budget includes a request for $10 million as our initial contribution toward the Fund's five-year goal of $100 million, and I recommend authorizing legislation for this purpose.

—*Ocean Dumping Convention.* Along with 91 other nations, the United States recently concluded an international convention calling for regulation of ocean dumping. I am most anxious to obtain the advice and consent of the Senate for this convention as soon as possible. Congressional action is also needed on several other international conventions and amendments to control oil pollution from ships in the oceans.

Managing The Land

As we readily bring our pollution problems under control, more effective and sensible use of our land is rapidly emerging as among the highest of our priorities. The land is our Nation's basic natural resource, and our stewardship of this resource today will affect generations to come.

America's land once seemed inexhaustible. There was always more of it beyond the horizon. Until the twentieth century we displayed a carelessness about our land, born of our youthful innocence and desire to expand. But our land is no longer an open frontier.

Americans not only need, but also very much want to preserve diverse and beautiful landscapes, to maintain essential farm lands, to save wetlands and wildlife habitats, to keep open recreational space near crowded population centers, and to protect our shorelines and beaches. Our goal is to harmonize development with environmental quality and to add creatively to the beauty and long-term worth of land already being used.

Land use policy is a basic responsibility of State and local governments. They are closer to the problems and closer to the people. Some localities are already reforming land use regulation—a trend I hope will accelerate. But because land is a national heritage, the Federal Government must exercise leadership in land use decision processes, and I am today again proposing that we provide it. In the coming weeks, I will ask the Congress to enact a number of legislative initiatives which will help us achieve this goal:

—*National Land Use Policy.* Our greatest need is for comprehensive new legislation to stimulate State land use controls. We especially need a National Land Use Policy Act authorizing Federal assistance to encourage the States, in cooperation with local governments, to protect lands of critical environmental concern and to regulate the siting of key facilities such as airports, highways and major private developments. Appropriate Federal funds should be withheld from States that fail to act.

—*Powerplant Siting.* An open, long-range planning process is needed to help meet our power needs while also protecting the environment. We can avoid unnecessary delays with a powerplant siting law which assures that electric power facilities are constructed on a timely basis, but with early and thorough review of long-range plans and specific provisions to protect the environment.

—*Protection of Wetlands.* Our coastal wetlands are increasingly threatened by residential and commercial development. To increase their protection, I believe we should use the Federal tax laws to discourage unwise development in wetlands.

—*Historic Preservation and Rehabilitation.* An important part of our national heritage are those historic structures in our urban areas which should be rehabilitated and preserved, not demolished. To help meet this goal, our tax laws should be revised to encourage rehabilitation of older buildings, and we should provide Federal insurance of loans to restore historic buildings for residential purposes.

—*Management of Public Lands.* Approximately one-fifth of the Nation's land is considered "public domain", and lacks the protection of an overall management policy with environmental safeguards. Legislation is required to enable the Secretary of the Interior to protect our environmental interest on those lands.

—*Legacy of Parks.* Under the Legacy of Parks program which I initiated in 1971, 257 separate parcels of parklands and underused Federal lands in all 50 States have been turned over to local control for park and recreational purposes. Most of these parcels are near congested urban areas, so that millions of citizens can now have easy access to parklands. I am pleased to announce today that 16 more parcels of Federal land will soon be made available under this same program.

We must not be content, however, with just the Legacy of Parks program. New authority is needed to revise the formula for allocating grant funds to the States from the Land and Water Conservation Fund. More of these funds should be channelled to States with large urban populations.

—*Mining on Public Lands.* Under a statute now over a century old, public lands must be transferred to private ownership at the request of any person who discovers minerals on them. We thus have no effective control over mining on these properties. Because the public lands belong to all Americans, this 1872 Mining Act should be repealed and replaced with new legislation which I shall send to the Congress.

—*Mined Area Protection.* Surface and underground mining can too often cause serious air and water pollution as well as unnecessary destruction of wildlife habitats and aesthetic and recreational areas. New legislation with stringent performance standards is required to regulate abuses of surface and underground mining in a manner compatible with the environment.

American Agriculture—A Basic National Resource

Nearly three-fifths of America's land is in the stewardship of the farmer and the rancher. We can be grateful that farmers have been among our best conservationists over the years. Farmers know better than most that sound conservation means better long-term production and improved land values. More importantly, no one respects and understands our soil and land better than those who make their living by the land.

But Americans know their farmers and ranchers best for all they have done to keep us the best-fed and best-clothed people in the history of mankind. A forward-looking agricultural economy is not only essential for environmental progress, but also to provide for our burgeoning food and fiber needs.

My Administration is not going to express its goal for farmers in confusing terms. Our goal, instead, is very simple. The farmer wants, has earned, and deserves more freedom to make his own decisions. The Nation wants and needs expanded supplies of reasonably priced goods and commodities.

These goals are complementary. Both have been advanced by the basic philosophy of the Agricultural Act of 1970. They must be further advanced by Congressional action this year.

The Agricultural Act of 1970 expires with the 1973 crop. We now face the fundamental challenge of developing legislation appropriate to the economy of the 1970's. Over the next several months, the future direction of the farm program must be discussed, debated and written into law. The outcome of this process will be crucial not only to farmers and ranchers, but to consumers and taxpayers as well.

My Administration's fundamental approach to farm policy is to build on the forward course set by the 1970 Act. These principles should guide us in enacting new farm legislation:

—Farmers must be provided with greater freedom to make production and marketing decisions. I have never known anyone in Washington who knows better than a farmer what is in his own best interest.

—Government influence in the farm commodity marketplace must be reduced. Old fashioned Federal intrusion is as inappropriate to today's farm economy as the old McCormick reaper would be on a highly sophisticated modern farm.

—We must allow farmers the opportunity to produce for expanding domestic demands and to continue our vigorous competition in export

markets. We will not accomplish that goal by telling the farmer how much he can grow or the rancher how much livestock he can raise. Fidelity to this principle will have the welcome effect of encouraging both fair food prices for consumers and growing income from the marketplace for farmers.

—We must reduce the farmer's dependence on Government payments through increased returns from sales of farm products at home and abroad. Because some of our current methods of handling farm problems are outmoded, the farmer has been unfairly saddled with the unflattering image of drinking primarily at the Federal well. Let us remember that more than 93 percent of gross farm income comes directly through the marketplace. Farmers and ranchers are strong and independent businessmen; we should expand their opportunity to exercise their strength and independence.

—Finally, we need a program that will put the United States in a good posture for forthcoming trade negotiations.

In pursuing all of these goals, we will work closely through the Secretary of Agriculture with the Senate Committee on Agriculture and Forestry and the House Committee on Agriculture to formulate and enact new legislation in areas where it is needed.

I believe, for example, that dairy support systems, wheat, feed grains and cotton allotments and bases—some established decades ago—are drastically outdated. They tend to be discriminatory for many farm operators.

It would be desirable to establish, after a reasonable transition period, a more equitable basis for production adjustment in the agricultural economy should such adjustment be needed in the years ahead. Direct Federal payments should, at the end of the transition period, be limited to the amounts necessary to compensate farmers for withholding unneeded land from crop production.

As new farm legislation is debated in the months ahead, I hope the Congress will address this important subject with a deep appreciation of the need to keep the Government off the farm as well as keeping the farmer on.

Protecting Our Natural Heritage

An important measure of our true commitment to environmental quality is our dedication to protecting the wilderness and its inhabitants. We must recognize their ecological significance and preserve them as sources of inspiration and education. And we need them as places of quiet refuge and reflection.

Important progress has been made in recent years, but still further action is needed in the Congress. Specifically, I will ask the 93rd Congress to direct its attention to the following areas of concern:

—*Endangered Species.* The limited scope of existing laws requires new authority to identify and protect endangered species before they are

so depleted that it is too late. New legislation must also make the taking of an endangered animal a Federal offense.

—*Predator Control.* The widespread use of highly toxic poisons to kill coyotes and other predatory animals has spread persistent poisons to range and forest lands without adequate foresight of environmental effects. I believe Federal assistance is now required so that we can find better means of controlling predators without endangering other wildlife.

—*Wilderness Areas.* Historically, Americans have always looked westward to enjoy wilderness areas. Today we realize that we must also preserve the remaining areas of wilderness in the East, if the majority of our people are to have the full benefit of our natural glories. Therefore I will ask the Congress to amend the legislation that established the Wilderness Preservation System so that more of our Eastern lands can be included.

—*Wild and Scenic Rivers.* New legislation is also needed to continue our expansion of the national system of wild and scenic rivers. Funding authorization must be increased by $20 million to complete acquisitions in seven areas, and we must extend the moratorium on Federal licensing for water resource projects on those rivers being considered for inclusion in the system.

—*Big Cypress National Fresh Water Preserve.* It is our great hope that we can create a reserve of Florida's Big Cypress Swamp in order to protect the outstanding wildlife in that area, preserve the water supply of Everglades National Park and provide the Nation with an outstanding recreation area. Prompt passage of Federal legislation would allow the Interior Department to forestall private or commercial development and inflationary pressures that will build if we delay.

—*Protecting Marine Fisheries.* Current regulation of fisheries off U.S. coasts is inadequate to conserve and manage these resources. Legislation is needed to authorize U.S. regulation of foreign fishing off U.S. coasts to the fullest extent authorized by international agreements. In addition, domestic fishing should be regulated in the U.S. fisheries zone and in the high seas beyond that zone.

—*World Heritage Trust.* The United States has endorsed an international convention for a World Heritage Trust embodying our proposals to accord special recognition and protection to areas of the world which are of such unique natural, historical, or cultural value that they are a part of the heritage of all mankind. I am hopeful that this convention will be ratified early in 1973.

—*Weather Modification.* Our capacity to affect the weather has grown considerably in sophistication and predictability, but with this advancement has also come a new potential for endangering lives and property and causing adverse environmental effects. With additional Federal regulations, I believe that we can minimize these dangers.

Meeting Our Energy Needs

One of the highest priorities of my Administration during the com-

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ing year will be a concern for energy supplies—a concern underscored this winter by occasional fuel shortages. We must face up to a stark fact in America: we are now consuming more energy than we produce.

A year and a half ago I sent to the Congress the first Presidential message ever devoted to the energy question. I shall soon submit a new and far more comprehensive energy message containing wide-ranging initiatives to ensure necessary supplies of energy at acceptable economic and environmental costs. In the meantime, to help meet immediate needs, I have temporarily suspended import quotas on home heating oil east of the Rocky Mountains.

As we work to expand our supplies of energy, we should also recognize that we must balance those efforts with our concern to preserve our environment. In the past, as we have sought new energy sources, we have too often damaged or despoiled our land. Actions to avoid such damage will probably aggravate our energy problems to some extent and may lead to higher prices. But all development and use of energy sources carries environmental risks, and we must find ways to minimize those risks while also providing adequate supplies of energy. I am fully confident that we can satisfy both of these imperatives.

Going Forward in Confidence

The environmental awakening of recent years has triggered substantial progress in the fight to preserve and renew the great legacies of nature. Unfortunately, it has also triggered a certain tendency to despair. Some people have moved from complacency to the opposite extreme of alarmism, suggesting that our pollution problems were hopeless and predicting impending ecological disaster. Some have suggested that we could never reconcile environmental protection with continued economic growth.

I reject this doomsday mentality—and I hope the Congress will also reject it. I believe that we can meet our environmental challenges without turning our back on progress. What we must do is to stop the hand-wringing, roll up our sleeves and get on with the job.

The advocates of defeatism warn us of all that is wrong. But I believe they underestimate this Nation's genius for responsive adaptability and its enormous reservoir of spirit.

I believe there is always a sensible middle ground between the Cassandras and the Pollyannas. We must take our stand upon that ground.

I have profound respect for the enormous challenge ahead, but I have even stronger respect for the capacity and character of the American people. Many of us have heard the adage that the last letters of the word, "American," say "I can." I am confident that we can, and we will, meet our natural resource challenges.

Richard Nixon

The White House,
February 15, 1973.

FACT SHEET

THE PRESIDENT'S 1973 PROGRAM

(* indicates legislation being resubmitted)

Managing the Land

- National land use policy*
- Powerplant siting*
- Wetlands protection*
- Preservation of historic buildings*
- Public lands management*
- Transfers of Federal properties for park and recreational use*
- Relocation of Federal facilities*
- Land and Water Conservation Fund amendments*
- Reform of laws for mining and mineral leasing on Federal lands*
- Mined area protection*

American Agriculture

- Work with the Congress to expand farm production and incomes through --
  - -- greater freedom for farmers to make production and marketing decisions
  - -- minimizing direct Federal payments
  - -- developing a more equitable method for providing agricultural production adjustments when they are needed

Controlling Pollution

- Toxic substances control*
- Controlling land disposal of hazardous wastes*
- Safe drinking water
- Sulfur oxides emissions charge*
- Sediment control*
- Controlling impacts of transportation
- U.S. contribution to UN Environment Fund*
- Approval of international convention on ocean dumping
- Approval and implementation of IMCO marine pollution conventions and amendments*

Protecting Our Natural Heritage

- Endangered species protection*
- Predator controls*
- Wilderness areas

- Wild and scenic rivers
- Big Cypress National Fresh Water Reserve*
- Protection of marine fisheries
- Ratification of World Heritage Trust convention
- Weather modification protection

DESCRIPTION OF THE PROGRAM

MANAGING THE LAND

National Land Use Policy

A National Land Use Policy Act would authorize Federal assistance to encourage the States, in cooperation with local governments, to protect lands which are of critical environmental concern and to control major development, including airport and highway siting. One hundred seventy million dollars would be authorized over five years to assist the States in this effort -- $40 million in each of the first two years and $30 million in each of the next three years.

Any State that fails to establish an acceptable land use program within three years from enactment would be subject to cumulative reductions of up to 21 percent of the funds allocated to the State under the Airport and Airway Development Act, the Federal-Aid Highway Acts, including the Highway Trust Fund, and the Land and Water Conservation Fund.

Powerplant Siting

A new powerplant siting law would assure that needed electric power facilities are constructed on a timely basis and require early and thorough review of long-range plans and specific proposals for plants and transmission lines to protect environmental values.

The powerplant siting law being submitted this year has a number of significant improvements over the legislation submitted by the Administration to the 92nd Congress. Early identification of long-range power needs on a yearly basis would be accompanied by the review and comment of public agencies and members of the

public. A decision to approve or disapprove a new powerplant or transmission line would be required to be made by all Federal, State, and local agencies within 18 months of application. The application would be submitted three to five years prior to the time when construction is planned to begin, thus affording adequate time for public evaluation and court review of decisions. Substantial changes have also been made in the bill to provide a "one-stop" application and review process at both Federal and State levels. Other new provisions assure full review of new powerplants and transmission lines under the provisions of the National Environmental Policy Act.

Wetlands Protection

The Environmental Protection Tax Act would amend the Internal Revenue Code to limit applicability of certain Federal tax benefits for new development in coastal wetlands, thereby discouraging unnecessary development in these environmentally critical areas.

Historic Preservation and Rehabilitation

The Environmental Protection Tax Act would also encourage more rehabilitation, rather than demolition, of older buildings in urban areas, as well as make the restoration of those specific buildings registered as historic structures substantially more attractive for private investors. Companion legislation will be resubmitted to make HUD-insured loans available for homeowners to restore their historic buildings for residential purposes.

The tax legislation also contains provisions to encourage charitable donations of partial interests in land -- such as scenic easements -- for conservation purposes.

Public Lands Management

The National Resource Land Management Act would provide for the first time an overall management policy and enforcement authority for Federally-owned public lands, administered by the Bureau of Land Management in the

Department of the Interior, which are not set aside for park, forest or other specified uses. These lands, constituting approximately one-fifth of the Nation's land, contain spectacular scenery, mineral and timber resources, important fish and wildlife habitat, and land with great ecological significance and recreational potential. The legislation would establish strong safeguards to protect environmental values. It would require that these lands be retained in Federal ownership, unless under limited conditions enumerated in the bill, disposal of particular tracts would lead to a significant improvement in their management or would serve important public objectives which cannot be achieved on nonpublic lands.

Transfers of Federal Properties for Park and Recreational Use

Based on recommendations of the Property Review Board, which the President established in 1970, Federal properties have been transferred to State and local governments for park and recreational use. Today's transfer of 16 additional properties in 10 States -- valued at $2.7 million and covering 5,020 acres -- brings to 273 the total number of properties transferred since the program was launched in March, 1971. The 273 properties cover 46,292 acres in 50 States, the Commonwealth of Puerto Rico, and the District of Columbia. Their total estimated fair market value is $136,717,176.

The 16 properties announced today for inclusion in the legacy of parks program include all, or portions of the Castle Communications Annex in Atwater, California; Nike Site 29 in Brea, California; Pueblo Army Depot in Pueblo, Colorado; Dana Housing Area in Dana, Indiana; Fort Riley in Junction City, Kansas; Grand Haven Rifle Range in Ferrysburg, Michigan; Marine Corps Training Center in Mattydale, New York, West Point Military Reservation in Woodbury, New York; Coast Guard Station in Ashtabula, Ohio; Naval Communication Station (Fort Burnside) in Newport, Rhode Island; Fort Bliss in El Paso, Texas; Former Perrin Air Force Base in Grayson County, Texas; Fort Hood in Killeen, Texas; Falcon Dam and Reservoir Project in Starr and Zapata Counties, Texas; Rattlesnake

Slope in Richland, Washington; and Coast Guard Radio and Light Station in Westport, Washington.

A number of additional properties are being leased by State and local governments from the Army Corps of Engineers for development as park and recreational areas. The military services are working to open for increased public use some parks and recreational areas on military installations, such as Fort DeRussy, with its frontage on Waikiki Beach, Hawaii, and the Presidio in San Francisco, which is part of the new Golden Gate National Recreation Area that the President recommended.

Relocation of Federal Facilities

Another part of the Federal lands transfer program still requires Congressional action. Existing statutory requirements serve as a disincentive for Federal agencies to move facilities from recreationally-valuable lands to other locations. At present, proceeds from the sale of Federal properties cannot be used to offset the cost of relocating agency activities. Proposed legislation would revise financial arrangements for the sale of Federal lands in order to facilitate conversion of under-utilized Federal property to recreational use.

A portion of the proceedings from the sale of Federal property could be used for moving and replacement costs of the agency giving it up. This proposal would take away the current financial disincentive to Federal agencies in moving from properties which have higher values in alternative uses.

Land and Water Conservation Fund Amendments

Through the Land and Water Conservation Fund, the Federal government assists States and localities to acquire park and recreational lands. However, because of the way in which the State grant funds must be allocated, a disproportionately small percentage has been used for the purchase and development of recreational facilities in and near urban areas where they are most needed. Proposed legislation would change the allocation formula to ensure that more parks will be

developed in our most populous States by putting most of the money in States with large urban populations.

Mining and Mineral Leasing on Public Lands

Since 1872, Federal law has required that public lands be transferred into private ownership whenever a person discovered valuable minerals in them. This practice fails to provide necessary controls to protect the environment. New legislation would repeal the 1872 Mining Act and put all minerals on Federal lands under a comprehensive system of leasing. The Secretary of the Interior would be given the full authority to protect the public lands to assure that future mining is carried out in harmony with the environment.

No mining operation could commence until the Secretary had approved the mining operation and reclamation plan, including a performance bond to assure compliance.

Mined Area Protection

A new Mined Area Protection Act would establish Federal requirements and guidelines for State programs to regulate the environmental consequences of surface and underground mining. The bill calls for stringent Federal performance standards for mining and reclamation operations and encourages the reworking and reclamation of abandoned, previously-mined areas.

In any State that fails to enact the necessary regulations or enforce them properly, the Federal government would be authorized to do so.

CONTROLLING POLLUTION

Toxic Substances

Many new chemicals marketed each year pose hazards to humans and the environment. The Toxic Substances Control Act would empower the Administrator of EPA to restrict manufacturing or distribution of any substance which he finds is a hazard to human health or the environment. He would also be authorized to stop the

sale or use of any substance that violates the provisions of the legislation; to seek immediate relief when use or distribution of a substance presents an imminent hazard to health or the environment; and to prescribe minimum standard tests to be performed by manufacturers on new substances.

Land Disposal of Hazardous Wastes

Land disposal of hazardous wastes is becoming more prevalent because of strict air and water pollution control programs. New legislation would empower the Administrator of EPA to regulate extremely hazardous wastes and to establish disposal standards and guidelines for State programs to regulate other hazardous waste disposal on or under the land. There would be Federal authority to ensure compliance with the standards. Such legislation would fill a gap now left by air and water quality legislation.

Safe Drinking Water

New legislation would authorize the Administrator of EPA to establish national drinking water standards to protect health. Water suppliers would be required to notify customers whenever these standards are not met. States would retain primary enforcement powers and monitoring responsibilities, and citizens would be authorized to help enforce the law through court actions. Federal enforcement authority would be provided to deal with imminent hazards and to ensure that notification is given of standards violations.

Current Federal law is limited to authority to deal with interstate transmission of communicable diseases through water supplies and authority to regulate bottled water.

Sulfur Oxides Emissions Charge

A charge would be imposed on sulfur emitted into the atmosphere from combustion, refining, smelting, and other processes in all regions where air quality does not meet national standards for sulfur oxides.

The revised proposal calls for a charge of 20 cents per pound of sulfur emitted, taking effect in 1976 in regions where the national primary standard for sulfur oxides is not met by the 1975 deadline for achievement under the Clean Air Act. That standard is designed to protect public health. In regions where air quality in 1978 and thereafter meets the primary standard but exceeds the national secondary standard (designed to protect property, vegetation, and aesthetic values) a charge of 20 cents per pound of sulfur emitted would be imposed in 1979 and succeeding years. Areas which meet both primary and secondary air quality standards would be exempt from the emission charge. Not only will this charge act as a powerful incentive, together with existing regulatory authority, to clean up sulfur oxide emissions, but it will also help allocate limited supplies of low sulfur fuels to areas where they are most required, to protect human health.

Sediment Control

Sediment from soil erosion and runoff is the most pervasive water pollutant. Heavy loads of sediment interfere with many boneficial uses of water, such as swimming, fishing, and water supply, and can change the entire character of an aquatic environment. This problem, is particularly acute in areas with major suburban development, where a significant amount of sediment comes from construction. However, if proper construction practices are followed, sediment runoff from this source can be greatly reduced.

A proposed amendment to the Federal Water Pollution Control Act would require States to establish, through appropriate local and regional agencies, regulatory programs to control sediment from construction that affects water quality.

Controlling Impacts of Transportation

Again this year, the Administration will urge that the Congress permit the use of the Federal Highway Trust Fund for mass transit purposes as well as for highways. This action would give State and local governments the

option of choosing the transportation alternatives they determine to be most appropriate to meet transportation and environmental needs. Local flexibility will help to ensure that Federal money more effectively meets peoples' needs. In many cases, public transportation will more adequately meet the demands for both efficient transportation and environmental protection than expanded automotive traffic on new highways. When this is the case, Federal funds for surface transportation should be available for this option and not arbitrarily restricted to the alternative of more highway construction.

U.N. Environment Fund

New legislation would authorize appropriations for voluntary U.S. contributions to the U.N. Environment Fund proposed by the U.S. and approved last December by the U.N. General Assembly. The President's fiscal year 1974 budget includes $10 million to be used for the first year U.S. contribution. The President has recommended that the United States contribute on a 40-60 matching basis toward the Fund's initial five-year goal of $100 million. Other nations already have announced intended contributions which, together with the proposed U.S. contributions, would total more than $80 million. Expressions of interest in contributing by additional nations make attainment of the $100 million goal reasonably assured.

Ocean Dumping Convention

The Senate is requested to give its advice and consent to the international convention to regulate ocean dumping, concluded last November by the U.S. and 91 other nations. The Administration is also proposing amendments to our domestic ocean dumping legislation to fully implement the convention.

The amendments would extent U.S. regulation to vessels or aircraft registered in the United States or flying the American flag and loading material, to be transported for dumping, from the territory of another nationa. The amendments would also extent U.S. regulation to oil loaded on vessels or aircraft for the purpose of dumping at sea.

Approval and Implementation of IMCO Conventions

Limitations on the discharge of oil from ships into ocean waters have been provided since 1954 through the IMCO Oil Pollution Convention of that year. IMCO has adopted three separate amendments to the 1954 Convention, including amendments that would establish tank size limitations and construction requirements to minimize damage to the marine environment from oil spills caused by tanker collision or grounding.

Two additional IMCO Conventions, the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention of the Establishment of a Fund for Compensation of Oil Pollution Damage, would provide compensation to victims damaged by oil spills. The Civil Liability Convention would place strict liability on the vessel owner up to a fixed limit. The Compensation Fund Convention, to be supported by contributions from oil cargo receivers, would more than double the amounts now available for compensating victims and would make convention provisions that benefit shipowners contingent on their compliance with pollution prevention standards.

The Senate has consented to the 1969 IMCO Convention Relating to Intervention on the High Seas, which authorizes a nation to take measures on the high seas to avoid or reduce dangers to its territory and territorial seas from pollution, actual or threatened, arising from a maritime casualty.

Legislation that I have proposed to implement the new IMCO conventions and Amendments still awaits enactment. In addition, the Senate's advice and consent is required for the Civil Liability and Compensation Fund Conventions and for the 1971 Amendments to the 1954 Convention.

PROTECTING OUR NATURAL HERITAGE

Endangered Species

A new Endangered Species Conservation Act would provide

for early identification and protection of endangered species. This legislation would for the first time the taking of endangered animal species a Federal offense and would permit protective measures to be undertaken before such a species is so depleted that recovery is difficult or impossible. In addition, executive branch agencies will cooperate with the Smithsonian Institution in its planned study of endangered plants.

Delegates from almost 70 nations are now meeting in Washington at a conference hosted by the United States Government to conclude an international convention protecting endangered species of plants and wildlife throughout the world by controlling international trade of such species.

Predator Control

New legislation would change the Federal predator control program to one of research together with technical and financial assistance to the States to help them control predator populations by means other than poisons. This legislation would complement the President's action last year in barring by Executive Order the use of poisons for predator control on Federal lands. Also, the Administrator of EPA terminated Federal registrations for predator control poisons used on private as well as public lands.

Wilderness Areas

Most of the nation's current wilderness areas are in the West. However, despite the fact that much of the Federal land in the East has been logged or otherwise disturbed by man, many of these areas have been restored to a near natural state.

New legislation would permit inclusion of substantially restored areas in the East under the Wilderness Preservation System. The 53 areas previously identified within the eastern National Forest System are candidates for inclusion under this proposal.

The legislation would prohibit mining and grazing in these areas and provide for acquisition of any private holdings. During the interim, The Secretary of Agriculture, through authority presently available to him, will protect the areas he has identified from timbering, mining and other development pending Congressional action.

Over the past four years the President has proposed for inclusion in the Wilderness Preservation System 48 areas, none of which have been so designated by the Congress.

Wild and Scenic Rivers

New legislation would increase the authorized funding for Wild and Scenic Rivers Act from $17 million to $37.6 million to complete acquisitions in seven of the original statutorily-designated river areas. It would also extend for another five years the current moratorium on Federal Power Commission licenses and Federal agency assistance for dams and other water resource projects that may affect rivers being considered for inclusion in the National Wild and Scenic River System.

In 1970, the President ordered the termination of the Cross-Florida barge canal because that project threatened to destroy a unique scenic area along the Oklawaha River that provides a major wildlife habitat and contains a large sport fish population. He asked the Council on Environmental Quality and the Secretary of the Army to make recommendations for the future of the affected area. As a result of these recommendations, the Department of Agriculture is planning to purchase, for inclusion in the Ocala National Forest, the land formerly designated for the canal project. In addition, the two agencies recommended that the Okalawaha River be designated for study as a wild and scenic river. That recommendation was recently sent to the Congress.

Big Cypress National Fresh Water Reserve

New legislation would authorize the Federal Government to acquire the requisite legal interest in 522,000 acres of private land in the Big Cypress Swamp to establish a Big Cypress National Fresh Water Reserve and protect it from development.

The swamp is a unique area of marsh and lowland forest located to the north of the Everglades National Park in Florida, which provides water that is essential to maintaining the ecological balance of the Everglades Park. Creation of a reserve in this area would prevent private development that would interfere with the water supply of the Everglades Park, and it would also protect the outstanding wildlife in the Big Cypress area, while providing the Nation with an outstanding recreation area. Prompt Federal legislation is required to give the Interior Department authority to forestall development and inflationary pressures. Under the proposal the Reserve would be administered by the Secretary of the Interior in accordance with the laws applicable to the National Park System or by State or local governments if they agree to conditions for protecting the swamp's unique natural environment. Some portions would be managed as scientific, ecological study areas, and acquisition would preserve important habitat for at least nine endangered species of wildlife as well as many species of exotic plants and flowers.

Protection of Marine Fisheries

Failure to wisely manage fisheries almost invariably leads to a decline in the resource and to corresponding economic hardship for fishermen. Fishing off the U.S. coasts is now only partially regulated. Some States regulate fishing within U.S. territorial waters, and several international agreements apply to fisheries in the high seas off of U.S. coasts, but the U.S. has inadequate legislative authority to regulate foreign fishing in these areas as authorized by these agreements.

New legislation would authorize Federal regulation of fishing adjacent to U.S. coasts by vessels of a party to an international fishing agreement, to the full extent authorized by such agreement. The legislation would also authorize Federal regulation of all U.S. fishing vessels in the U.S. fisheries zone and the high seas beyond that zone.

Regulation would be for the purposes of conserving and managing the fisheries and preventing the taking of contaminated fish.

World Heritage Trust

In his 1971 Environmental Message, the President suggested that the world's nations agree to the principle that some areas of the world have such unique natural, historical, or cultural value that they are part of the heritage of all mankind and should be accorded special recognition and protection as part of the World Heritage Trust. A final draft of a convention for a World Heritage Trust, embodying my proposals, was endorsed at the U.S. environmental conference and is being readied for signature. The Administration will submit this convention for ratification.

Weather Modification

Under Public Law 92-205, enacted at the Administration's request in 1971, non-Federal weather modification projects must be reported in advance to the National Oceanic and Atmospheric Administration in the Department of Commerce. States have the responsibility and opportunity for preventing potential adverse effects of weather modification, but the Federal information-gathering program can be used to assist the States.

The President has directed the Secretary of Commerce to expand his regulations to provide for Federal notification, including recommendations where appropriate, to operators and State officials in cases where a report discloses that a proposed project may endanger persons, property or the environment or the success of Federal research projects. Notifications will be available to the public.

# # #

II
the president's proposals

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Controlling Pollution

Toxic Substances

ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF THE
ADMINISTRATOR

February 15, 1973

Dear Mr. [President/Speaker]:

I am pleased to forward to you a proposed bill, "The Toxic Substances Control Act of 1973," designed to provide for the effective control of chemical substances for the purposes of assuring that such substances do not endanger human health or the environment.

The proposal is being transmitted in accordance with the Environment and Natural Resources State of the Union Message of the President.

The proposed bill would provide to the American public the protection greatly needed from the dangers posed by toxic substances, both new and existing. With the exposure of our citizens to an increasing number of chemical substances each year and with hazards to health and the environment potentially present in certain existing chemicals, it is essential that chemical substances be tested so that the Administrator may determine if regulation to control such substances is necessary.

The legislative proposal would authorize the Administrator of the Environmental Protection Agency to restrict or prohibit the use or distribution of a chemical substance if necessary to protect health and the environment. The Administrator is also authorized to prescribe standards for tests and test results which must be met before a manufacturer can market a new product. Such testing requirements can likewise be applied to existing chemical substances if the Administrator determines that an unreasonable threat to health or the environment may be posed. The Administrator is required to consult with an independent board

of scientists before proposing action to restrict a substance or before proposing standards for tests.

The legislation has been developed in cooperation with the Council on Environmental Quality and other interested agencies. We recommend that the bill be referred to the appropriate committee and that it be enacted.

The Office of Management and Budget advises that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

/s/ William D. Ruckelshaus
Administrator

Honorable Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

Honorable Carl Albert
Speaker of the House
of Representatives
Washington, D. C. 20515

Enclosure

S. 888
H.R. 5087

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. This Act may be cited as the "Toxic Substances Control Act of 1973."

POLICY

Sec. 2. Whereas the American people are being exposed to a large number of chemical substances each year, and

Whereas among the many chemical substances constantly being developed are some which may be a danger to human health or the environment, and

Whereas the effective regulation of interstate commerce in such chemicals necessitates the regulation of transactions in such chemicals in intrastate commerce as well;

Therefore, it is the policy of the United States that new chemical substances and toxic or potentially toxic chemical substances should be adequately tested with respect to their safety to man and the environment; and that such testing should be the responsibility of those who produce such chemicals; and

That adequate authority should exist to restrict the distribution and use of chemicals found to be toxic; and to seize chemical substances that pose imminent hazards;

That such authority over chemicals be exercised in such a manner as not to unduly impede technological innovation while fulfilling the primary purpose of this Act to assure that such innovation and commerce does not endanger human health or the environment.

DEFINITIONS

Sec. 3. (a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Chemical substance" means any organic or inorganic substance of a particular molecular identity or any uncombined chemical radical or element or any mixture which (1) occurs naturally, or (2) is produced by an industrial chemical process and which is marketed or used without separation into its constituents.

(c) "New chemical substance" means any chemical substance which is not produced in commercial quantities or imported into the United States on the effective date

of this Act.

(d) "Existing chemical substance" means any chemical which is being produced in commercial quantities or imported into the United States on the effective date of this Act.

(e) "Manufacturer" means any person engaged in the production or manufacture of chemical substances for purposes of sale or distribution in commercial quantities, or any person engaged in the import of chemical substances.

(f) "Processor" means any person engaged in the preparation of a chemical substance for distribution or use either in the form in which it is received or as part of another product, as defined by regulations of the Administrator.

(g) "Restrict use or distribution" means to prescribe the amount sold to given types of processors, or to limit the type of processor to whom a substance may be sold, or to prescribe the amount which may be utilized by a given type of processor, or to prescribe quality control standards related to the presence of toxic contaminants.

(h) "Byproduct" means a chemical substance produced as a direct result of the production, manufacture, or processing of some other chemical substance which is subject to the provisions of this Act.

(i) "Environment" includes water, air, land, all plants and animals living therein, and the interrelationships which exist among these.

(j) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(k) "Protect health and the environment" means protection against any injury to man and protection against any substantial adverse effects on environmental values, taking into account the public interest.

(l) "District court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising under this Act.

RESTRICTIONS ON USE OR DISTRIBUTION

Proposal To Adopt Restrictions

Sec. 4. (a) For any chemical substance produced in commercial quantities, after evaluating all information developed by or otherwise provided to or made available to him, and after referring the matter to a committee in accordance with section 10, the Administrator may publish proposed regulations to:

(1) restrict or prohibit the use or distribution of the chemical substance to the extent necessary to protect health and the environment; and

(2) require that any or all persons engaged in the distribution of the substance so regulated give notification to purchasers of the substance of such restriction in such form or manner as the Administrator deems advisable including labeling requirements; and

(3) require such other action as may be necessary to carry out such restrictions including prohibiting or restricting the sale, use, or removal of such substance or product.

Objections, Notice, Hearing, Final Order

(b)(1) On or before the thirtieth day after the day on which the proposed regulations under subsection (a) are made public, any person who will be adversely affected by such regulations if placed in effect may file objections thereto with the Administrator specifying with particularity the provisions of the regulations deemed objectionable, stating the grounds therefor, and requesting a public hearing upon such objections.

(2) After such request for a public hearing, the Administrator, after due notice, shall upon request by a manufacturer or processor, and may, in his discretion, upon request by any other person adversely affected by such order, hold such a public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. At the hearing, any interested person may be heard in person or by representative.

(3) As soon as practicable after the date for completion of the filing of objections and comments, and the hearing, if any such hearing has been held, the Administrator shall by order act upon such objections, if any, and make public an order promulgating, modifying, or withdrawing the proposed regulations issued under paragraph (a)(1). Such order shall be based only

on the evidence of record and shall set forth, as part of the order, detailed findings of fact on which the order imposing restrictions is based and the relationship of such finding to the restrictions imposed. Such order must be based on the Administrator's finding that such regulations are necessary to protect health and the environment and that the proposed action is necessary to carry out the objectives of this Act. In making such a finding the Administrator shall consider all relevant factors including: the effects on human health and the environment of the substance or its by-products; the benefits to be derived from the use of the substance as compared with the risks; the normal circumstances of use; the degree to which release of the substance or byproducts to the general environment is controlled; and the magnitude of exposure of humans and the environment to the substance or its byproducts. The Administrator shall specify in the order the date on which it shall take effect, except that it shall not be made to take effect prior to the ninetieth day after its publication.

Modification or Rescission

(c) Manufacturers or processors of a chemical substance affected by final regulations issued pursuant to this section may petition the Administrator for modification or rescission of the regulation. The Administrator may at any time modify or rescind such regulations. Proceedings respecting petitions from manufacturers or processors or respecting modifications or rescissions made by the Administrator shall be held in accordance with the standards and procedures established by this section, except that the Administrator may or may not, in his discretion, provide for a hearing regarding such modifications or rescissions.

Judicial Review

(d)(1) Any person who will be adversely affected by an order issued under subsection (b) or (c) of Section 4 if placed in effect may at any time prior to the ninetieth day after such order is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Attorney General and the

Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court the record on which he based his order, as provided in section 2112 of title 28 of the United States Code.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the record before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in subsection (d)(1), the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently. If the order of the Administrator refuses to issue, amend, or repeal a regulation and such order is not in accordance with law the court shall by its judgment order the Administrator to take action, with respect to such regulation, in accordance with law. The findings of the Administrator as to the facts shall be sustained if based upon substantial evidence on the record considered as a whole.

(d) The judgment of the court affirming or setting aside, in whole or in part, any such order of the Administrator shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

IMMINENT HAZARD

Sec. 5. (a) An imminent hazard shall be considered to exist when the evidence is sufficient to show that a use or distribution of a chemical substance creates a hazard to human health or the environment (1) that should be corrected immediately to prevent injury to health and

(2) that should not be permitted to continue while an administrative hearing or other formal proceeding is being held.

(b) If the Administrator has reason to believe that an imminent hazard exists he may request the Attorney General to petition an appropriate district court of the United States to restrain the uses or distribution of the chemical substance responsible for the hazard or require that stocks of such substances be recalled by the manufacturer from wholesalers, retailers, and other distributors. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of proceedings pursuant to section 4 of this Act. Such proceedings shall be initiated contemporaneously with the request of the Administrator to take action under this subsection. Such proceedings shall be deemed to be initiated when he has referred the matter to a committee under section 10.

(c) The initiation of any proceedings or actions under section 4 shall not prevent the Administrator from initiating action under this section if he has reason to believe that an imminent hazard exists.

TESTING

Sec. 6. (a) As soon as practicable after enactment of the Act, and from time to time thereafter, the Administrator shall, after referral to the Toxic Substances Board, for various classes and uses of chemical substances, prescribe by regulation standards for test protocols, and for the results to be achieved therefrom, as are necessary to protect health and the environment. He shall afford opportunity for submission of written comments, and upon request of any affected person, a public hearing with respect to any such proposed regulation, and such regulation shall be based upon substantial evidence of record in such proceeding. He may supplement, modify, or withdraw any such regulation in the same manner. Except as provided in subsection (b), regulations promulgated pursuant to this section shall be applicable only to new chemical substances. The promulgation of regulations to a particular chemical substance under this section shall not preclude action with respect to such substance under section 4. A regulation under this section may require

that a manufacturer or processor of the chemical substance or class of substances perform the test called for in the regulation. In the case of a substance or class of substances for which there is more than one manufacturer, or processor, such manufacturers or processors, may designate one or more of their number, or designate a qualified third party, to perform tests required under this section, and may share the costs of such tests.

(b)(1) Upon a determination that an existing chemical substance (or class of substances) may pose an unreasonable threat to health or the environment, the Administrator may promulgate regulations under subsection (a) of this section if he has not previously done so.

(2) The failure of a manufacturer or processor, of a substance to comply with regulations promulgated under this section shall relieve the Administrator in any proceeding under Section 4 from establishing that any restriction or prohibition proposed by him to be imposed against such manufacturer or processor under Section 4 is necessary to protect health and the environment, and any such proposed restriction or prohibition shall apply pending the outcome of proceedings under Section 4 as if a final regulation were in effect.

REPORTS

Sec. 7. (a) The Administrator may by regulation require any or all manufacturers or processors of chemical substances to report to him annually or at such more frequent times as the Administrator may reasonably require as to any or all of the following:

(1) The names of any or all substances produced or used by the manufacturer or processor;

(2) The chemical identity and molecular structure of such substances;

(3) The categories of use of each such substance, insofar as they are known to him;

(4) Reasonable estimates of the amounts of each substance produced by him for each such category of use; and

(5) A description of the byproducts, if any, resulting from the production of such substance, and, insofar as they are known to him, from the use thereof.

(b) Whenever the Administrator determines that such

action is necessary to accomplish the purposes of this Act, he may direct manufacturers of a chemical substance to provide, within a specified period of time not to be less than thirty days, the results of any tests on the health or environmental effects of the substance or its byproducts which have been performed by or at the instance of the manufacturer or such results as are otherwise known to him, and any or all of the items of information listed in subsection (a).

(c) Whenever the Administrator determines that such action would be productive and desirable to allow him to carry out his responsibilities and authorities under this Act, he may by publishing a notice in the Federal Register invite and afford all interested persons an opportunity to provide in writing information respecting the health or environmental effects of the substance or its byproducts.

SEIZURE

Sec. 8. (a) Any chemical substance which the Administrator finds (1) is manufactured, processed, used, or distributed in violation of any regulation issued under section 4 or 6 and (2) of itself constitutes an imminent hazard shall be liable to be proceeded against while in commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States within the jurisdiction of which the article is found. Such substance shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury.

(b) Any substance condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such substance shall not be sold under such decree contrary to the provisions of this Act or the laws of the jurisdiction in which sold: Provided, that after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such substance

shall not be sold or disposed of contrary to the provisions of this Act or the laws of any State or Territory in which sold, the court may by order direct that such substances be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this Act under the supervision of an officer or employee duly designated by the Administrator, and the expenses of such supervision shall be paid by the person obtaining release of the article under bond.

(c) When a decree of condemnation is entered against the article, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

RELATIONSHIP TO OTHER LAWS

Sec. 9. (a) This Act shall not apply to--

(1) economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and chemical substances used solely in such poisons: Provided, That if a chemical substance which constitutes such a poison or such an ingredient is or may be used for any purpose which is not regulated by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, this Act shall apply to such other uses.

(2) foods, drugs, devices, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, as amended, foods subject to the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act; and toys, articles and other substances subject to the Federal Hazardous Substances Act, or products regulated pursuant to the Consumer Product Safety Act of 1972: Provided, that this Act shall apply to any use of such a product or component thereof not regulated under such Acts.

(3) any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission;

(4) the authority of the Secretary of the Department of Transportation to establish

rules and regulations for the transportation of hazardous materials.

(b) To the extent that such activities are subject to regulation under the Occupational Safety and Health Act of 1970, the Administrator shall not regulate the use or distribution of a new or existing chemical substance on the basis of any possible hazard to employees in their place of employment. If it appears to the Administrator that any such substance may pose a hazard when transported for any purpose subject to subsection (a) of this section or when used or may be a hazard to employees in their place of employment, he shall transmit any data received relevant to such hazards to the Federal department or agency with authority to take legal action if a hazard is found to exist.

(c) The Administrator shall coordinate actions taken under this Act with actions taken to enforce the Federal Water Pollution Control Act as amended and the Clean Air Act as amended, and shall, where appropriate, use the authorities contained in those Acts to regulate chemical substances.

(d) The Administrator shall make every effort to maintain close coordination with the Department of Health, Education, and Welfare and other appropriate Federal agencies in administering the provisions of this Act.

(e) This Act shall not be construed as superseding or impairing the provisions of any other law or treaty of the United States.

TOXIC SUBSTANCES BOARD

Sec. 10. (a) There shall be established in the Environmental Protection Agency a Toxic Substances Board consisting of a reasonable number of scientifically qualified persons. The Administrator shall appoint as the members of the board the persons nominated to him by the National Academy of Sciences except that the Secretary of Health, Education, and Welfare shall appoint one member of the Board from whatever source he desires. One of the members may be designated at any time by the Director of the National Academy of Sciences to serve as Chairman of the Board.

(b) The National Academy of Sciences, in consultation with the Board, shall establish, maintain, and publish a continuing list of qualified scientists,

including experts in the areas likely to be covered by this Act. Such scientists shall be consultants to the Toxic Substances Board.

(c) Before proposing any regulations under authority of section 4 or 6 the Administrator shall refer his proposed action and the available evidence to a Committee drawn from members of the Board and the list of consultants to the Board, except that the Secretary of Health, Education, and Welfare may appoint one member of the Committee from whatever source he desires. The Administrator shall appoint as the members of the Committee the consultants nominated to him by the Board. The Committee shall report its views, in writing, to the Administrator, within a reasonable time, not to be less than forty-five days, specified by the Administrator. If the Committee fails to report within the specified time, the Administrator may proceed to take action under this Act. The report of the Committee shall be considered as part of the record in any proceeding taken with respect to the Administrator's action.

(d) The Administrator may, at his discretion, also request the Board to convene a panel to consider other actions proposed to be taken under this Act, including actions proposed to be taken under section 5(b).

(e) The Administrator is authorized to reimburse the National Academy of Sciences for expenses incurred in carrying out this section.

RESEARCH

Sec. 11. The Administrator is authorized to conduct such research and monitoring as is necessary to carry out his functions and responsibilities under this Act. Such research and monitoring shall not duplicate the efforts of other Federal agencies. To this end, the Administrator is authorized to establish research laboratories, including the acquisition of necessary land, buildings, or facilities, and to make contracts and grants for such research and monitoring.

ADMINISTRATIVE INSPECTIONS AND WARRANTS

Sec. 12. (a)(1) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this Act and otherwise facilitating the carrying out of his functions under this Act, the Administrator is authorized, in accordance with this section, to enter

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any factory, warehouse, or premises in which chemical substances are manufactured, processed, or held and to conduct administrative inspections thereof, and of the things specified in this section, relevant to those functions.

(2) Such entries and inspections shall be carried out through officers of employees (hereinafter referred to as "inspectors") designated by the Administrator. Any such inspector, upon stating his purpose and presenting to the owner, operator, or agent in charge of such premises (A) appropriate credentials and (B) his administrative inspection warrant or a written notice of his other inspection authority, shall have the right to enter such premises and conduct such inspection at reasonable times.

(3) Except when the owner, operator, or agent in charge of such premises so consents in writing, no inspection authorized by this section shall extend to--

(A) financial data;

(B) sales data other than shipment data;

(C) pricing data;

(D) personnel data, or

(E) research data (other than data relating to the tests described in subsection 7(b)).

(b) A warrant under this section shall not be required for entries and administrative inspections (including seizures of property of a nature or quantity appropriate to such inspections)--

(1) with the written consent of the owner, operator, or agent;

(2) in situations presenting imminent danger to health or safety;

(3) in any other exceptional or emergency circumstances where time or opportunity to apply for a warrant is lacking; or

(4) in any other situations where a warrant is not constitutionally required.

(c) Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of the United States or of a State court of record, or any United States magistrate, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative

inspections authorized by this Act or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, the term "probable cause" means a valid public interest in the effective enforcement of this Act or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or contents thereof in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of an officer or employee having knowledge of the facts alleged sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, or building, to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the items or types of property to be seized, if any. The warrant shall be directed to a person authorized under subsection (a)(2) to execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, or building identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing by the United States of a need therefor, the judge or magistrate allows additional time in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the

presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant. In any case of seizure of property without warrant pursuant to this section, the person executing such seizure shall give to the person from whose premises the property was taken a receipt for such property, or shall leave such receipt at the place from which the property was taken. The receipt shall be accompanied by a written inventory of any property taken and shall be made by the person executing the seizure in the presence of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory.

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made.

EXPORTS AND IMPORTS

Sec. 13. (a) Notwithstanding any other provision of this Act, no substance shall be deemed in violation of this Act when intended solely for export to any foreign country except if the Administrator finds that as exported and used the substance, or particular uses of the substance, will produce a significant direct or indirect hazard to human health or the environment in the United States, provided, however, that such chemical substance shall be subject to the reporting requirements of Section 7 (a) of this Act.

(b) The Secretary of the Treasury shall refuse entry into the United States of any chemical substance or article containing such substance offered for entry if it violates any of the provisions of this Act. If a substance or article is refused entry, the Secretary of the Treasury shall refuse delivery to the consignee and

shall cause the disposal or storage of any substance or article refused delivery which has not been exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of Treasury may prescribe: Provided, That the Secretary of Treasury may deliver to the consignee such substance or article pending examination and decision in the matter on execution of bond for the amount of the full invoice value of such substance or article, together with the duty thereon, and on refusal to return such substance or article for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: And provided further, That all charges for storage, cartage, and labor on substances or articles which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

(c) The Secretary of the Treasury, in consultation with the Administrator, shall issue regulations for the enforcement of subsection (b) above.

CONFIDENTIALITY

Sec. 14. (a) Copies of any communications, documents, reports or other information received by the Administrator from any manufacturer shall be available to the public upon identifiable request, and at cost, unless such information may not be publicly released under the terms of subsection (b) of this section.

(b) If requested by a manufacturer furnishing such information, the Administrator or any officer or employee of the Environmental Protection Agency shall not disclose any information which contains or might reveal information referred to in section 1905 of title 18 of the United States Code, and is otherwise unavailable to the public, except that such information may be disclosed --

(1) to other government officials;

(2) to duly authorized committees of Congress;

(3) in camera in any judicial proceedings if ordered by a court;

(4) in camera if relevant in any proceeding under this Act to carry out the purposes of this Act; and

(5) to other officers and officials concerned with carrying out this Act.

PROHIBITED ACTS

Sec. 15. The following acts and the causing thereof are prohibited--

(a) The failure to comply with any final regulation or order issued by the Administrator pursuant to this Act;

(b) The failure or refusal to provide information or results of tests as required by section 7 of this Act;

(c) The sale, distribution, or importation into the United States of a chemical substance subject to regulations promulgated under section 6 for which the standards applicable thereto required by such regulations have not been met;

(d) The knowing failure of any person who purchases or receives a substance and who is required to be given notice of restrictions on use or distribution of such substance pursuant to a final regulation under paragraph 4(a)(2), to comply with such restrictions on use or distribution;

(e) The failure to perform any other action required under this Act.

PENALTIES AND REMEDIES

Sec. 16. (a) Any person willfully violating subsections 15 (a), (b), (c), or (d) shall on conviction be fined not more than $25,000 or imprisoned for not more than one year or both.

(b)(1) Any person violating subsections 15(a), (b), (c), or (d), shall be liable to a civil penalty to the United States of a sum which is not more than $25,000 for each day of violation, to be assessed by the Administrator after notice and opportunity for hearing and after he has considered the nature, circumstances, and extent of such violation, the practicability of compliance with the provisions violated and any good faith efforts to comply with such provisions.

(2) Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(c) The Attorney General or his delegate may bring an action in the appropriate district court of the

United States for equitable relief to redress a violation by any person of any provision of section 15 of this Act, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

ENVIRONMENTAL PREDICTION AND ASSESSMENT

Sec. 17. The Environmental Protection Agency shall, cooperation with other Federal agencies, develop the ecessary personnel and information resources to predict the introduction of new chemical substances into the environment and assess the environmental consequences of such introduction.

USE OF GOVERNMENT FACILITIES

Sec. 18. The Administrator may use, by agreement, the personnel, services, and facilities of other Federal departments, agencies, or instrumentalities, whether on a reimbursable or nonreimbursable basis.

HEALTH AND ENVIRONMENTAL DATA

Sec. 19. The Council on Environmental Quality in consultation with the Administrator, the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the heads of other appropriate departments or agencies, shall coordinate a study of the feasibility of establishing (1) a standard classification system for chemical compounds and related substances, and (2) a standard means for storing and for obtaining rapid access to information respecting such materials.

CITIZEN CIVIL ACTIONS

Sec. 20. (a) Except as provided in subsection (b), any person may commence a civil action for injunctive relief on his own behalf, whenever such action constitutes a case or controversy--

(1) against any (i) manufacturer and processor of a chemical substance, (ii) the United States, and (iii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution who is alleged to be in violation of any regulation restricting the use or distribution of a chemical substance, or order promulgated under this Act, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred and, any action brought under paragraph (a)(2) of this subsection shall be brought in the district court of the District of Columbia.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties over suits brought under this section.

(b) No civil action may be commenced--

(1) under subsection (a)(1)

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator, and (ii) to any alleged violator of the regulation or order, or

(B) if the Attorney General has commenced and is diligently prosecuting a civil or criminal action in a court of the United States to require compliance with the regulation or order, or

(C) if the Attorney General has commenced an action to impose a penalty pursuant to section 16 of this Act.

(2) under subsection (a)(2) prior to sixty days after the plaintiff has given notice of such action to the Administrator, except that such action may be brought ten days after such notification in the case of an action under this section for the failure of the Administrator to act under section 4. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) In any action under this section in which the United States is not a party, the Attorney General, at the request of the Administrator, may intervene on behalf of the United States as a matter of right.

(d) The Court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any regulation or order or to seek any other relief.

(f) For purposes of this section, the term "person" means an individual, corporation, partnership, association, State, municipality, or political subdivision of a State.

(g) When any actions brought under this subsection involving the same defendant and the same issues of violations are pending in two or more jurisdictions, such pending proceedings, upon application of the defendant reasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the defendant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the defendant may apply to the court of one such jurisdiction, and such court (after giving all parties reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the applicant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

STATE REGULATIONS

Sec. 21. Nothing in this Act shall affect the authority of any State or local government to restrict the distribution or use of a chemical substance or impose requirements of tests and test results for a chemical substance except that (1) if the Administrator has published proposed regulations under section 4 with respect to limiting particular uses of a particular substance a State or local government may not thereafter impose restrictions on such uses of such substance other than a total ban on such use or uses; (2) if the Administrator has published proposed regulations under section 6 with respect to tests for particular substances or uses, a State or local government may not impose test protocols or results to be achieved therefrom with respect to such substances and uses for the purposes similar to this Act; and (3) if the Administrator has

published proposed regulations under section 4 with respect to limiting particular uses of a particular substance or if the Administrator has published proposed regulations under section 6 with respect to tests for particular substances or uses, a State is not preempted from enforcing any restrictions or test protocols and results to be achieved therefrom existing at the time any such proposed regulation was published; provided that if the Administrator issues an order under section 4 (b)(3) restricting the use of such substance or withdrawing a proposed regulation restricting a use of such substance, or if the Administrator issues an order under section 6 prescribing tests or withdrawing a proposed regulation for such tests, the State may not enforce any such restrictions, test protocols, or results to be achieved therefrom after the effective date of such order, other than a total ban on such use or uses.

REGULATIONS

Sec. 22. The Administrator is authorized to issue such regulations as he may deem appropriate to carry out the purposes of this Act and to amend them at any time.

AUTHORIZATION FOR APPROPRIATIONS

Sec. 23. There is hereby authorized to be appropriated to the Environmental Protection Agency such sums as may be necessary for the purposes and administration of this Act.

SECTION-BY-SECTION ANALYSIS

Toxic Substances Control Act of 1973

Section 1 -- short title

Section 2 -- Policy -- It is the policy of the Act that since the American people are being exposed to a large number of chemical substances some of which may be a danger to human health and the environment, regulation of both interstate and intrastate commerce in such chemicals is required, chemical substances should be adequately tested by the producer, and adequate authority for use and distribution restrictions and for seizure of imminent hazard chemical substances should exist.

Section 3 -- Definitions -- "Chemical substance" is any organic or inorganic substance of a particular molecular identity or any uncombined chemical radical or any mixture. "Manufacturer" includes both the producer of a chemical substance or the importer of such a substance. "Restrict use or distribution" means to prescribe amount that may be sold to given processors, the amount that a processor may use, or quality control standards related to the presence of toxic contaminants.

Section 4 -- Restrictions on Use or Distribution -- Establishes a mechanism whereby the Administrator may propose regulations to restrict or prohibit the use or distribution of chemical substances, may require distributors to give notification to purchasers of restrictions imposed on the substance, and may require other necessary actions including prohibiting sale, use, or removal of such substance.

Subsection (b) provides for public hearings for manufacturers or processors who object to the regulations proposed and established procedures for issuance of an order by the Administrator promulgating, modifying or withdrawing the proposed regulations.

Subsection (c) provides for petitioning the Administrator to modify or rescind a final regulation under

this section and subsection (d) provides for judicial review of any order issued under this section.

Section 5 -- Imminent Hazard -- Provides authority for the Administrator to request court action, to restrain uses or distribution of a chemical substance that poses an imminent hazard, including the ordering or a recall of such a substance.

Section 6 -- Testing -- The Administrator is authorized to prescribe by regulation standards for test protocols for chemical substances produced subsequent to the enactment of this legislation. Such regulations shall include the results that must be achieved in performance of the testing, which shall be performed by the manufacturer or processor.

Subsection (b) provides that the Administrator may subject existing chemical substances to testing requirements if he determines that such chemicals pose an unreasonable threat to health or the environment.

Section 7 -- Reports -- Provides that the Administrator may require manufacturers and processors to report to him the names, chemical identity, uses, amounts, and by-products of substances that the manufacturer or processor is producing or using.

Subsection (b) -- Provides that the Administrator may direct the manufacturer of a substance to provide results of any tests that the manufacturer has performed or has had performed on that substance.

Section 8 -- Seizure -- The Administrator is authorized to seize under judicial order any substance which is manufactured, processed, used, or distributed in violation of any regulation and which constitutes an imminent hazard.

Section 9 -- Relation to Other Laws -- This Act shall not apply to matters subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act, the Food, Drug, and Cosmetic Act, the Occupational Health and Safety Act, the Consumer Product Safety Act,

and under other authorities such as those possessed by the Atomic Energy Commission and the Department of Transportation.

Section 10 -- Toxic Substances Board -- A Toxic Substances Board is to be established and is to consist of scientifically qualified persons to be appointed by the Administrator from nominations made by the National Academy of Sciences. The Secretary of Health, Education, and Welfare also shall appoint one member of the Board from whatever source he desires. It will be the responsibility of this Board, working through committees, to report its views in writing to the Administrator on any regulations that he has proposed with respect to restrictions on use and distribution under Section 4 or with respect to testing under Section 6.

Section 11 -- Research -- The Administrator is authorized to conduct research and monitoring necessary to carry out his duties under the Act and to make contracts and grants for such research and monitoring.

Section 12 -- Administrative Inspections and Warrants -- Provides authority for the Administrator to conduct administrative inspections of facilities where chemical substances are manufactured, processed, or held. A warrant is required for such entries and inspections except when the owner consents in writing, when there are situations presenting imminent danger or emergency circumstances, or in a situation where a warrant is not constitutionally required.

Section 13 -- Exports and Imports -- Provides that no substance intended solely for export shall be subject to any of the requirements of the Act except for the reporting requirements of Section 7(a).

Subsection (b) provides that the Secretary of Treasury shall refuse entry in the United States of any substance or article containing such substance if it violates any provision of this Act.

Section 14 -- Confidentiality -- Provides that information received by the Administrator from any manufacturer shall

be available to the public unless it is confidential information protected by the Act or by other Federal law.

Section 15 -- Prohibited Acts -- These include the failure to comply with regulations, the failure to provide information required under the reporting section, the sale, distribution, or importation in the United States of a substance subject to testing requirements when the requirements for that substance have not been met, the failure by a purchaser who has been given notice of restrictions on use and distribution to comply with such restrictions, and the failure to perform other required actions.

Section 16 -- Penalties and Remedies -- Provides for a fine of up to $25,000 or one year in imprisonment for any violation of prohibited acts and for a civil penalty of up to $25,000 a day for such violation.

Section 17 -- Environmental Prediction and Assessment -- The Environmental Protection Agency is mandated, to develop along with other Federal agencies, prediction and assessment capability with regard to environmental consequences of introduction of new chemical substances in the environment.

Section 18 -- Use of Government Facilities -- Authorizes the Administrator to enter into agreements to use government facilities of other Federal entities.

Section 19 -- Health and Environmental Data -- The Council on Environmental Quality, in consultation with the Environmental Protection Agency, Department of Health, Education, and Welfare, and the Commerce Department, shall coordinate a study of the feasibility of establishing a standard classification system for chemical substances and a rapid access information storage system with regard to such substances.

Section 20 -- Citizen Civil Suits -- Citizen civil actions may be brought against any manufacturer or processor of a chemical substance or against any governmental entity which is in violation of any regulation restricting use or distribution of a chemical substance or of any order

promulgated under this Act. Action against the Administrator is authorized when there is alleged a failure by him to perform a nondiscretionary action.

Section 21 -- State Regulations -- The States are prohibited from imposing use or distribution restrictions on chemical substances when the Administrator has published proposed regulations to accomplish the same, except that the State may impose a total ban on such uses. The States are also prohibited from imposing regulations with respect to test protocols on substances for which the Administrator has proposed such protocols. The States are allowed to enforce restrictions for test protocols which were in existence prior to Federal requirements in these areas until the Administrator issues a final order with respect to such substances.

Section 22 -- Regulations -- The Administrator is authorized to issue such regulations as appropriate to carry out the Act.

Section 23 -- Authorization for Appropriations -- Appropriations of such sums as may be necessary for the purposes and administration of this Act are authorized.

Controlling Pollution

Land Disposal of Hazardous Wastes

ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 21, 1973

OFFICE OF THE
ADMINISTRATOR

Honorable Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

Honorable Carl Albert
Speaker of the House of Representatives
Washington, D. C. 20515

Dear Mr. [President/Speaker]:

I am pleased to forward to you a proposed bill, "The Hazardous Waste Management Act of 1973," designed to protect public health and other living organisms from the adverse impact of the disposal of hazardous wastes.

The proposed bill is being transmitted in accordance with the Environment and Natural Resources State of the Union Message of the President.

The proposed Hazardous Waste Management Act of 1973 addresses the mounting environmental problem resulting from the unregulated disposition of hazardous wastes. With advances in industry and technology, increasingly complex wastes pose significant hazards to health when they are released into the environment.

Hazardous wastes would be identified under the proposed bill by the Administrator of the Environmental Protection Agency. Standards for treatment and disposal of such wastes and guidelines for State programs to regulate such wastes would be issued. The primary responsibility for regulating hazardous wastes will rest with the States. Direct Federal regulation under a permit system would be provided for a limited category of the most hazardous wastes. Federal authority would also be provided to ensure compliance with the standards in the event States failed to do so or in the event an imminent hazard is presented. Research, investigations,

and studies with respect to the impact of wastes upon the environment, development and operation of waste management programs, and the reduction of waste generation and recovery of secondary materials would also be provided.

I believe that this proposal provides a much needed solution to the problems of hazardous waste management and disposition, and presents an opportunity to prevent serious hazards to human health and other living organisms.

I recommend that the bill be referred to the appropriate Committee for consideration and that it be enacted.

The Office of Management and Budget has advised that the enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

/s/ William D. Ruckelshaus
Administrator

Enclosure

S. 1086
H.R. 4873

A BILL

To assure protection of public health and other living organisms from the adverse impact of the disposal of hazardous wastes, to authorize a research program with respect to hazardous waste disposal, and for other purposes.

Be it enacted by the Senate and the House of Representatives of United States of America in the Congress assembled.

Sec. 1. This Act may be cited as the "Hazardous Waste Management Act of 1973."

Sec. 2. FINDINGS AND PURPOSE

(a) The Congress finds--

(1) that continuing technological progress, improvement in the methods of manufacture, and abatement of air and water pollution has resulted in an ever-mounting increase of hazardous wastes;

(2) that improper land disposal and other management practices of solid, liquid and semi-solid hazardous wastes which are a part of interstate commerce are resulting in adverse impact on health and other living organisms;

(3) that the knowledge and technology necessary for alleviating adverse health, environmental and aesthetic impacts associated with current waste management and disposal practices are generally available at costs within the financial capacity of those who generate such wastes, even though this knowledge and technology are not widely utilized;

(4) that private industry has demonstrated its capacity and willingness to develop, finance, construct and operate facilities and to perform other activities for the adequate disposal of hazardous and other waste materials;

(5) that while the collection and disposal of wastes should continue to be a responsibility of private individuals and organizations and the concern of State, regional and local agencies, the problems of hazardous waste disposal as set forth above and as an intrinsic part of interstate commerce have become a matter national in scope and in concern, and necessitate Federal action through regulation of the treatment and the disposal of the

most hazardous of these wastes, and through technical and other assistance in the application of new and improved methods and processes to provide for proper waste disposal practices and reductions in the amount of waste and unsalvageable materials.

(b) The purposes of this Act therefore are -

(1) to protect public health and other living organisms through Federal regulation in the treatment and disposal of certain hazardous wastes;

(2) to provide for the promulgation of Federal guidelines for State regulation of the treatment and disposal of hazardous wastes not subject to Federal regulation;

(3) to provide technical and other assistance to public and private institutions in the application of efficient and effective waste management systems;

(4) to promote a national research program relating to the health and other effects of hazardous wastes and the prevention of adverse impacts relating to health and other living organisms.

Sec. 3. DEFINITIONS

When used in this Act:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico.

(3) The term "waste" means useless, unwanted, or discarded solid, semi-solid or liquid materials.

(4) The term "hazardous waste" means any waste or combination of wastes which pose a substantial present or potential hazard to human health or living organisms because such wastes are nondegradable or persistent in nature or because they can be biologically magnified, or because they can be lethal, or because they may otherwise cause or tend to cause detrimental cumulative effects.

(5) The term "secondary material" means a material that is or can be utilized in place of a primary or raw material in manufacturing a product.

(6) The term "generation" means the act or process of producing waste materials.

(7) The term "storage" means the interim contain-

ment of waste after generation and prior to ultimate disposal. Containment for more than two years shall be considered disposal.

(8) The term "transport" means the movement of wastes from the point of generation to any intermediate transfer points, and finally to the point of ultimate disposal.

(9) The term "treatment" means any activity or processing designed to change the physical form or chemical composition of waste so as to render such materials non-hazardous.

(10) The term "disposal of waste" means the discharge, deposit, or injection into subsurface strata or excavations or the ultimate disposition onto the land of any waste.

(11) The term "disposal site" means the location where any final deposition of waste materials occurs.

(12) The term "treatment facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated.

(13) The term "person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, State, municipality, or any legal representative agent or assigns.

(14) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law with responsibility for the planning or administration of waste management, or an Indian tribe or an authorized Indian tribal organization.

(15) The term "waste management" means the systematic control of the generation, storage, transport, treatment, recycling, recovery, or disposal of waste materials.

Sec. 4. STANDARDS AND GUIDELINES FOR STATE REGULATION

(a) Within 18 months after the date of enactment of this Act, and from time to time thereafter, the Administrator pursuant to this Section and after consultation with representatives of appropriate Federal agencies shall by regulation:

(1) identify hazardous wastes;

(2) establish standards for treatment and

disposal of such wastes; and

(3) establish guidelines for State programs for implementing such standards.

(b) In identifying a waste as hazardous, pursuant to this section, the Administrator shall specify quantity, concentration and the physical, chemical, or biological properties of such waste, taking into account means of disposal, disposal sites, and available disposal practices.

(c) The standards established under this Section shall include minimum standards of performance required to protect human health and other living organisms and minimum acceptable criteria as to characteristics and conditions of disposal sites and operating methods, techniques, and practices of hazardous wastes disposal taking into account the nature of the hazardous waste to be disposed. Such standards shall include but not be limited to requirements that any person generating waste must (1) appropriately label all containers used for on-site storage or for transport of hazardous waste; (2) follow appropriate procedures for treating hazardous waste on-site; (3) transport all hazardous waste intended for off-site disposal to a hazardous waste disposal facility for which a permit has been issued. In establishing such standards the Administrator shall take into account the economic and social costs and benefits of achieving such standards.

(d) The guidelines established under paragraph (a)(3) of this Section shall provide that:

(1) With respect to disposal sites for hazardous wastes, the State program requires that any person obtain from the State a permit to operate such site;

(2) Such permits require compliance with the minimum standards of performance acceptable site criteria set by the guidelines;

(3) The State have such regulatory and other authorities as may be necessary to carry out the purpose of this Act, including, but not limited to, the authority to inspect disposal sites and records, and to judicially enforce compliance with the requirements of an approved program against any person.

(e) Within 18 months of the promulgation of final

regulations under this Act, each State shall submit to the Administrator evidence, in such form as he shall require, that the State has established a State program which meets the requirement of the guidelines of paragraph (a)(3) of this Section. If a State fails to submit such evidence, in whole or in part, the Administrator shall publish notice of such failure in the Federal Register and provide such further notification, in such form as he consider appropriate, to inform the public in such State of such failure.

Sec. 5. FEDERAL REGULATION

(a) Within 18 months after the date of enactment of this Act and from time to time thereafter, the Administrator after consultation with representatives of appropriate Federal agencies may with respect to those hazardous wastes identified pursuant to subsection (a)(1) of Section 4 determine in regulations those of such wastes which because of their quantity of concentration, or because of their chemical characteristics, could if allowed to be dispersed into the environment result in, or contribute to, the loss of human life or substantial damage to human health or to other living organisms.

(b) The Administrator may promulgate regulations establishing Federal standards and procedures for the treatment and disposal of such wastes. Such Federal standards and procedures shall be designed to prevent damage to human health or living organisms from exposure to such wastes identified pursuant to subsection (a) and may include

(1) with respect to hazardous waste disposal sites

(A) minimum requirements as to the characteristics and conditions of such sites,

(B) minimum standards of performance for the operation and maintenance of such sites, and

(C) recommendations as to specific design and construction criteria for such sites; and

(2) with respect to hazardous waste treatment facilities

(A) minimum standards of performance

for the operation and maintenance, and

(B) recommendations based on available technology as to appropriate methods, techniques, or practices for the treatment of specific wastes.

(c) The Administrator may issue a permit for the operation of a hazardous waste disposal site or treatment facility if, after a review of the design, construction, and proposed operation of such site or facility, he determines that such operation will meet the requirements and standards promulgated pursuant to subsection (b).

(d) Within 18 months after the date of enactment of this Act, the Administrator shall promulgate regulations establishing requirements for generators of hazardous wastes subject to regulation under this section to--

(1) Maintain records indicating the quantities of hazardous waste generated and the disposition thereof;

(2) Package hazardous waste in such a manner so as to protect human health and other living organisms, and label such packaging so as to identify accurately such wastes.

(3) Treat or dispose of all hazardous waste at a hazardous waste disposal site or treatment facility for which a permit has been issued under this Act.

(4) Handle and store all hazardous waste in such a manner so as not to pose a threat to human health or other living organisms.

(5) Submit reports to the Administrator, at such times as the Administrator deems necessary, setting out

(A) the quantities of hazardous waste subject to Federal regulation under this subsection that he has generated;

(B) the nature and quantity of any other waste which he has generated which he has reason to believe may have a substantial adverse effect on human health and other living organisms; and

(C) the disposition of all waste included in categories (A) and (B).

(e) The Administrator may prescribe regulations requiring any person who stores, treats, disposes of, or otherwise handles hazardous wastes subject to regulation under this section to maintain such records with respect to their operations as the Administrator determines are necessary for the effective enforcement of this Act.

(f) The Administrator is authorized to enter into cooperative agreements with States to delegate to any State which meets such minimum requirements as the Administrator may establish by regulation the authority to enforce this section against any person.

Sec. 6. FEDERAL ENFORCEMENT

(a) Whenever on the basis of any information the Administrator determines that any person is in violation of requirements under Section 5 or of any standard under Section 4(a)(2) under this Act, the Administrator may give notice to the violator of his failure to comply with such requirements or may request the Attorney General to commence a civil action in the appropriate United States District Court for appropriate relief, including temporary or permanent injunctive relief. If such violation extends beyond the thirtieth day after the Administrator's notification the Administrator may issue an order requiring compliance within a specified time period or the Administrator may request the Attorney General to commence a civil action in the United States District Court in the District in which the violation occurred for appropriate relief, including a temporary or permanent injunction. Provided that, in the case of a violation of any standard under section 4(a)(2) where such violation occurs in a State which has submitted the evidence required under Section 4(e), the Administrator shall give notice to the State in which such violation has occurred 30 days prior to issuing an order or requesting the Attorney General to commence a civil action. If such violator fails to take corrective action within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000 for each day of continued non-compliance. The Administrator may suspend or revoke any permit issued to the violator.

(b) Any order or any suspension or revocation of

a permit shall become final unless, no later than 30 days after the order or notice of the suspension or revocation is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this Section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Any order issued under this Section shall state with reasonable specificity the nature of the violation and specify a time for compliance and assess a penalty, if any, which the Administrator determines is a reasonable period and penalty taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(d) Any person who knowingly violates any requirement of this Act or commits any prohibited act shall, upon conviction, be subject to a fine of not more than $25,000 for each day of violation, or to imprisonment not to exceed one year, or both.

Sec. 7. RESEARCH, DEVELOPMENT, INVESTIGATIONS, TECHNICAL ASSISTANCE AND OTHER ACTIVITIES

(a) The Administrator shall conduct, encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, development, investigations, experiments, surveys, and studies relating to--

(1) any adverse health and welfare effects on the release into the environment of material present in waste, and methods to eliminate such effects;

(2) the operation or financing of waste management programs;

(3) the development and application of new and improved methods of collecting and disposing of waste and processing and recovering materials and energy from wastes; and

(4) the reduction of waste generation and the recovery of secondary materials and energy

from solid, liquid, and semi-solid wastes.

(b) In carrying out the provisions of the preceding subsection, the Administrator is authorized to--

(1) collect and make available, through publication and other appropriate means, the results of, and other information pertaining to, such research and other activities, including appropriate recommendations in connection therewith;

(2) cooperate with public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and the conduct of such research and other activities; and

(3) make grants-in-aid to and contract with public or private agencies and institutions and individuals for research, surveys, developments, and public education. Contracts may be entered into without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

(c) The Interstate Commerce Commission, the Federal Maritime Commission, and the Office of Oil and Gas in the Department of the Interior, in consultation with the Environmental Protection Agency and with other Federal agencies as appropriate, shall conduct within twelve months of the date of enactment of this Act and submit to Congress, a thorough and complete study of rate setting practices with regard to the carriage of secondary materials by rail and ocean carriers. Such study shall include a comparison of such practices with rate setting practices with regard to other materials and shall examine the extent to which, if at all, there is discrimination against secondary materials.

Sec. 8. INSPECTIONS

(a) For the purpose of developing or assisting in the development of any regulation or enforcing the provisions of this Act, any person who stores, treats, transports, disposes of, or otherwise handles hazardous wastes shall, upon request of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to, and to copy all records relating to such wastes.

(b) For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this Act, officers or employees duly designated by the Administrator are authorized -

(1) to enter at reasonable times, any establishment or other place maintained by any person where hazardous wastes are stored, treated, or disposed of;

(2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes. Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment or other place where hazardous wastes are stored, treated, or disposed of appropriate credentials and a written statement as to the reason for the inspection. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(c) Any records, reports, or information obtained from any person under this subsection shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, to which the Administrator has access under this section if made public, would divulge information entitled to protection under section 1905 of Title 18 of the United States Code, the Administrator shall consider such information or particular portion thereof confidential in accordance within the purposes of that section.

Sec. 9. ENCOURAGEMENT OF INTERSTATE AND INTERLOCAL COOPERATION

The Administrator shall encourage cooperative activities by the States and local governments in connection with waste disposal programs, encourage,

where practicable, interstate, interlocal, and regional planning for, and the conduct of, interstate, interlocal, and regional hazardous waste disposal programs; and encourage the enactment of improved and, so far as practicable, uniform State and local laws governing waste disposal.

Sec. 10. IMMINENT HAZARD

(a) An imminent hazard shall be considered to exist when the Administrator has reason to believe that handling or storage of a hazardous waste presents an imminent and substantial danger to human health or other living organisms the continued operation of a disposal site will result in such danger when a State or local authority has not acted to eliminate such risk.

(b) If an imminent hazard exists, the Administrator may request the Attorney General to petition the district court of the United States in the district where such hazard exists, to order any disposal site operator or other person having custody of such waste to take such action as is necessary to eliminate the imminent hazard, including, but not limited to, permanent or temporary cessation of operation of a disposal site, or such other remedial measures as the court deems appropriate.

Sec. 11. PROHIBITED ACTS

The following acts and the causing thereof are prohibited and shall be subject to enforcement in accordance with the provisions of subsection 6(d) of this Act--

(a) Operating any disposal site for hazardous waste identified pursuant to Section 5 without having obtained an operating permit pursuant to such Section.

(b) Disposing of hazardous waste identified pursuant to Section 5 in a manner not in compliance with requirements under Section 5.

(c) Failure to comply with the requirements of Section 5 in labeling containers used for the storage, transport, or disposal of hazardous waste.

(d) Failure to comply with (1) the conditions of any Federal permit issued under this Act, (2) any regulation promulgated by the Administrator pursuant to Section 4(a)(2) or Section 5 of this Act, or (3) any order issued by the Administrator pursuant to this Act.

Sec. 12. APPLICATION OF STANDARDS TO FEDERAL AGENCIES

(a) Each department, agency, and instrumentality of the Executive, Legislative, and Judicial Branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity which generates, or which may generate, wastes shall insure compliance with such standards pursuant to subsections 4(a)(2), 5(a), and 5(c) as may be established by the Administrator for the treatment and disposal of such wastes.

(b) The President or his designee may exempt any facility or activity of any department, agency, or instrumentality in the Executive Branch from compliance with guidelines established under section 4 if he determines it to be in the paramount interest of the United States to do so. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's or his designee's making of a new determination. The Administrator shall ascertain the exemptions granted under this subsection and shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year.

(c) Within 18 months after enactment of this Act and from time to time thereafter, the Administrator, in consultation with other appropriate Federal agencies, shall identify products which can utilize significant quantities of secondary materials and shall issue guidelines with respect to the inclusion of such secondary materials to the maximum extent practicable in products procured by the Federal government.

(d) In any proceeding initiated before the Interstate Commerce Commission or the Federal Maritime Commission after the enactment of this Act where a determination is made by such Commission as to any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers, a specific finding by the Commission will be required that such rate, fare or charge does not or will not cause discrimination against secondary materials.

Sec. 13. CITIZEN SUITS

(a) Except as provided in subsection (b) any person may commence a civil action for injunctive relief

on his own behalf--

(1) against any person who is alleged to be in violation of any regulation promulgated or order issued under this Act;

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred and any action brought under paragraph (a)(2) of this subsection shall be brought in the district court of the District of Columbia. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such regulation or order, or to order the Administrator to perform such act or duty as the case may be.

(b) No action may be commenced--

(1) under subsection (a)(1) of this section--

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has caused to be commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with requirements of this Act or order issued hereunder;

(2) under subsection (a)(2) prior to sixty days after plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(3) In such action under this section, if the United States is not a party, the Attorney General may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to this section, may award

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costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any regulation or to seek any other relief (including relief against the Administrator or a State agency).

Sec. 14. STATE AUTHORITY

(a) If the Administrator has promulgated regulations under Section 5 no State or municipality may without the approval of the Administrator impose more stringent requirements than those imposed under the provisions of Section 5 on the transport, treatment, or disposal of hazardous wastes.

(b) No State or municipality shall impose, on wastes originating in other States or municipalities, requirements respecting the transport of such wastes into or disposal within its jurisdiction which are more stringent than those requirements applicable to wastes originating within such receiving States and municipalities.

Sec. 15. AUTHORIZATION AND APPROPRIATION

There is hereby authorized to be appropriated to the Environmental Protection Agency such sums as may be necessary for the purposes and administration of this Act.

Sec. 16. JUDICIAL REVIEW

(a) A petition for review of action of the Administrator in promulgating any regulation pursuant to Sections 4 or 5 shall be filed in the United States Court of Appeals for the District of Columbia. Any person who will be adversely affected by a final order or other final determination issued under Section 6 may file a petition with the United States Court of Appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such order or determination. Any such petition shall be filed within 30 days from the date of such action or order, or after such date if such petition is based solely on grounds arising after such 30th day.

(b) Action of the Administrator with respect to which review could have been obtained under subsection (a) shall not be subject to judicial review in civil

or criminal proceedings for enforcement.

(c) In any judicial proceeding in which review is sought of an action under this Act required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

Sec. 17. RELATIONSHIP TO OTHER LAWS

(a) This Act shall not apply to--

(1) Any source material, special nuclear material, or byproduct material subject to regulation or control pursuant to the Atomic Energy Act of 1954, as amended;

(2) lethal chemicals subject to regulation pursuant to 50 U.S.C. 1511, et seq., as amended.

(b) This Act shall not be construed to relieve any person from any present or future requirement arising from any other Federal law.

SECTION-BY-SECTION ANALYSIS
Waste Management Act of 1973

Section 1 -- short title. The proposal is intended to replace the Toxic Waste Disposal Control Act proposed by the President in his 1972 Environmental Program and is intended to supercede the Solid Waste Disposal Act, as amended.

Section 2 -- Findings and Purpose -- Congressional findings and public policy reasons for this Bill. The emphasis is on the protection of the public and other living organisms through State regulation of the treatment and disposal of hazardous wastes in general, through Federal regulation of the most hazardous forms of waste, and through research, development and similar activities relating to the health and other effects of hazardous waste.

Section 3 -- Definitions -- Defines various terms used in the bill.

Section 4 -- Standards and Guidelines for State Regulation -- This Section establishes a mechanism whereby the States are basically responsible for the regulation of hazardous wastes. The Administrator will identify hazardous wastes, establish standards for treatment and disposal of such wastes and establish guidelines for State programs for implementing the standards. It is anticipated that the wastes identified by the Administrator for regulation will be materials that are (1) toxic or poisonous, (2) corrosive, (3) irritating or sensitizing, (4) radioactive, (5) pathological, (6) explosive, or (7) flammable. Within 18 months of the promulgation of these standards and guidelines States are to submit evidence to the Administrator that they have established a State program which meets the requirement of the guidelines and are in a position to enforce the standards the Administrator has established. If the State fails to submit such evidence, the Administrator shall publish notice of such failure in the Federal Register and also shall provide notice of the failure to the public.

Section 5 -- Federal Regulation -- Authorizes Federal regulation of certain particularly hazardous substances. Federal regulations will be promulgated to regulate both disposal sites and generators of such wastes. The

regulations shall provide for issuance of permits for operation of waste disposal sites for these substances and for standards dealing with the construction and operation of such sites. Generators of hazardous wastes would be required to maintain records, package and label hazardous wastes in such a manner as to protect human health and other living organisms, submit certain reports to the Administrator, insure that hazardous wastes are either disposed of on-site in accordance with Federal standards or transferred to a disposal facility having a permit, and insure that hazardous wastes are held and stored in such a manner as not to pose a threat to human health or other living organisms.

Section 6 -- Federal Enforcement -- In the case of a violation of any requirement pertaining to hazardous wastes subject to Federal regulation under the previous section, the Administrator is authorized by this Section to either give notice to the violator of his failure to comply or else request the Attorney General to commence immediately a civil action. If notification is given, and the violation extends beyond the thirtieth day after such notification, the Administrator may issue an order requiring compliance or may at that point request the Attorney General to commence an action. The Administrator is also given the same authority to proceed against violators of the standards of Section 4, provided he gives 30 days notice to the State if the State is one that has submitted evidence of having a regulatory program.

Section 7 -- Research, Development, Investigations, Technical Assistance of Activities -- The Administrator is authorized to himself conduct, or to assist others to conduct, research and development, surveys and studies, and experiments relating to adverse efffects on health and welfare of waste materials, operating and financing of waste management programs, production of waste generation and the recovery of secondary materials and energy from wastes, and development and application of new improved methods of collecting and disposing of wastes. The Administrator is authorized to carry out these provisions by collecting and making available information, cooperating with various agencies in the conduct of such research and other activities, and

making grants to and contracting with various entities for such research and development. The Section also mandates the Interstate Commerce Commission, the Federal Maritime Commission, and the Office of Oil and Gas to do a study of rate-setting practices with regard to the carriage of secondary materials.

Section 8 -- Inspections -- Any person who stores, treats, transports, disposes of, or otherwise handles hazardous wastes has to make records relating to such wastes available to the Administrator or the State. The Administrator's designates are authorized to enter and to inspect establishment or places where hazardous wastes are stored, and to obtain samples of wastes, such activities to be conducted at reasonable times and to be concluded and treated with reasonable promptness. Protection of confidential information is provided for the persons subject to this section.

Section 9 -- Encouragement of Interstate and Interlocal Cooperation -- Requires the Administrator to encourage cooperate activities by the State and local governemnts in connection with waste disposal programs.

Section 10 -- Imminent Hazards -- If an imminent hazard exists so that handling or storage of a hazardous waste or the continued operation of the disposal site will result in imminent and substantial danger to human health, the Administrator may request the Attorney General to take appropriate legal action to eliminate the hazard.

Section 11 -- Prohibited Acts -- Certain acts or the causing thereof are prohibited, specifically -- operating a disposal site subject to Federal regulation without having obtained the appropriate operating permit, disposing of hazardous wastes subject to Federal regulations in a manner not in compliance with the Federal requirements established under Section 5, failure to comply with the requirements of section 5 in labeling containers, and failure to comply with conditions of a Federal permit, with any regulations promulgated by the Administrator or with an order issued by him.

Section 12 -- Guidelines for Federal Agencies -- The Administrator shall identify products which can utilize significant quantities of secondary materials and issue guidelines with respect to inclusion of such materials in products procured by the Federal govern-

ment. Federal agencies shall be required to be in compliance with standards and guidelines established by the Administrator for the treatment and disposal of wastes. The section also provides that in Interstate Commerce Commission and the Federal Maritime proceedings relating to fares or rates to be charged by any common carrier, a finding must be made that such rate or fare does not cause discrimination against secondary materials.

Section 13 -- Citizen Suits -- Any person may commence a civil action against any person who is in violation of the Act or against the Administrator if he fails to perform a non-discretionary action.

Section 14 -- State Authority -- No State may impose more stringent requirements than those imposed by the Administrator under the Federal regulatory program on the transport treatment of disposal of hazardous wastes. No State or municipality may impose "non-importation" laws.

Section 15 -- Authorizations and Appropriations -- Such sums as may be necessary for the purposes and administration of this Act are authorized to be appropriated.

Section 16 -- Judicial Review -- Petition for review of the actions of the Administrator in promulgating regulations is to be filed in the United States Court of Appeals for the District of Columbia and any person who will be adversely affected by a final order under Section 6 may file a petition for judicial review and the United States Court of Appeals where such person resides or has principal place of business. Such petitions must be filed within 30 days from the date of the action in the order.

Section 17 -- Relationship to Other Laws -- The Act does not apply to nuclear material subject to regulation under the Atomic Energy Act or to certain lethal chemicals regulated under other law. The Act would not relieve persons from compliance with any other Federal law.

Controlling Pollution

Safe Drinking Water

ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 27, 1973

OFFICE OF THE
ADMINISTRATOR

Honorable Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

Honorable Carl Albert
Speaker of the House of Representatives
Washington, D. C. 20515

Dear Mr. [President/Speaker]:

I am pleased to transmit a proposed bill, "The Safe Drinking Water Act of 1973," which is designed to assure that the public is provided with safe drinking water, and for other purposes."

The proposed bill is forwarded in accordance with the Environmental and Natural Resources State of the Union Message of the President.

The Safe Drinking Water Act of 1973 would provide an effective solution to the problem associated with providing safe drinking water for the public. The legislation would insure that adequate standards are developed, require that citizens receive prompt notification if their drinking water fails to meet health standards, and provide that primary enforcement, reporting, and monitoring authorities will rest with State and local governments where they properly belong. The proposal is essentially a preventive measure intended to assure safe drinking water now and for the future.

Under the proposed bill, the Administrator of the Environmental Protection Agency would establish national mandatory drinking water standards, designed to protect the public health. Recommendatory standards relating to non-health characteristics of drinking water would also be issued. States would have responsibility for implementing and assuring compliance with the mandatory national standards. In the event of non-compliance,

the supplier of water would be obliged to notify users, the State, and EPA. We believe that the public awareness to be achieved through the notification requirement will best assure continuing safe drinking water to the Nation. Additional assurance of compliance would be achieved through a citizen suit provision. Direct Federal enforcement would be available in the event of an imminent health hazard. Research and studies addressed to drinking water supply problems would also be provided.

We recommend that the bill be referred to the appropriate Committee for consideration and that it be enacted.

The Office of Management and Budget has advised that the enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

/s/ William D. Ruckelshaus
Administrator

Enclosure

H.R. 5368

A BILL

To assure that the public is provided with safe drinking water, 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 "Safe Drinking Water Act of 1973."

DECLARATION OF POLICY

Sec. 2. (a) The Congress finds--

(1) that potentially hazardous drinking water directly or indirectly affecting interstate commerce is reaching many consumers due to inadequate treatment and distribution facilities, inadequate monitoring and surveillance, and a lack of sufficient information and technology to adequately treat raw water to assure its potability.

(2) that the public should be provided with water that is safe for drinking and other human uses;

(3) that the public should receive prompt and accurate notification if its water is not safe for drinking and other human uses;

(4) that the primary responsibility and enforcement authority for ensuring the quality of public water supplies has rested and should continue to rest with State and local Governments;

(5) that the Federal Government has the responsibility for establishing minimum national primary drinking water standards and for recommending national secondary drinking water standards for all public water systems, and for supplying where appropriate technical assistance, research and development information, monitoring, and testing information.

DEFINITIONS

Sec. 3. As used in this Act--

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "Agency" means the Environmental Protection Agency.

(3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico.

(4) The term "municipality" means a city, town, borough, county, parrish, district, or other public body created by or pursuant to State law and having

jurisdiction over the supply of water to the public, and an Indian tribe or an authorized Indian tribal organization.

(5) The term "person" includes a State or political subdivision thereof, municipality, corporation, partnership, association, private or public nonprofit institutions, or an individual.

(6) The term "public water system" means--

(A) any system which provides drinking water, (i) to ten or more premises not owned or controlled by the supplier of water or (ii) to forty or more individuals receiving such drinking water from a system.

(B) any system which provides drinking water to carriers, or facilities or establishments serving travelers in interstate commerce.

The term "public water system" does not include relocatable systems set up during disasters or emergencies or used in military field operations.

(7) The term "supplier of water" means any person who controls, owns or operates a public water system.

(8) The term "contaminant" means any physical, chemical, biological, radiological, or other substance or matter which causes or transmits infectious disease, chemical poisoning, chronic disease, or other impairment to man.

(9) The term "allowable limit - health" means that water, delivered to any user of the public water system, containing substances above these limits presents a substantial risk to the health of humans and shall not normally be used for drinking or culinary purposes.

(10) The term "recommended limit - aesthetic" means that water delivered to any user of the public water supply system, containing substances above these limits may be objectionable to an appreciable number of persons but is not hazardous to health.

NATIONAL DRINKING WATER STANDARDS

Sec. 4. (a) The Administrator, after consultation with the Secretary of Health, Education, and Welfare, (A) shall promulgate national primary drinking water standards as soon as practicable after the date of enactment of this Act and (B) may issue recommended national secondary drinking water standards for adoption and enforcement by State and local governments at their

option. The Administrator shall specify in such regulations for national primary drinking water standards the date on which such regulations shall take effect, which shall be as soon as is practicable. The Administrator shall from time to time, revise such standards as appropriate.

(b)(1) National primary drinking water standards shall be standards, the attainment and maintenance of which are requisite to reasonably protect the public health, except that the Administrator shall not prescribe the addition of any substance other than for the purpose of treating contaminants. Such standards--

(A) shall prescribe the allowable limits - health for any contaminants which may exist in any public water system in the United States which may cause or transmit disease, chemical poisoning, or other impairments to man, allowing adequate margins of safety, and

(B) shall include standards for the adequate monitoring and reporting of water quality.

(2) Recommended national secondary drinking water standards, as described under subsection (a) of this section, shall specify the level of quality of drinking water the attainment and maintenance of which is requisite to reasonably assure aesthetically adequate drinking water. Such recommended standards may apply to any constituent of drinking water (A) which may affect the taste, odor, or appearance of such water, or (B) which may otherwise be necessary to assure aesthetically adequate drinking water. These standards shall be designated as recommended limits - aesthetic.

(3) In establishing or revising standards or publishing recommended standards under this section, the Administrator shall take into consideration (A) the views and recommendations of recognized experts in the field of water supply engineering and public health and (B) the economic and social costs and benefits of such standards and their alternatives.

(c) The Administrator shall publish simultaneously with the issuance of any proposed national primary or recommended national secondary drinking water standard under this section--

(1) Such criteria and information as, in his judgment, are necessary to accurately reflect the nature

and extent of identifiable effects on public health or welfare which may be expected from the presence of the contaminant which is the object of such proposed drinking water standards.

(2) Information and data on drinking water treatment methods and technology for the control of the contaminant which is the object of such proposed drinking water standard. Such information and data shall apply to features of the water supply system at which control of the contaminant may be exercised including, but not limited to, treatment, storage, and distribution facilities and the adequate construction, maintenance, and operation thereof. Such information and data shall include where available the costs and the effectiveness of such treatment and the time period necessary to control such contaminant.

(d) the Administrator shall, at least every 3 years review the adequacy of any national primary or recommended national secondary drinking water standard under subsection (a) of this section and the criteria, information, and data published under subsection (c) of this section. The Administrator shall publish his findings in the Federal Register.

ENFORCEMENT OF STANDARDS

Sec. 5.(a) For the purposes of this Act, the States have primary enforcement responsibility except for Federal facilities which will comply with section 15(a). The Administrator shall monitor the activities of the States and public water systems only to the extent necessary to determine if States are establishing and maintaining an adequate program to enforce the national primary drinking water standards.

(b) Whenever the water delivered by a water supply system is not in compliance with national primary drinking water standards, the supplier of such water shall notify its users, appropriate State agencies, and through the State, the Administrator, in accordance with regulations promulgated by the Administrator, of the noncompliance and the extent and nature and possible health effects of such non-compliance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a

false statement.

(c) Whenever, on the basis of information available to him, the Administrator finds that any public water system does not comply with any national primary drinking water standard and that necessary remedial action is not being taken, he shall so notify the State in which such water system is operating.

IMMINENT HAZARDS

Sec. 6. (a) An imminent hazard shall be considered to exist when there is reason to believe that a violation of the national primary drinking water standards by a public water system or any other condition will result in a serious risk to public health.

(b) If he determines that an imminent hazard exists, the Administrator may request the Attorney General to petition an appropriate district court of the United States to order such action as is necessary to eliminate the imminent hazard. The Administrator shall simultaneously, if he has not previously done so, propose any regulation which might be necessary under section 4 of this Act, or he may commence an action under section 13 of this Act.

RESEARCH, TECHNICAL ASSISTANCE, INFORMATION

Sec. 7.(a) The Administrator shall conduct research, studies, and investigations and render financial, technical, and other assistance to appropriate public agencies, institutions, water supply utilities, and individuals in the conduct of research, studies, and investigations relating to the causes, diagnosis, treatment, control, and prevention of diseases and impairments of man resulting directly or indirectly from contaminants in drinking water. Such research, studies, or investigations may include, but shall not be limited to, the development of --

(1) new and improved methods to identify and measure the existence of contaminants in drinking water and to identify the source of such contaminants;

(2) new and improved methods to identify and measure the health effects of contaminants in drinking water;

(3) new and improved methods of treating water to prepare it for drinking, to improve the efficiency of water treatment and to remove contaminants from the

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water; and

(4) new and improved methods for providing safe water for drinking to the public, including improvements in water purification and distribution, and methods of assessing the health-related hazards to other characteristics of drinking water supplies, and studies of the health implications of the reclamation, reuse, and recycling including both indirect and direct reuse of waste waters as sources of public water supplies.

(b) In carrying out this Act, the Administrator is authorized to --

(1) collect and make available information pertaining to research and investigations, with respect to providing adequate quality and quantity of safe drinking water together with appropriate recommendations in connection therewith; and

(2) make available research facilities of the Agency to appropriate public agencies, institutions, water supply utilities, and individuals engaged in studies and research relating to water supply.

STATE WATER SUPPLY PROGRAM PLANS

Sec. 8.(a) Each State shall file an annual State Program Plan with EPA defining the methods and resources to be applied in establishing and maintaining adequate programs to enforce the national primary drinking water standard for each type of public water system as defined in section 3(6) beginning one year from enactment.

(b) Such State plan shall be satisfactory if it--

(1) provides for the adoption by the State of the national drinking water standards or standards which are no less stringent than the national primary drinking water standards;

(2) provides for the adoption by the State of appropriate regulations and procedures for the implementation and enforcement of the standards adopted pursuant to paragraph (1) of this subsection;

(3) provides for the enforcement of the standards violation notification procedures under section 5(b) of this Act;

(4) provides for administration or for the supervision of administration of the plan by the State agency charged with the responsibility for the safety of drinking water;

(5) sets forth the plans, policies, and

procedures to be followed in carrying out the State plan;

(6) provides for such accounting, budgeting, and other fiscal methods and procedures as are necessary for the proper and efficient administration of the plan;

(7) provides for the establishment of an emergency plan of action for each public water system within the State for use in case of an emergency affecting the safety of the treated drinking water or the effective operation of the treatment facility, including provision for emergency reserves or alternate sources of water suitable for drinking and culinary purposes.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

Sec. 9.(a) At his own initiative, or upon the petition of any person, the Administrator is authorized to issue regulations to carry out the purposes of this Act and to amend or rescind such regulations at any time.

(b) The Administrator shall publish any regulations proposed under this Act, or proposals to amend or rescind such regulations, and his justification therefor in the Federal Register at least sixty days prior to the time when such regulations shall become final. The Administrator shall also publish in the Federal Register a notice of all petitions received under subsection (a) and, if such petition is denied, his reasons therefor. Such notice shall identify the purpose of the petition and include a statement of the availability of any data submitted in support of such petition. If any person directly and adversely affected by a proposed regulation files objections and requests a public hearing within forty-five days of the date of publication of the proposed regulation, the Administrator shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Administrator until after the conclusion of such hearing. All public hearings authorized by this subsection shall consist of the oral and written presentation of data, views, or arguments in accordance with such conditions or limitations as the Administrator may make applicable thereto.

(c) Proposed and final regulations issued under this Act shall set forth findings of fact on which the

regulations are based and the relationship of such findings to the regulations issued.

(d) Any judicial review of final regulations promulgated under this Act shall be in accordance with section 701-706 of title 5, United States Code, except that, with respect to relief pending review, no stay of an agency action may be granted unless the reviewing court determines that the party seeking such stay (a) is likely to prevail on the merits in the review proceeding and (b) will suffer irreparable harm pending such proceeding.

(e) Except as expressly modified by the provisions of this section, the provisions of 5 U.S.C. 551 et seq. shall apply to proceedings conducted by the Administrator under this Act.

(f) If the party seeking judicial review applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court either (1) that the information is material and was not available at the time of the proceeding before the Administrator or (2) that failure to include such evidence in the proceeding was an arbitrary or capricious act of the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, and his recommendations, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

RECORDS AND INSPECTION

Sec. 10. (a) Suppliers of water and others subject to the requirements of this Act shall submit such reports and make available such records and information to the appropriate State agency as necessary for implementation of a State program required under section 8 of this Act.

(b) Any officer or employee duly designated by the Administrator, upon presenting appropriate credentials and a written notice of inspection authority to any

supplier of water subject to a national primary drinking water standard prescribed under section 4 of this Act or any grantee (or person in charge of any of its property), is authorized to enter any establishment or facility or other property of such person in order to determine whether such supplier or grantee has acted or is acting in compliance with this Act, including for this purpose, inspection, at reasonable time, of records, files, papers, processes, controls and facilities, or in order to test any feature of a public water system, including its raw water source. Each inspection shall be commenced and completed with reasonable promptness and the supplier or grantee notified of the results of such inspection.

(c) For purposes of this section, the term "grantee" means any person who receives financial assistance under this Act.

STATE REGULATIONS

Sec. 11. Nothing in this Act shall affect the authority of any State or local government to establish drinking water standards or to make other requirements for purposes similar to those contained in this Act, except that any such standards or requirements shall not be less stringent than the requirements of the national primary drinking water standards under this Act.

PROHIBITED ACTS

Sec. 12. The following acts and the causing thereof are prohibited:

(1) Failure by a supplier of water to comply with the requirements of section 5(b) of this Act, or dissemination by such supplier of any false or misleading information with respect to remedial actions being undertaken to achieve compliance with national primary drinking water standards.

(2) Failure by a supplier of water to comply with the standards for monitoring and reporting pursuant to subparagraph (B) of paragraph 4(b)(1) of this Act; or

(3) The refusal to allow entry and inspection of establishments, facilities, or other property pursuant to section 10(b) of this Act.

PENALTIES AND REMEDIES

Sec. 13.(a) Any person willfully violating section 12 of this Act shall on conviction be fined not more

than $15,000 for each violation or imprisoned for not more than one year, or both.

(b)(1) Any person not willfully violating section 12 of this Act shall be liable to the United States for a civil penalty of a sum which is not more than $10,000 for each violation, to be assessed by the Administrator after notice and opportunity for an adjudicative hearing conducted in accordance with section 554 of title 5, United States Code, and after he has considered the nature, circumstances, and extent of such violation, the difficulties of achieving compliance with the provisions violated, and any good-faith efforts to comply with such provisions.

(2) Upon failure of the offending party to pay the civil penalty, the Administrator may request the Attorney General commence an action in an appropriate district court of the United States to secure such payment.

(c) The Attorney General may bring an action in the appropriate district court of the United States for equitable relief to redress a violation by any person of any provision of section 12 of this Act, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

CITIZEN CIVIL ACTION

Sec. 14.(a) Except as provided in subsection (b) of this section, any person may commence a civil action for injunctive relief on his own behalf, whenever such action constitutes a case or controversy--

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any national primary drinking water standard promulgated under section 4 of this Act, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator. Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred and any action brought under paragraph (a)(2) of this subsection shall be brought in

the district court of the District of Columbia.

The district courts shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) No civil action may be commenced--

(1) under subsection (a)(1) of this section --

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to any alleged violator of such standard and (iii) to the State in which the violation occurs.

(B) if the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such standard.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) In any action under this section to which the United States is not a party, the Attorney General at the request of the Administrator may intervene on behalf of the United States as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any national primary drinking water standard or to seek any other relief.

FEDERAL FACILITIES

Sec. 15.(a) Except as provided for in subsection (b) of this section, each Federal department or agency having jurisdiction over a federally owned or maintained public water system, shall comply with all national primary drinking water standards prescribed under section 4 of this Act and shall, to the maximum extent practicable, comply with any recommended national secondary drinking water standard prescribed under such

section. Notification required by section 5(b) will be submitted to the Administrator in lieu of the appropriate State agency.

(b) The Administrator may waive compliance with the requirements of subsection (a) of this section, in whole or in part, upon receiving information from the Secretary of Defense or from the Secretary of the Department in which the United States Coast Guard is operating that such waiver is in the interest of national security. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for good cause shown by the Secretary of Defense or by the Secretary of the Department in which the United States Coast Guard is operating, in the interest of national security, unless the Administrator has been requested by the applicable Secretary to omit such publication because it would be contrary to the interests of national security.

AUTHORIZATION FOR APPROPRIATIONS

Sec. 16. There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Section-by-Section Analysis
Safe Drinking Water Act of 1973

Section 1 of the bill provides that the Act may be cited as the "Safe Drinking Water Act of 1973."

Section 2 declares the findings of the Congress which include: potentially hazardous drinking water affecting interstate commerce is reaching many consumers due to inadequate treatment and distribution facilities, inadequate monitoring and surveillance, and lack of sufficient information and technology; the public should receive prompt notice if the water is not safe; primary responsibility and enforcement authority should continue in State and local governments; and the Federal government should establish health related standards, recommend aesthetic related standards, and provide research, technical assistance, and information with regard to drinking water supplies.

Section 3 contains definitions of terms used in the bill including "public water systems," "contaminant," "allowable limit-health," and "recommended limit-aesthetic."

Section 4 provides that the Administrator of the Environmental Protection Agency shall establish national primary drinking water standards (those related to health) as soon as practicable, and may issue recommended national secondary drinking water standards (those related to aesthetics). In establishing or revising these standards the Administrator must consider the views of recognized experts in water supply and public health and consider the costs and benefits of such standards and their alternatives. When standards are issued, information on effects of contaminants, drinking water treatment and technology, and other information must be published.

Section 5 provides that the States shall have primary enforcement responsibility with regard to the drinking water standards except for Federal facilities. The Environmental Protection Agency is required to monitor the activities of the States and public water supply systems only to the extent necessary to determine if

States are establishing and maintaining an adequate program to enforce the national primary drinking water standards.

Section 5 also provides that if the drinking water is not in compliance with the national primary drinking water standards, the suppliers of such water must notify the users, appropriate State agencies, and the Environmental Protection Agency of the non-compliance and of the possible health effects of such non-compliance. The notification received or information obtained by the exploitation of such notification shall not be used against such person in any criminal case, except a prosecution for perjury or for giving a false statement. Section 5 also provides that from any information available to the Environmental Protection Agency, if it should find that any public water supply system does not meet the national primary standards and necessary remedial action is not being taken, it must notify the State.

Section 6 provides that if the Administrator of the Environmental Protection Agency determines that an imminent hazard exists (a violation of the primary standards or other condition which would result in a serious risk to public health) he may institute enforcement proceedings to eliminate the hazard.

Section 7 provides that the Administrator of the Environmental Protection Agency shall conduct research, studies, and investigations and render financial, technical, and other assistance to appropriate public agencies, institutions, water supply utilities, and individuals relating to safe drinking water supplies. The Administrator is also authorized to make available information pertaining to research and investigations and to make the Environmental Protection Agency's research facilities available to appropriate groups and agencies engaged in studies and research relating to water supplies.

Section 8 requires each State to file an annual State program plan with the Environmental Protection Agency outlining its methods and resources for establishing

and maintaining an adequate program to enforce the national primary drinking water standards, beginning one year after enactment of the legislation. Section 8 also sets out the requirements of the State plan.

Section 9 provides that the Administrator may issue regulations to carry out the purposes of the legislation. This section also sets out procedures for issuing regulations, holding public hearings, and requiring findings of fact on which regulations are based.

Section 9 also makes provisions for judicial review of proceedings of the Administrator under the Act.

Section 10 requires suppliers of water and others subject to the requirements of the Act to submit reports to and to make available records and information to the appropriate State agency as necessary for implementation of the State program. Provision is also made for employees of the Environmental Protection Agency to make inspections of water supplies to determine compliance with the national primary drinking water standards.

Section 11 provides that no provision of this legislation will affect the authority of State and local governments to establish drinking water standards, except that such shall not be less stringent than the national primary drinking water standards.

Section 12 lists the prohibited acts, which includes failure by a supplier of water to make proper notifications when there is a non-compliance with the primary standards, failure by a supplier of water to comply with standards for monitoring and reporting, and the refusal to allow entry and inspection of establishments, facilities, and other property.

Section 13 establishes criminal penalties for willfully committing the prohibited acts under the bill of up to $15,000 for each violation, or one year imprisonment, or both. Civil penalties of up to $10,000 for each violation is authorized for unwillfull violations. The Attorney General may also bring an action

for injunctive relief.

Section 14 provides that any person may commence a civil action for injunctive relief against alleged violators of the national primary drinking water standards or against the Administrator of the Environmental Protection Agency where there is alleged a failure to perform any act or duty under the legislation which is not discretionary with the Administrator. Detailed procedures for commencing a citizen civil action under this section are set out.

Section 15 provides that each Federal department or agency having jurisdiction over a federally owned or maintained public water system shall meet the primary drinking water standards, and, to the maximum extent possible, comply with the secondary standards. This requirement may be waived in the interest of national security. The notification required by section 5(b) must be submitted to the Administrator of EPA in lieu of the appropriate State agency.

Section 16 authorizes funds as may be necessary to be appropriated to carry out the provisions of the legislation.

Controlling Pollution

Sediment Control

ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF THE
ADMINISTRATOR

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Honorable Carl Albert
Speaker of the House
of Representatives
Washington, D.C. 20515

Dear Mr. [President/Speaker]:

I am pleased to transmit a proposed bill amending the Federal Water Pollution Control Act which is intended to ensure that States make the control of sediment a part of their water quality program.

The proposed bill is forwarded in accordance with the Environmental and Natural Resources State of the Union Message of the President.

The problems of sedimentation resulting from earth-disturbing activities such as highway and building construction are severe in many bodies of water. Sedimentation often thwarts the attainment of water quality objectives, even though controls could be applied.

This amendment to the Federal Water Pollution Control Act is intended to strengthen the Act with regard to sediment control from construction activities. While the 1972 amendments provide significant requirements with regard to sediment control, the sanction for failure to meet these requirements may not be adequate. This proposal would provide an additional legal basis upon which to require States to adopt effective sediment pollution control measures.

Under section 208 of the Federal Water Pollution Control Act the Governor of each State may designate waste treatment management planning areas, or the State shall

act as the planning agency for portions of the State where no designation is made. The section also makes the preparation of a waste management plan mandatory, requiring it to include, among other things, procedures and methods to control construction activity related sources of pollution. This provision would be enforceable under the State program grants provision of section 106, which requires as a condition of such grants that the State submit for the approval of the EPA Administrator its program for the prevention, reduction, and elimination of pollution in accordance with the purposes and provisions of the Act.

Section 303(e) of the Act requires that each State develop for EPA approval a "continuing planning process" that will "result in plans" containing various specified items, including "effluent limitations" needed to meet water quality standards,"adequate schedules of compliance for...water quality standards" and "controls over the disposition of all residual waste from any water treatment processing." Thus, the "planning process" already must include several types of regulatory control measures. The sanction for failure to establish these or other measures required in the "planning process" is EPA disapproval of the "process" and, when that occurs, refusal to approve the State's Title IV (point source) permit program. Section 303 also requires "all elements of any applicable areawide waste management plans under section 208" to be included in the continuing planning process. However, for States that have not developed 208 plans, no sanctions are presently available under section 303 to require sediment control.

This proposed amendment would supplement the sanction contained in section 106. It would deal with a situation where a State does not develop "208" plans throughout its jurisdiction and is willing to suffer a possible loss of funds under section 106 of the Act.

Thus the proposed amendment to section 303 would add to the requirements of this section the requirement of procedures and methods for sediment control with the same enforcement sanctions that cover other control measures that are mandated under section 303.

We recommend that the bill be referred to the appropriate Committee for consideration and that it be enacted.

The Office of Management and Budget has advised that the enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

William D. Ruckelshaus
Administrator

Enclosure

A BILL

To amend the Federal Water Pollution Control Act to provide for the control of sediment from construction activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Water Pollution Control Act is amended as follows:

Sec. 1. Section 303 is amended by redesignating subparagraph (H) of section 303(e)(3) as subparagraph (I) and by inserting after subparagraph (G) the following new subparagraph:

"(H) procedures and methods (including land use requirements where appropriate) to control to the extent feasible construction activity related sources of pollution, including runoff from resultant facilities."

Controlling Pollution

Controlling Environmental Impacts of Transportation

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

March 22, 1973

Dear Mr. [President/Speaker]:

The Department of Transportation has prepared and submits herewith as a part of its legislative program for the 93d Congress a draft of a proposed bill

"To authorize appropriations for certain transportation projects in accordance with title 23 of the United States Code, and for other purposes",

together with a section-by-section analysis of the bill.

Although the 92d Congress worked hard on comprehensive highway and mass transit legislation, a bill was not enacted last year. As a result, action was not taken on many important changes in the existing Federal-aid program which were advocated by the Administration and carefully considered by the Congress.

Since the adjournment of the last Congress, we have reviewed our prior proposals and those advanced by members of the Congress. We have given particular attention to the important question of the proper use of Highway Trust Fund monies for transportation projects --especially those in urbanized areas. We believe that only by the proper combination of highway and mass transit capital investment can we expect to effectively meet the severe and complex transportation problems faced by our urbanized areas. Our proposed bill, entitled the "Federal-Aid Highway and Public Transportation Act of 1973", reflects this belief by making funds available for both types of investment, including improvements to bus and rapid rail systems.

We also believe that because of their familiarity with the particulars of their transportation problems, large urbanized areas should decide for themselves the proper mix of highway and mass transit capital invest-

ment. Accordingly, the bill passes through urban system funds to urbanized areas having a population of 400,000 or more.

The bill also provides a means for the resolution of the controversies which have tied up a number of Interstate links in our urban areas. Recognizing that the controversies are usually not whether additional transportation capacity is needed, but rather how best to supply it, we would permit funds originally authorized for the Interstate System to be expended for other highway and public transportation projects.

Departing from the past practice of requesting two-year authorizations for the Federal-aid systems, this bill would provide authorizations for the period extending from fiscal year 1974 through 1976. Specifically, the bill provides $3.65 billion for the urban system and $3 billion for highways on the rural system during that period. Authorizations for the Interstate System are requested through the end of fiscal year 1980, the revised completion date for that system.

Other important features of the bill include continuation of a strong rural highway program, providing State officials flexibility for transportation investments for rural areas, extension of the secondary road program procedures to all Federal-aid systems other than the Interstate System, and expansion of the coverage of our bill board control program.

The Office of Management and Budget has advised that enactment of this legislation would be in accord with the President's program.

Sincerely,

/s/ Claude S. Brinegar

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Honorable Carl Albert
Speaker of the House of Representatives
Washington, D.C. 20515

Enclosures

S. 502
H.R. 118

A BILL

To authorize appropriations for certain transportation projects in accordance with title 23 of the United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 101. This act may be cited as the "Federal-Aid Highway and Public Transportation Act of 1973."

REVISION OF AUTHORIZATION OF APPROPRIATIONS FOR INTERSTATE SYSTEM

SEC. 102 Section 108(b) of the Federal-Aid Highway Act of 1956, as amended, is amended by striking out "the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1974, the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1975, and the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1976" and inserting in lieu thereof the following: "the additional sum of $3,250,000,000 for the fiscal year ending June 30, 1974, the additional sum of $3,150,000,000 for the fiscal year ending June 30, 1975, the additional sum of $3,000,000,000 for the fiscal year ending June 30, 1976, the additional sum of $3,000,000,000 for the fiscal year ending June 30, 1977, the additional sum of $3,000,000,000 for the fiscal year ending June 30, 1978, the additional sum of $3,000,000,000 for the fiscal year ending June 30, 1979, and the additional sum of $1,357,000,000 for the fiscal year ending June 30, 1980."

AUTHORIZATION OF USE OF COST ESTIMATE FOR APPORTIONMENT OF INTERSTATE FUNDS

SEC. 103. The Secretary of Transportation is authorized to make the apportionment for fiscal years 1974, 1975, and 1976 of the sums authorized to be appropriated for such years for expenditures on the National System of Interstate and Defense Highways, using the apportionment factors contained in revised table 5 of House Public Works Committee Print Number 92-29.

EXTENSION OF TIME FOR COMPLETION OF SYSTEM

SEC. 104.(a) The second paragraph of section 101(b) of title 23, United States Code, is amended by striking out "twenty years'" and inserting in lieu thereof "twenty-four years'" and by striking out "June 30, 1976" and inserting in lieu thereof "June 30, 1980."

(b)(1) The introductory phrase and the second and third sentences of section 104(b)(5) of title 23, United States Code, are amended by striking out "1976" each place it appears and inserting in lieu thereof at each such place "1980."

(2) Section 104(b)(5) is further amended by striking out the sentence preceding the last three sentences and inserting in lieu thereof the following: "Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for fiscal years 1974, 1975 and 1976. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1975. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for fiscal years 1977 and 1978. The Secretary shall make a final revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1977. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for fiscal years 1979 and 1980. Whenever the Secretary, pursuant to this subsection, requests and receives estimates of cost from the State highway departments, he shall furnish copies of such estimates at the same time to the Senate and the House of Representatives."

AUTHORIZATIONS

SEC. 105.(a) For the purpose of carrying out the provisions of title 23, United States Code, the following

sums are hereby authorized to be appropriated:

(1) For the Federal-aid primary system in rural areas, out of the Highway Trust Fund, $1,000,000,000 for each of the fiscal years 1974, 1975, and 1976.

(2) For the Federal-aid urban system, out of the Highway Trust Fund, $1,100,000,000 for fiscal year 1974, $1,200,000,000 for fiscal year 1975, and $1,350,000,000 for fiscal year 1976.

(3) For forest highways, out of the Highway Trust Fund, $33,000,000 for each of the fiscal years 1975 and 1976.

(4) For public lands highways, out of the Highway Trust Fund, $16,000,000 for each of the fiscal years 1975 and 1976.

(5) For the Federal-aid Indian reservation road and bridge system, out of the Highway Trust Fund, $60,000,000 for the fiscal year 1974, and $75,000,000 for each of the fiscal years 1975 and 1976.

(6) For carrying out section 215(a) of title 23, United States Code--

(A) for the Virgin Islands, not to exceed $1,500,000 for fiscal year 1974, and not to exceed $2,000,000 for each of the years 1975 and 1976.

(B) for Guam, not to exceed $1,500,000 for fiscal year 1974, and not to exceed $2,000,000 for each of the fiscal years 1975 and 1976.

(C) for American Samoa, not to exceed $500,000 for fiscal year 1974, and not to exceed $1,000,000 for each of the fiscal years 1975 and 1976.

Sums authorized by this paragraph shall be available for obligation at the beginning of the fiscal year for which authorized in the same manner and to the same extent as if such sums were apportioned under chapter 1 of title 23, United States Code.

(7) For carrying out section 319(b) of title 23, United States Code (relating to landscaping and scenic enhancement), out of the Highway Trust Fund $3,000,000 for each of the fiscal years 1975 and 1976.

(8) For necessary administrative expenses in carrying out section 131, section 136, and section 319 (b) of title 23, United States Code, out of the High-

way Trust Fund, $1,300, for each of the fiscal years 1974, 1975, and 1976.

(9) Nothing in the first six paragraphs of this section shall be construed to authorize the appropriation of any sums to carry out section 131, 136, 319(b), or chapter 4 of title 23, United States Code.

(b) Any State which has not completed Federal funding of the Interstate System within its boundaries shall receive at least one-half of one percentum of the total apportionment for each of the fiscal years 1974, 1975, and 1976 under section 104(b)(5) of title 23, United States Code, or an amount equal to the actual cost of completing such funding, whichever amount is less.

DEFINITIONS

SEC. 106. Section 101(a) of title 23, United States Code, is amended as follows:

(1) The definition of the term "construction" is amended by striking out "Coast and Geodetic Survey" and by inserting in lieu thereof: "National Oceanic and Atmospheric Administration."

(2) The definition of "rural areas" is amended to read: "The term 'rural areas' means all areas of a State not included in urbanized areas."

(3) The definition of "urbanized areas" is amended to read: "The term 'urbanized area' means an area so designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other subject to approval by the Secretary. Such boundaries shall, as a minimum, encompass the entire urbanized area designated by the Bureau of the Census."

(4) The definition of the term "urban area" is amended by inserting immediately after "State highway department" the following: "and appropriate local officials in cooperation with each other."

FEDERAL-AID SYSTEMS

SEC. 107.(a) Section 103(b) of title 23, United States Code, is redesignated as section 103(b)(1) and a new section 103(b)(2) is added to read as follows:

"(b)(2) After June 30, 1975, the Federal-aid primary system shall consist of an adequate system of arterial routes in rural areas important to interstate, statewide, or regional travel. The Federal-aid primary

system shall be designated by each State, subject to the approval of the Secretary as provided in subsection (f) of this section."

(b) Section 103(c) of title 23, United States Code, is redesignated as section 103(c)(1) and a new section 103(c)(2) is added to read as follows:

"(c)(2) After June 30, 1975, the Federal-aid secondary system shall consist of major collector routes in rural areas. The Federal-aid secondary system shall be designated by each State and appropriate local officials in cooperation with each other, subject to the approval of the Secretary as provided in subsection (f) of this section."

(c) Section 103(d) of title 23, United States Code, is amended to read as follows:

"(d) The Federal-aid urban system shall be located in urbanized areas and consist of arterial and collector routes, and other significant local routes. The routes on the Federal-aid urban system shall be designated by the appropriate local officials, after consultation with the State, and in accordance with section 134 of this title. Designation of the system shall be subject to the approval of the Secretary as provided in subsection (f) of this section. If a State does not have an urbanized area, or part thereof, it may designate routes on the Federal-aid urban system for its largest urban area, based upon a continuing planning process developed cooperatively by State and local officials and approved by the Secretary. Funds authorized to be appropriated for the Federal-aid urban system are eligible for expenditure on any Federal-aid highway route within an urbanized area."

(d) Section 103(e) of title 23, United States Code, is amended by adding at the end thereof the following:

"(4) In addition to the provisions of paragraph (2) of the subsection, the Secretary may, at any time prior to July 1, 1974, upon the joint request of a State and the local governments concerned, withdraw his approval of any route or portion thereof on the Interstate System within that State selected and approved in accordance with this title prior to the enactment of this paragraph, if he determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System and if he

receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by such route or portion thereof. After the Secretary has withdrawn his approval of any such route or portion thereof, a sum equal to the Federal share of the cost of such route or portions thereof, based upon the 1972 Interstate cost estimate, shall be available for projects on any Federal-aid system within that State, including projects authorized by section 142 of this title. The Federal share for projects substituted under this paragraph shall be determined in accordance with the provisions of section 120 of this title applicable to the Federal-aid system of which the substitute project is a part.

(e) Section 103(g) of title 23, United States Code, is amended to read as follows:

"(g) The Secretary, on July 1, 1974, shall remove from designation as a part of the Interstate System any segment of the System for which a State has not established a schedule for the expenditure of funds for completion of construction of such segment within the period of availability of funds authorized to be appropriated for completion of the Interstate System, and with respect to which the State has not satisfied the Secretary that such schedule will be met. The Secretary, on July 1, 1976, shall remove from designation as a part of the Interstate System any segment of the System with respect to which a State has not submitted plans, specifications, and estimates for approval. No segment of the Interstate System removed under authority of this subsection shall thereafter be designated as a part of the Interstate System.

APPORTIONMENT

SEC. 108. Section 104 of title 23, United States Code, is amended as follows:

(1) The introductory part of subsection (b) is amended by striking out "deduction authorized by subsection (a) of this section" and inserting in lieu thereof "deductions authorized by subsections (a) and (d) of this section."

(2) Subsection (b)(1) is amended to read as follows:

"(1) For the Federal-aid primary system:

"One-third in the ratio which the area of each State bears to the total area of all the States; one-

third in the ratio which the total population of each State outside of urbanized areas, or parts thereof, bears to the total population of all the States outside of urbanized areas, or parts thereof, as shown by the latest available Federal census; one-third in the ratio which the mileage in each State of rural delivery routes and intercity mail routes where service is performed by motor vehicles bears to the total mileage in all the States of such rural delivery and intercity mail routes at the close of the next preceding calendar year, as shown by a certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary. No State shall receive less than one-half of one percent of each year's apportionment. If a State does not have an urbanized area, or part thereof, the population of its largest urban area shall be excluded from the population totals computed under this paragraph."

(3) Subsection (b)(2) is amended to read as follows:

(2) For the Federal-aid secondary system:

"In accordance with the needs of such system as determined by each State from funds apportioned to the State under paragraph (1) of this subsection, but not less than 10 per centum nor more than 30 per centum of those funds."

(4) Subsection (b)(6) is amended to read as follows:

"(6) For the Federal-aid urban system:

"In the ratio which the population in urbanized areas, or parts thereof, in each State bears to the total population in urbanized areas, or parts thereof, in all the States as shown by the latest available Federal census. If a State does not have an urbanized area, or part thereof, the population of its largest urban area shall be included in the population totals computed under this paragraph."

(5) Subsections (c), (d), and (f) are repealed; subsection (e) is redesignated as subsection (c); and a new subsection (d) is added as follows:

"(d) On or before January 1 next preceding the commencement of each fiscal year, the Secretary shall set aside not to exceed one-half per centum of the funds authorized to be appropriated for expenditure upon the Federal-aid systems for that fiscal year for the

purpose of carrying out the requirements of section 134 of this title, and apportion that amount to the States in the manner provided by subsection (b)(6) of this section. The funds apportioned to a State under this paragraph shall be allocated within the State to the agencies responsible for carrying out the provisions of section 134 of this title according to a formula developed by the State and approved by the Secretary. In deriving a formula under this paragraph, the State shall take into consideration such factors as population, status of planning, and metropolitan area transportation needs. Funds made available to a State under this paragraph shall be matched by the State in accordance with section 120(a) of this title unless the Secretary determines that the interests of Federal transportation programs would be served better without such matching.

PROGRAM APPROVAL

SEC. 109. Section 105(d) of title 23, United States Code, is amended to read as follows:

(d) In approving programs for projects on the Federal-aid urban system, the Secretary shall require that such projects be selected by the appropriate local officials, after consultation with the State, in accordance with section 134 of this title. Urban area traffic operations improvement programs and fringe and corridor parking facilities authorized by sections 135 and 137, respectively, of title 23, United States Code, shall be given full consideration in the selection of projects on the Federal-aid urban system.

ADVANCE ACQUISITION OF RIGHTS-OF-WAY

SEC. 110.(a) The last sentence of section 108(a) of title 23, United States Code, is amended by striking out "seven years" and inserting in lieu thereof "ten years."

(b) The first sentence of section 108(c)(3) of title 23, United States Code, is amended by striking out "seven years" and inserting in lieu thereof "ten years."

SIGNS ON PROJECT SITE

SEC. 111. The last sentence of section 114(a) of title 23, United States Code, is amended to read as follows: "After July 1, 1973, the State highway department shall not erect on any project where actual

construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary."

CERTIFICATION ACCEPTANCE

SEC. 112.(a) Section 117 of title 23, United States Code, is amended to read as follows:

§117. Certification acceptance

"(a) The Secretary may discharge any of his responsibilities under this title relative to projects on the Federal-aid systems, except the Interstate System, upon the request of any State, by accepting a certification of its capability to perform such responsibilities, if he finds that such projects will be carried out in accordance with State laws, regulations, directives, and standards establishing requirements at least equivalent to those contained in, or issued pursuant to, this title.

"(b) The Secretary shall make a final inspection of each such project upon its completion and shall require an adequate report of the estimated and actual cost of construction as well as such other information as he determines necessary.

"(c) The procedure authorized by this section shall be an alternative to that otherwise prescribed in this title. The Secretary shall promulgate such guidelines and regulations as may be necessary to carry out this section.

"(d) Acceptance by the Secretary of a State's certification under this section may be rescinded by the Secretary within his discretion.

"(e) Nothing in this section shall affect or discharge any responsibility or obligation of the Secretary under any Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d), et seq.), title VIII of the Act of April 11, 1968 (P.L. 90-284, 42 U.S.C. 3601 et seq.), and the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), other than this title.

(b) The analysis of chapter 1 of title 23, United States Code, is amended by striking out "117. Secondary

road responsibilities." and inserting in lieu thereof the following: "117. Certification acceptance."

PUBLIC HEARINGS

SEC. 113. Section 128(a) of title 23, United States Code, is amended by adding the following at the end thereof:

"The Secretary shall also require with the submission of plans for a Federal-aid project an assurance that all steps have been taken as required pursuant to guidelines issued by the Secretary to foster and ensure public participation in the planning of the project before and after the public hearings required by this subsection."

FERRIES

SEC. 114. The last subsection of section 129 of title 23, United States Code, is redesignated as subsection (g) and paragraph (5) of that subsection is amended to read as follows:

"(5) Such ferry may be operated only within the State (including among the islands which comprise the State of Hawaii) or between adjoining States. Except with respect to operations between the islands which comprise the State of Hawaii and operations solely between the States of Alaska and Washington, no part of such a ferry operation shall be in any foreign or international waters."

CONTROL OF OUTDOOR ADVERTISING

SEC. 115.(a) The first sentence of section 131(b) of title 23, United States Code, is amended by inserting after "main traveled way of the system," the following: "and Federal-aid highway and Public Transportation Act of 1973 to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are six hundred and sixty feet or more from the nearest edge of the right-of-way, outside of incorporated cities and villages, and visible from the main traveled way of the system."

(b) Section 131(c) of title 23, United States Code, is amended to read as follows:

"(c) Effective control means that such signs, displays, or devices, shall after January 1, 1968, if

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located within six hundred and sixty feet of the right-of-way, and after July 1, 1974, or after the expiration of the next regular session of the State legislature, whichever is later, if located six hundred and sixty feet or more from the right-of-way, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located."

(c) Section 131(e) of title 23, United States Code, is amended to read as follows:

"(e) Any nonconforming sign under State law enacted to comply with this section shall be removed no later than the end of the fifth year after it becomes nonconforming, except as determined by the Secretary."

(d) Section 131(f) of title 23, United States Code, is amended by inserting the following after the first sentence:

"The Secretary shall also, in consultation with the States, provide within the rights-of-way of other roads on the Federal-aid highway system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained."

(e) Section 131(g) of title 23, United States Code, is amended by striking out the first sentence and inserting the following in lieu thereof: "Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law prior to the date of enactment of the Federal-Aid Highway and Public Transportation Act of 1973."

(f) Section 131(m) of title 23, United States Code,

is amended to read as follows:

"(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for each of the fiscal years 1966 and 1967, not to exceed $2,000,000 for fiscal year 1970, not to exceed $27,000,000 for fiscal year 1971, not to exceed $20,500,000 for fiscal year 1972, and not to exceed $50,000,000 for fiscal year 1973, and, out of the Highway Trust Fund, $55,000,000 for each of the fiscal years 1975 and 1976. The provisions of this chapter relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967."

TRANSPORTATION PLANNING IN CERTAIN URBANIZED AREAS

SEC. 116. Section 134(a) of title 23, United States Code, is amended by striking the second and third sentences and inserting in lieu thereof the following:

"To accomplish this objective the Secretary shall cooperate with the States as authorized in this title, in the development of transportation plans and programs which are formulated with due consideration to their probable effect on the future development of urbanized areas. The Secretary shall not approve under section 105 of this title any program for projects in any urbanized area unless he finds (1) that such projects result from a continuing comprehensive transportation planning and programming process conducted by the local governments with consultation and participation by the State, and (2) that all reasonable measures have been taken to permit, encourage, and assist public participation in the planning and programming process. This process shall serve as the basis for assigning priorities and allocating funds for projects on the Federal-aid urban system. A project may not be constructed or implemented in any urbanized area unless the responsible public officials of the area in which the project is located have been consulted and their views considered with respect to the corridor, the location, and the design of the project."

URBAN AREA TRAFFIC OPERATIONS

IMPROVEMENT PROGRAMS

SEC. 117. Section 135(c) of title 23, United States Code, is repealed and section 135(d) is relettered as subsection (c), including any references thereto.

CONTROL OF JUNKYARDS

SEC. 118.(a) Section 136(j) of title 23, United States Code, is amended by striking out the first sentence and inserting in lieu thereof the following: "Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law prior to the date of enactment of the Federal-Aid Highway and Public Transportation Act of 1973."

(b) Section 136(m) of title 23, United States Code, is amended to read as follows:

"(m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for each of the fiscal years 1966 and 1967, not to exceed $3,000,000 for each of the fiscal years 1970, 1971, and 1972, not to exceed $5,000,000 for fiscal year 1973, and out of the Highway Trust Fund, not to exceed $7,000,000 for each of the fiscal years 1975 and 1976. The provisions of this chapter relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967."

PRESERVATION OF PARKLANDS

SEC. 119. Section 138 of title 23, United States Code, is amended (1) by striking out "lands" in the first sentence and inserting in lieu thereof "areas (including water)", and (2) by striking out "lands" and "land" wherever thereafter appearing therein and inserting in lieu thereof "areas" and "area", respectively.

TRAINING PROGRAMS

SEC. 120. Section 140(b) of title 23, United States Code, is amended by striking out in the second sentence "and 1973" and inserting in lieu thereof ", 1973, 1974, and 1975".

PUBLIC TRANSPORTATION

SEC. 121.(a) Section 142 of title 23, United States Code, is amended to read as follows:

"§142. Public mass transportation

"(a) To encourage the development, improvement, and use of public mass transportation systems for the transportation of passengers within urbanized areas, so as to increase the efficiency of the Federal-aid systems, sums apportioned in accordance with section 104(b)(6) of this title shall be available to finance the Federal share of the cost of construction and acquisition of facilities and equipment for public mass transportation projects. For purposes of this subsection, the term 'public mass transportation' means ground transportation which provides general or special service (excluding schoolbus, charter, and sightseeing service) to the public on a regular and continuing basis, and includes activities designed to coordinate such service with other transportation. Projects which may be financed under this subsection include, but are not limited to, exclusive or preferential bus lanes, highway traffic control devices, passenger loading areas and facilities, including shelters, and fringe and transportation corridor parking facilities to serve bus, rail, and other public mass transportation passengers, the construction of fixed rail facilities, and the purchase of passenger equipment, including rolling stock for fixed rail facilities. Projects financed under this subsection may also include exclusive or preferential truck and emergency vehicle routes or lanes.

"(b) To encourage the development, improvement, and use of public transportation systems for the transportation of passengers in urban areas and rural areas designated by the States and approved by the Secretary on the basis of local transportation need, so as to increase the efficiency of the Federal-aid systems, sums apportioned in accordance with paragraphs (1) and (2) of section 104(b) of this title shall be available to finance the Federal share of the costs of projects for highway traffic control devices, passenger loading areas and facilities, including shelters, and fringe and transportation corridor parking facilities to serve bus and other public transportation passengers, and for the purchase of passenger equipment other than rolling stock for fixed rail facilities.

"(c) To encourage the development, improvement, and use of public transportation systems for the transportation of passengers in such urban areas and rural areas as may be designated by the States and approved by the Secretary on the basis of local transportation need, so as to increase the efficiency of the Federal-aid systems, sums apportioned in accordance with section 104(b)(5) of this title shall be available to finance the Federal share of the costs of projects for the construction of exclusive or preferential bus lanes, highway traffic control devices, passenger loading areas and facilities, including shelters, and fringe and transportation corridor parking facilities to serve bus and other public mass transportation passengers. Projects financed under this subsection may also include exclusive or preferential truck and emergency vehicle routes or lanes. Routes constructed under this subsection shall not be subject to the third sentence of section 109(b) of this title.

"(d) The establishment of routes and schedules of such public mass transportation systems in urbanized areas shall be based upon a continuing comprehensive transportation planning process carried on in accordance with section 134 of title 23, United States Code.

"(e) For the purpose of this title, a project authorized by subsections (a), (b), or (c) of this section shall be deemed to be a highway project, and the Federal share payable on account of such project shall be determined in accordance with the provisions of section 120 of this title applicable to the Federal-aid system involved.

"(f) No public mass transportation project authorized by this section shall be approved unless the Secretary of Transportation is satisfied that public mass transportation systems will have adequate capability to utilize fully the proposed project and to maintain and operate properly any equipment acquired under this section.

"(g) In the acquisition of equipment pursuant to subsections (a) and (b) of this section, the Secretary shall require that such equipment meet the standards prescribed by the Administrator of the Environmental Protection Agency under section 202 of the Clean Air Act, as amended, and shall authorize, whenever practicable,

that such equipment meet the special criteria for low-emission vehicles set forth in section 212 of the Clean Air Act, as amended.

"(h) The provisions of chapters 1 and 3 of title 23, United States Code, shall apply in carrying out the provisions of this section except with respect to projects within urban areas as to which the Secretary determines the provisions of the Urban Mass Transportation Act of 1964, as amended, are more appropriately applicable."

(b) The analysis of chapter 1 of title 23, United States Code, is amended by striking out "142. Urban highway public transportaion." and inserting in lieu thereof "142. Public Mass Transportation."

AVAILABILITY OF URBAN SYSTEM FUNDS

SEC. 122(a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section: "§145. Availability of urban system funds

"(a) Funds apportioned to a State under section 104 (b)(6) of this title which are attributable to urbanized areas having a population of 400,000 or more, or parts thereof, shall be allocated among such urbanized areas, or parts thereof, within the State in the ratio that the population of the State within each such urbanized area, or part thereof, bears to the population of all such urbanized areas, or parts thereof, within the State. However, such funds shall be available for expenditure in another urbanized area within such State if the responsible public officials in both urbanized areas agree to such availability.

"(b) In any case where an agency is created for an urbanized area having a population of 400,000 or more, funds allocated to the urbanized area under this section shall be available to that agency. An agency shall be considered to exist for an urbanized area if (1) it has been created (A) under State law by the local unit or units of general purpose governments within the urbanized area which represent at least 75 per centum of the total population of the area and includes the political subdivisions with the largest population in the urbanized area, or (B) by the State or States involved; and (2) it has adequate powers and is suitably equipped and organized to plan and carry out

projects on the Federal-aid urban system. The agency may delegate the authority to carry out projects to appropriate State, metropolitan, or local agencies.

"(c) In the event that cooperation between the States is necessary in order to realize the full benefit of provisions of this section, the consent of Congress is given to the States to enter into agreements."

(b) The analysis of chapter 1 of title 23, United States Code, is amended by inserting at the end thereof the following: "145. Availability of urban system funds."

BICYCLE TRANSPORTATION, PEDESTRIAN WALKWAYS AND EQUESTRIAN TRAILS

SEC. 123(a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section: "§146. Bicycle transportation, pedestrian walkways, and equestrian trails

"(a) Sums apportioned in accordance with section 104(b) of this title shall be available to finance the Federal share of the cost of projects for the acquisition or construction of separate or preferential bicycle lanes, pedestrian walkways, and equestrian trails on or in conjunction with highway and other rights-of-way, including overpasses and underpasses, traffic control devices, shelters, and bicycle parking facilities. Projects authorized under this section shall be located and designed pursuant to an overall plan which provides due consideration for safety and contiguous routes.

"(b) For purposes of this title, a project authorized by subsection (a) of this section shall be deemed to be a highway project, and the Federal share payable on account of such project shall be that provided in section 120(a) of this title.

"(c) Funds authorized and appropriated for forest highways, forest development roads and trails, public lands development roads and trails, park roads and trails, parkways, Indian reservation roads, and public lands highways shall be available, at the discretion of the Department charged with the administration of such funds, for the construction of bicycle, pedestrian, and equestrian routes in conjunction with such trails, roads, highways, and parkways.

"(d) Except for maintenance or emergency purposes,

no motorized vehicles shall be permitted on paths, trails, or walkways authorized under this section."

(b) The analysis of chapter 1 of title 23, United States Code, is amended by inserting at the end thereof the following: "146. Bicycle transportation, pedestrian walkways, and equestrian trails."

FEDERAL-AID INDIAN RESERVATION ROAD AND BRIDGE SYSTEM

SEC. 124.(a) Section 208 of title 23, United States Code, is amended to read as follows:

"SEC. 208. Federal-aid Indian reservation road and bridge system

"(a) The Federal-aid Indian reservation road and bridge system shall consist of roads and bridges that are located within or provide access to an Indian reservation or Indian trust land or restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government on which Indians reside whom the Secretary of the Interior has determined to be eligible for services generally available to Indians under Federal laws specifically applicable to Indians. The Federal-aid Indian reservation road and bridge system shall be designated by the Secretary and the Secretary of the Interior in conformity with regulations jointly developed. No road or bridge on the Federal-aid Indian reservation road and bridge system shall also be a route on any other Federal-aid system.

"(b) Funds available for the Federal-aid Indian reservation road and bridge system shall be used for the cost of construction and improvement thereof. In connection therewith, the Secretary may enter into construction contracts and such other contracts with a State or civil subdivision thereof as he deems advisable.

"(c) All appropriations for the Federal-aid Indian reservation road and bridge system shall be administered in conformity with regulations jointly approved by the Secretary and the Secretary of the Interior.

"(d) The Secretary shall transfer to the Secretary of the Interior from appropriations for the Federal-aid Indian reservation road and bridge system such amounts as may be needed to cover necessary administrative expenses of the Bureau of Indian Affairs in connection with the Federal-aid Indian

reservation road and bridge program.

"(e) Construction estimated to cost $15,000 or more per mile, exclusive of bridges, shall be advertised and let to contract. If such estimated cost is less than $15,000 per mile, or if, after proper advertising, no acceptable bid is received or the bids are deemed excessive, the work may be done by the Secretary on his own account. For such purposes, the Secretary may purchase, lease, hire, rent, or otherwise obtain all necessary supplies, materials, tools, equipment, and facilities required to perform the work, and may pay wages, salaries, and other expenses for help in connection with such work, Provided, That the Secretary shall employ Indian labor to the greatest extent possible in carrying out work done on his own account.

"(f) Indian labor may be employed in such construction and improvement under such rules and regulations as may be prescribed by the Secretary of the Interior.

"(g) Cooperation of States, counties, or other local subdivisions may be accepted in such construction and improvement, and any funds, received from a State, county, or local subdivision shall be credited to appropriations available for the Federal-aid Indian reservation road and bridge system."

(b) The analysis of chapter 2 of title 23, United States Code, is amended by striking out "208. Indian reservation roads" and inserting in lieu thereof the following: "208. Federal-aid Indian reservation road and bridge system."

(c) Section 202 of title 23, United States Code, is amended by adding a new subsection (d) as follows:

"(d) Sums authorized to be appropriated for the Federal-aid Indian reservation road and bridge system shall be allocated by the Secretary of the Interior."

(d) Subsection (a) of section 101 of title 23, U.S.C., is amended as follows:

(1) After the definition of the term "Federal-aid urban system" add the following new paragraph: "The term 'Federal-aid Indian reservation road and bridge system' means the Federal-aid highway system described in section 208 of this title."

(2) The definition of the term "Federal-aid highways" is amended to read as follows: "The term 'Federal-

aid highways' means highways located on one of the Federal-aid systems described in sections 103 and 208 of this title."

(e) The Secretary, in cooperation with the Secretary of the Interior, the States, counties and Tribal Councils, shall conduct a full and complete investigation and study of the Federal-aid Indian reservation road and bridge system including, but not limited to, a functional highway classification study of such routes and report to Congress his recommendations resulting from such investigation and study not later than July 1, 1974, including an estimate of the cost of such a program. Funds authorized to carry out section 307 of this title are authorized to be used to carry out the investigation and study required by this subsection.

PUBLIC TRANSPORTATION IN NATIONAL FORESTS AND PARKS

SEC. 125.(a) Section 204(f) of title 23, United States Code, is amended to read as follows:

"(f) Funds available for forest highways shall be available for adjacent vehicular parking areas, for sanitary, water, and fire control facilities, and for passenger loading areas and facilities and the purchase of buses to provide interpretive or shuttle transportation services as an alternative means of transportation."

(b) Section 206 of title 23, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Funds available for park roads and trails shall be available for adjacent vehicular parking areas and for passenger loading areas and facilities and the purchase of buses to provide interpretive or shuttle transportation services as an alternative means of transportation."

RESEARCH AND PLANNING

SEC. 126. Section 307(c) of title 23, United States Code, is amended to read as follows:

"(c)(1) One and one-half per centum of the sums apportioned for each fiscal year beginning with fiscal year 1974 to any State under section 104(b) of this title shall be available to the State with the approval of the Secretary for expenditure only for engineering and economic surveys and investigations; for the

planning of transportation programs and the financing thereof, including associated land use planning; for studies of the economy, safety, and convenience of highway usage and the desirable regulation and equitable taxation thereof; and for research and development necessary in connection with the planning, design, construction, and maintenance of highways and transportation systems, and the regulation and taxation of their use.

"(c)(2) In addition to the percentage provided in paragraph (1) of this subsection, not to exceed one-half of one per centum of the sums apportioned for each fiscal year beginning with fiscal year 1974 to any State under section 104(b) of this title shall be available to the State upon its request for the purposes enumerated in paragraph (1) of this subsection, including demonstration projects in connection with such purposes.

"(c)(3) Sums made available under this subsection shall be matched by the State in accordance with section 120 of this title unless the Secretary determines that the interests of the Federal-aid highway program would be served better without such matching."

DEMONSTRATION PROJECT--RAIL CROSSINGS

SEC. 127.(a) Section 322(c) of title 23, United States Code, is amended to read as follows:

"(c)(1) If the highway involved is on any Federal-aid system, the Federal share of the cost of such work shall be 100 per centum.

"(2) If the highway involved is not on any Federal-aid system, the Federal share of the cost of such work shall be 90 per centum and the remaining 10 per centum of such cost shall be paid by the State in which such crossing is located."

(b) Section 322(f) of title 23, United States Code, is amended by striking out "$9,000,000" and "$22,000,000" and inserting in lieu thereof $20,000,000" and "$32,000,000," respectively.

(c) The amendments made by this section shall take effect with respect to all obligations incurred after January 1, 1971.

TECHNICAL AMENDMENTS

SEC. 128. Title 23, United States Code, is amended as follows:

(a) Section 101(a) is amended by striking out "Secretary of Commerce" and inserting in lieu thereof "Secretary of Transportation."

(b) Section 109(g) is amended by striking out "Rct" and inserting in lieu thereof "Act."

(c) Section 126(a) and 310 are amended by striking out "Commerce" each place it appears and inserting in lieu thereof "Transportation."

(d) The heading of section 303 is amended to read: "Administration organization."

(e) Sections 308(b), 312, and 314 are amended by striking out "Bureau of Public Roads" each place it appears and inserting in lieu thereof "Federal Highway Administration."

(f) Section 309 is amended by striking out "Bureau of Public Roads" and inserting in lieu thereof "Department of Transportation."

(g) Sections 312 and 314 are amended by striking out "Commerce" each place it appears and inserting in lieu thereof "Transportation."

INCREASED FEDERAL SHARE--EFFECTIVE DATE

SEC. 129. Section 108(b) of the Federal-Aid Highway Act of 1970 is amended to read as follows:

"(b) The amendments made by subsection (a) of this section shall take effect with respect to all obligations incurred after June 30, 1973, except for projects on which Federal funds were obligated on or before that date."

SECTION-BY-SECTION ANALYSIS

SECTION 101. SHORT TITLE

This section provides that the bill may be cited as the "Federal-Aid Highway and Public Transportation Act of 1973."

SECTION 102. REVISION OF AUTHORIZATION OF APPROPRIATIONS FOR INTERSTATE SYSTEM

This section provides authorizations for the Interstate highway program through fiscal year 1980 in the following amounts: for fiscal year 1974, $3.25 billion; for fiscal year 1975, $3.15 billion; for each of the fiscal years 1976 through 1979, $3 billion; and for fiscal year 1980, $1.407 billion.

SECTION 103. AUTHORIZATION OF USE OF COST ESTIMATE FOR APPORTIONMENT OF INTERSTATE FUNDS

This section provides for the use of the apportionment factors contained in revised table 5 of the 1972 Interstate System Cost Estimate (House Public Works Committee Print No. 92-29) for the apportionment of Interstate System funds authorized to be appropriated for fiscal years 1974, 1975, and 1976.

SECTION 104. EXTENSION OF TIME FOR COMPLETION OF SYSTEM

This section extends the time for completion of the Interstate System until June 30, 1980, and directs the Secretary to submit to Congress a revised Interstate System Cost Estimate in January 1975 for apportionment of Interstate System funds for fiscal years 1977 and 1978, and a final Interstate System Cost Estimate in January of 1977 for apportionment of Interstate System funds for fiscal years 1979 and 1980.

This section authorizes the appropriation out of the Highway Trust Fund of the following sums: for each of the fiscal years 1974, 1975, and 1976, for the Federal-aid primary system in rural areas, $1 billion; for the Federal-aid urban system, $1.1 billion for fiscal year 1974, $1.2 billion for fiscal year 1975, and $1.35 billion for fiscal year 1976. There is not separate authorization for the Federal-aid secondary system in rural areas. However, section 108 of the bill revises the apportionment formula in 23 U.S.C. 104(b) to provide for meeting the needs of that system out of monies for the primary system.

In addition to the authorizations for the Federal-aid systems, the bill also continues funds for forest highways, public lands, highways, and Indian reservation roads and bridges. For the first time, the funds for Indian reservation roads and bridges will come out of the Highway Trust Fund. Funds for forest highways and public lands highways will come from the trust fund in accordance with the practice established in the 1970 Federal-Aid Highway Act. The authorizations for these highways are as follows:

(in millions)

CATEGORY	1974	1975	1976
Forest highways		33	33
Public lands highways		16	16
Federal-aid Indian Reservation road and bridge system	60	75	75

This section also authorizes $3 million for each of the fiscal years 1975 and 1976 for landscaping and scenic enhancement; $1.3 million for each of the fiscal years 1974, 1975, and 1976 for the administrative expenses of the beautification program; and continues the territorial highway program established in the 1970 Act with authorizations to the territories in the following amounts:

(in millions)

CATEGORY	1974	1975	1976
Virgin Islands	1.5	2.0	2.0
Guam	1.5	2.0	2.0
American Samoa	.5	1.0	1.0

Funds authorized for the Federal-aid primary system, the urban system, and other purposes specified in the first six paragraphs of this section could not be used to carry out highway beautification programs under sections 131, 136, and 319(b) of title 23 or safety programs under Chapter 4 of title 23. Those programs are financed under separate authorizations.

Each State which has not completed Federal funding of the Interstate System within its boundaries would receive at least one-half of one percent of the total apportionment for the Interstate System for each of the fiscal years 1974, 1975, and 1976, or an amount equal to the actual cost of completing such funding, whichever amount is less.

SECTION 106. DEFINITIONS

This section contains a number of changes to the definitions in 23 U.S.C. 101(a). First, it makes a conforming amendment to the definitions of the term "construction" to change the reference to the "Coast and Geodetic Survey" to its current name "National Oceanic and Atmospheric Administration."

The definition of "rural areas" would be changed to mean all areas of a State not included in urbanized areas.

The definition of "urbanized area" would be changed to allow responsible State and local officials, in cooperation with each other, and subject to approval by the Secretary to fix urbanized area boundaries which, as a minimum, are required to encompass the entire urbanized area designated by the Bureau of the Census.

The term "urban area" is amended to require the participation of appropriate local officials in the establishment of the boundaries of an urban area.

SECTION 107. FEDERAL-AID SYSTEMS

This section contains a number of amendments to the provisions of Federal-aid systems contained in 23 U.S.C. 103. It requires the realignment by June 30, 1975, of the Federal-aid primary and secondary systems. The primary system would be redefined to consist of an adequate system of arterial routes in rural areas important to interstate, statewide, or regional travel. The system would be designated by each State subject to the Secretary's approval. The secondary system would consist of major collector routes in rural areas and be designated by each State and appropriate local officials in cooperation with each other, subject to the Secretary's approval. Effective on the date the bill is enacted, the urban system is redefined to consist of arterial and collector routes, and other significant local routes within urbanized areas. They would be designated by appropriate local officials after consulting with the State, subject to the Secretary's approval. Selection of urban routes shall be in accordance with the planning process of 23 U.S.C. 134. If a State does not have an urbanized area, or part thereof, it could designate routes on the urban system for its largest urban area. Funds authorized for the urban system would be eligible for expenditure on any Federal-aid highway route within an urbanized area.

Section 107 would also amend section 103(e) of title 23 to provide that at any time prior to July 1, 1974, upon the joint request of a State and the local government concerned, the Secretary could withdraw his approval of any controversial Interstate segment if he determines that it is not essential to the completion of a unified and connected Interstate System. However, the Secretary must receive assurances that the State does not intend to construct a toll road in the traffic corridor which the removed segment would have served. After the Secretary withdraws his approval of any controversial Interstate segment within a State, dollar-for-dollar substitution of Interstate mileage based on the 1972 Interstate cost estimate would be permitted for any project on any Federal-aid system within that State, including Interstate substitutions and also mass transportation projects authorized by proposed new section 142 of title 23. Any sums made available by this amendment would have to be matched in accordance with the provision of 23 U.S.C. 120 applicable to the particular Federal-aid system involved. This amendment to section 103(e) would provide authority in addition to that authority respecting the transfer of Interstate routes already contained in section 103(e)(2) of title 23.

Section 107 also amends section 103 to require the Secretary on July 1, 1974, to remove Interstate segments from designation as a part of the Interstate System where a State has not established a construction schedule within the period of availability of funds authorized to be appropriated for completion of the Interstate System and where the Secretary has not received assurances that such schedule will be met. Further, it would require the Secretary to remove any Interstate segment for which plans and specifications have not been submitted for approval by July 1, 1976. No segment removed under these provisions could thereafter be designated as a part of the Interstate System.

SECTION 108. APPORTIONMENT

This section would amend the Federal-aid primary apportionment formula in section 104(b) of title 23 to substitute the total population outside of urbanized areas for general population. It also amends the

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formula to reflect the fact that the Postal Service no longer uses star routes; the mileage of rural delivery routes and inter-city mail routes where service is performed by motor vehicles is substituted in lieu of the star routes. Also, the population of the largest urban area in a State not having an urbanized area is excluded from the population totals computed in connection with the primary apportionment formula.

This section also amends the Federal-aid secondary formula to permit States to meet the needs of that system from funds apportioned for the Federal-aid primary system. However, not less than 10 percent nor more than 30 percent of the funds apportioned to a State for the primary system would be available to the State for the secondary system.

The Federal-aid urban formula is amended to provide for the inclusion in the population totals of the largest population center of each State that does not have an urbanized area.

This section repeals subsections (c), (d), and (f) of section 104 respecting the use of apportionments for one Federal-aid system for projects on another system, and adds a new subsection which would make funds available to agencies responsible for carrying out the planning provisions of 23 U.S.C. 134. Each year, the Secretary shall set aside for this purpose not to exceed one-half of one percent of the funds authorized to be appropriated for expenditure on the Federal-aid systems for that fiscal year. The funds would be apportioned to the States according to the formula for the apportionment of Federal-aid urban system funds under 23 U.S.C. 104(b)(6). The distribution of planning funds within a State would be based on a formula developed by each State and approved by the Secretary.

SECTION 109. PROGRAM APPROVAL

This section modifies 23 U.S.C. 105(d) to require that projects on the Federal-aid urban system be selected by appropriate local officials after consultation with the State and in accordance with the 23 U.S.C. 134 planning process. Presently projects must be selected by the appropriate local officials and the State highway department in cooperation with each other.

Further, in approving Federal-aid urban system projects TOPICS and fringe and corridor parking projects (23 U.S.C. 135 and 137) shall be given full consideration in selecting projects on the urban system.

SECTION 110. ADVANCE ACQUISITION OF RIGHTS-OF-WAY

This section amends 23 U.S.C. 108(a) to extend from seven to ten years the allowable time period within which highway construction must begin following the advance purchase of rights-of-way.

SECTION 111. SIGNS ON PROJECT SITES

This amendment to 23 U.S.C. 114(a) would, after July 1, 1973, prohibit any informational signs, other than official traffic control devices, from being erected on any highway projects where actual construction is in progress and where visible to highway users.

SECTION 112. CERTIFICATION ACCEPTANCE

This section amends section 117 of title 23, United States Code, by broadening its scope to cover all Federal-aid systems except the Interstate System. Upon the request of a State, the Secretary may discharge his responsibilities under title 23 relative to projects by accepting a certification of the capability of the State to perform such responsibilities, if he finds that projects will be carried out in accordance with State laws, regulations, directives and standards establishing requirements at least equivalent to those required under title 23. The Secretary would be required to make a final inspection of such projects upon their completion and require an adequate report of the estimated and actual cost of construction and such other information as he determines necessary. The acceptance of the State's certification by the Secretary could be rescinded by him at any time. The procedure provided by this section is an alternative to that otherwise prescribed in title 23 and the Secretary is required to promulgate such guidelines and regulations as may be necessary to carry out the section. Nothing in the amendment affects or discharges the responsibility or obligation of the Secretary under the National Environmental Policy Act of 1969, section 4(f) of the Department of Transportation Act, title VI of the Civil Rights Act of 1964, title VIII of P.L. 90-284 relating to fair housing, and the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970.

SECTION 113. PUBLIC HEARINGS

This section amends 23 U.S.C. 128(a) to require that when plans are submitted for a Federal-aid project, assurance be given that all steps have been taken under guidelines issued by the Secretary to foster and ensure public participation in the planning of the project before and after the required public hearings.

SECTION 114. FERRIES

This section amends 23 U.S.C. 129 to allow ferries financed under title 23 to travel in international waters when operating between the islands which comprise the State of Hawaii and when operating solely between the States of Alaska and Washington. Existing law provides that such ferries shall be operated only within a State or between adjoining States, and that no part of its operation may be in any foreign or international waters.

SECTION 115. CONTROL OF OUTDOOR ADVERTISING

This section would make a number of changes in the provisions on the control of outdoor advertising in 23 U.S.C. 131. The present 660-foot limit on the control of signs along the Interstate and primary systems would be eliminated. After the date of enactment of the bill, the 10 percent penalty provision in section 131 could be imposed on States which do not remove signs beyond 660 feet which are outside of incorporated cities and villages and "visible from the main traveled way."

Unless determined otherwise by the Secretary, signs that are not in conformity with State law would have to be removed no later than five years after they become nonconforming.

The present authority of the Secretary to provide standards for the erection along the Interstate System of signs providing specific information for the traveling public would be expanded to cover other Federal-aid highway systems.

Just compensation would be paid for the removal of all outdoor advertising signs which have been lawfully erected under State law prior to the date of enactment of the bill.

Not to exceed $55,000,000 is authorized to be appropriated from the Highway Trust Fund for each of the fiscal years 1975 and 1976 for purposes of outdoor

advertising control.

SECTION 116. TRANSPORTATION PLANNING IN CERTAIN URBANIZED AREAS

This section amends 23 U.S.C. 134, relating to comprehensive planning, to require the Secretary to cooperate with the States in the development of transportation plans and programs which are formulated with due consideration to their probable effect on the future development of urbanized areas. No projects could be approved under section 105 of title 23 in any urbanized area unless the Secretary finds (1) that such projects result from a continuing comprehensive transportation planning and programming process conducted by local governments with consultation and participation by the State, and (2) that all reasonable measures have been taken to permit public participation in the planning and programming process. The assignment of priorities and allocation of funds for urban system projects shall be based on this process. Responsible public officials in an area of a project must be consulted and their views considered with respect to the corridor, location, and design of a project before it may be constructed or implemented in any urbanized area.

SECTION 117. URBAN AREA TRAFFIC OPERATIONS IMPROVEMENT PROGRAM

This section repeals section 23 U.S.C. 135(c) (apportionment of sums for the Urban Area Traffic Operations Improvement Program).

SECTION 118. CONTROL OF JUNKYARDS

This section amends 23 U.S.C. 136(j) to require that just compensation be paid for removing, relocating or disposing of junkyards lawfully established under State law prior to the date of enactment of the bill. It also authorizes $7 million out of the Highway Trust Fund for each of the fiscal years 1975 and 1976 for junkyard control.

SECTION 119. PRESERVATION OF PARKLANDS

This section amends section 23 U.S.C. 138, regarding parkland preservation, to protect publicly owned water recreation areas and historic water areas of national, State or local significance, as well as public lands.

SECTION 120. TRAINING PROGRAMS

This section amends 23 U.S.C. 140(b) to extend authorizations for the highway construction training program for two years through fiscal year 1975. Five million dollars would be provided for each of the fiscal years 1974 and 1975.

SECTION 121. PUBLIC TRANSPORTATION

This section inserts a new section 142 to title 23 requesting public transportation projects. In order to encourage the development of public mass transportation systems in urbanized areas and to increase the efficiency of the Federal-aid systems, this section would authorize the use of funds apportioned to each State for the Federal-aid urban system to finance the Federal share of the costs of public mass transportation projects, defined to mean ground transportation providing general or special service (excluding school bus, charter, and sightseeing service) to the public on a regular and continuing basis. Included within the scope of the projects are exclusive or preferential bus lanes, highway traffic control devices, passenger loading areas and facilities, including shelters, and fringe and transportation corridor parking facilities to serve bus, rail, and other public mass transportation passengers; the construction of fixed rail facilities; and the purchase of passenger equipment, including rolling stock for fixed rail facilities.

To encourage the development of public transportation systems for the transportation of passengers in urban and rural areas, the section also authorizes the use of funds apportioned to each State for the Federal-aid primary and secondary systems to finance the Federal share of the costs of projects for highway traffic control devices, passenger loading areas and facilities, including shelters, and fringe and transportation corridor parking facilities to serve bus and other public transportation passengers, and for the purchase of passenger equipment other than rolling stock for fixed rail facilities.

Also, funds apportioned to each State for the Interstate System are authorized to finance the Federal share of projects for the construction of exclusive or preferential bus lanes, highway traffic control devices, passenger loading areas and facilities, including shelters, and fringe and transportation corridor

parking facilities to serve bus and other public transportation passengers.

Any project authorized by this section would be deemed to be a highway project with the Federal share payable according to the provision of 23 U.S.C. 120 applicable to the Federal-aid system involved.

The Secretary could not approve any public mass transportation projects under this section unless he is satisfied that public mass transportation systems will have adequate capability to utilize fully the proposed project and to maintain and operate properly any equipment acquired.

Buses purchased under this section would have to meet emission standards prescribed by the Environmental Protection Agency under section 202 of the Clean Air Act and, wherever practicable, special criteria for low emission vehicles set forth in section 212 of that Act. The provisions of chapters 1 and 3 of title 23 would apply in carrying out the provisions of this section except where the Secretary determines that the provisions of the Urban Mass Transportation Act of 1964, as amended, are more appropriately applicable.

SECTION 122. AVAILABILITY OF URBAN SYSTEM FUNDS

This section adds a new section 145 to title 23 respecting the availability of urban system funds for urbanized areas having a population of 400,000 or more. Urban system funds apportioned to any State attributable to these urbanized areas would be allocated among such urbanized areas within the State in the ratio that the population of the State within each such area bears to the population of all such urbanized areas within the State. Such funds would be available for expenditure within such urbanized areas for projects on the urban system including public mass transportation projects authorized by revised section 142. Computations under this provision for a State are to include funds and population attributable to its portion of urbanized areas overlapping State boundaries.

In any case where an agency is created for such an urbanized area for the purpose of planning and carrying out projects on the urban system, funds allocated to the urbanized area under this section would

be made available to that agency. The bill does not require such agencies to be formed.

For purposes of this section, an "agency" would be considered to exist for an urbanized area (including those comprised of territory in more than one State) if (1) it was created (A) under State law by the local unit or units of general purpose government within the urbanized area which represent at least 75 percent of the total urbanized area population, and includes the political subdivision with the largest population in the urbanized area, or (B) by the State or States involved; and (2) it is suitably empowered, equipped, or organized to plan and carry out projects on the urban system. Projects could be implemented through delegation of authority to appropriate agencies at the State, metropolitan, or local level.

SECTION 123. BICYCLE TRANSPORTATION, PEDESTRIAN WALKWAYS, AND EQUESTRIAN TRAILS

This section adds a new section 146 to title 23 respecting the development of routes for bicycles, pedestrians, and equestrians. Sums apportioned for the Federal-aid highway systems would be available for the acquisition or construction of such routes located on or in conjunction with highway or other appropriate rights-of-way. Funds could also be used to finance the construction of traffic control devices, shelters, and bicycle parking facilities. Projects authorized under this program would have to be located and designed according to an overall plan providing for safety and for contiguous routes.

Funds authorized and appropriated for forest highways, forest development roads and trails, public lands development roads and trails, park roads and trails, parkways, Indian reservation roads and public lands highways would also be available for such projects at the discretion of the Department charged with the administration of such programs.

Except for maintenance or emergency purposes, no motorized vehicle would be permitted on trails and walkways authorized under this section.

SECTION 124. FEDERAL-AID INDIAN RESERVATION ROAD AND BRIDGE SYSTEM

This section revises 23 U.S.C. 208 to establish a new Federal-aid highway system. Routes eligible for

inclusion on that system would be limited to roads on Indian reservations which are not on any other Federal-aid highway system. The system would be designated jointly by the Secretary of Transportation and the Secretary of the Interior under regulations they would develop jointly. Sums authorized for the new Federal-aid system would be allocated by the Secretary of the Interior in a manner consistent with the exercise of his trust responsibility to the Indians. This section also requires the Secretary of Transportation, in cooperation with the Secretary of the Interior, the States, counties, and the Indian tribal councils to conduct a study and investigation of this new Federal-aid system, including a functional highway classification study and a cost estimate, by July 1, 1974.

SECTION 125. PUBLIC TRANSPORTATION IN NATIONAL FORESTS AND PARKS

This section amends 23 U.S.C. 204 and 206 to permit funds authorized for forest highways and park roads and trails to be made available for the purchase of buses to provide interpretive and shuttle transportation services in national parks and forests as an alternative to private automobile transportation, and for the construction of passenger loading facilities and parking areas.

SECTION 126. RESEARCH AND PLANNING

This section amends 23 U.S.C. 307(c) to permit the financing of research and planning for transportation programs. As presently drafted, section 307(c) is limited to research and planning for highway programs. Beginning with fiscal year 1974, one and one-half percent of the sums apportioned for each fiscal year to a State under section 104(b) would be available only for such research and planning.

In addition, not to exceed one-half of one percent of such sums would be available upon the request of a State for such purposes, including demonstration projects in connection therewith.

SECTION 127. DEMONSTRATION PROJECT--RAIL CROSSINGS

This section would eliminate the requirement in 23 U.S.C. 322 for ten percentum participation by the railroads involved in the demonstration projects authorized by that section, and it would increase the

authorization of funds for the section. The section contains a provision making the resulting higher Federal share applicable retroactively to all agreements entered into by a State or railroad on or after January 1, 1971, so that contribution already agreed to or made by the individual States and railroads would be eligible for reimbursement with Federal funds.

SECTION 128. TECHNICAL AMENDMENTS

Several minor technical amendments are made throughout title 23 to conform language to previous organizational changes and to correct a typographical error.

SECTION 129. INCREASED FEDERAL SHARE--EFFECTIVE DATE

This section amends section 108(b) of the Federal-Aid Highway Act of 1970 to increase the Federal share payable on account of any non-Interstate project from 50 percent to 70 percent with respect to all obligations incurred after June 30, 1973, except for projects for which Federal funds were obligated on or before that date.

Controlling Pollution

United Nations Fund for the Environment

THE SECRETARY OF STATE

WASHINGTON

February 15, 1973

Honorable Spiro T. Agnew
President of the Senate
United States Senate
Washington, D.C. 20510

Honorable Carl Albert
Speaker of the House of Representatives
United States House of Representatives
Washington, D.C. 20515

Dear Mr. [President/Speaker]:

As mentioned in the President's Message to the Congress on the Environment, there is transmitted herewith a draft of a proposed act,

> "To provide for the participation of the United States in the United Nations Environment Program."

The proposed act would authorize the appropriation of amounts for United States voluntary contributions to a United Nations Environment Fund. The creation of this Fund was recommended by the United Nations Conference on the Human Environment, held in Stockholm June 5-16, 1972. The Conference recommendation has been implemented by UN General Assembly Resolution A/RES/2997 (XXVII).

The creation of a United Nations Environment Fund was largely the result of United States efforts. In his Message to the Congress of February 8, 1972, President Nixon proposed that such a Fund be established, subject to Congressional approval, the United States fair share of the Fund, up to $40 million on a 40-60 matching basis.

As of the close of the UN General Assembly in December 1972, a number of governments had made public their intention to contribute specific amounts (Australia, Canada, Finland, France, Federal Republic of Germany,

Japan, Netherlands, New Zealand, Sweden, United Kingdom) which, when added to the proposed United States contribution, totals $81.5 million. Several other governments have indicated their intention to contribute amounts which would bring the total of the Fund to the $100 million goal.

The purpose of the Fund is to coordinate and support international environmental programs, particularly in the fields of identification and control of pollutants, monitoring, conservation, human settlements, information exchange, education, training and research. The Fund would employ the facilities of existing organizations wherever possible.

The administration of the Fund is committed to the Executive Director of the United Nations Environment Program under the policy guidance of a Governing Council of 58 member countries. Costs of servicing the Secretariat and the Governing Council are to be borne by the UN regular budget. Operational program costs, program support and administrative costs of the Fund are to be borne by the Fund.

Members of the Governing Council are elected for three-year terms on the basis of equitable geographic distribution by the UN General Assembly. In addition to providing policy guidance to the Executive Director, the Governing Council will decide upon environmental programs to be supported by the Fund.

In view of the role of the United States in proposing and securing the creation of the Fund, prompt consideration and early enactment of this legislation are respectfully urged.

The Office of Management and Budget has advised that the enactment of this legislation is in accord with the President's program.

Sincerely yours,

/s/ Marshall Wright
Acting Assistant Secretary
for Congressional Relations

S. 1155
H.R. 5696

AN ACT

To provide for participation by the United States in the United National Environment Program.

Be in 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 "United Nations Environment Program Participation Act of 1973."

Sec. 2. It is the policy of the United States to participate in coordinated international efforts to solve environmental problems of global and international concern, and in order to assist the implementation of this policy, to contribute funds to the United Nations Environment Fund for the support of international measures to protect and improve the environment.

Sec. 3. There are authorized to be appropriated such amounts as may be necessary for contributions to the United Nations Environment Fund, which amounts are authorized to remain available until expended, and which may be used upon such terms and conditions as the President may specify.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Section 1 contains a "short title" for the Act.

Sec. 2. Section 2 states the policy upon which United States support for and participation in the United Nations Environment Fund is based. It endorses the creation of the Fund as a means to commence the amelioration and solution of environmental problems of global and international concern.

Sec. 3. Section 3 contains the authorization for appropriations for voluntary United States contributions to the United Nations Environment Fund.

Controlling Pollution

Ocean Dumping Convention

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THE SECRETARY OF STATE

WASHINGTON

February 16, 1973

Honorable Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

Honorable Carl Albert
Speaker of the
House of Representatives
Washington, D. C. 20515

Dear Mr. [President/Speaker]:

Enclosed is a draft of a proposed bill to "amend the Marine Protection, Research, and Sanctuaries Act of 1972, and for other purposes."

It would be appreciated if you would lay this proposal before the [Senate/House of Representatives] and if it would be referred to the appropriate Committee for consideration. A similar proposal has been submitted to the [Speaker of the House of Representatives/ President of the Senate]. We respectfully urge that it be enacted at an early date.

The proposed legislation would provide the amendments to the Marine Protection, Research, and Sanctuaries Act of 1972 which are required to enable that Act to implement fully the Convention of the Prevention of Marine Pollution By Dumping of Wastes and Other Matter.

Because of the great similarity of the Convention and the Act, the amendments required to the Act are minor. Most of the amendments deal with the addition of one further jurisdictional basis to those found in the Act. The Act applies to (1) transportation of material from the United States for the purpose of dumping, (2) dumping of material transported from outside the United States in our territorial sea or into our contiguous zone where the dumping affects our territory or territorial sea, and (3) transportation of material

for the purpose of dumping by any officer, employee, agent, department, agency, or instrumentality of the United States from any location outside the United States. The Convention adds a fourth ground of application, i.e., transportation of material for the purpose of dumping if such transportation is (1) by a vessel or aircraft registered in the United States or flying the United States flag, and (2) from the territory of any foreign State not a Contracting Party to the Convention. Thus, the added jurisdictional basis involves U.S. control over vessels of its own flag or registry, and in particular control through permits when the port State is not Party to the Convention and required under it to regulate the transportation from its port of material intended for dumping.

The Convention also differs from the domestic legislation in that its annexes specify certain substances which are to be banned from ocean dumping except in extraordinary circumstances, and substances which are to require special permits for dumping. The Act provides authority in subsection 104(d) for the Administrator to set bans by administrative regulations, aside from radiological, chemical, or biological warfare agents, or high-level radioactive wastes which are covered by the Act. Also, all permits issued under the Act will be "special permits" within the meaning of the Convention, except for those "general permits" issued pursuant to subsection 104(c). Subsection 102(d) provides for a special statutory general permit for fish wastes. Thus, the existing legislation provides the necessary authority to issue administrative regulations to carry out the Convention annexes. We accept and support this statutory approach in view of the fact that the annexes are likely to change rapidly as new information on the pollution effects of substances is developed and becomes available to the Convention Parties.

The Office of Management and Budget has advised that enactment of this proposed legislation is consistent with the Administration's objectives.

Sincerely,

/s/ Marshall Wright
Acting Assistant Secretary
for Congressional Relations

Enclosure

H.R. 5450

A BILL

To amend the Marine Protection, Research, and Sanctuaries Act of 1972, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

(a) Subsection 3(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 is amended to read as follows:

"(c) 'Material' means matter of any kind or description including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural, and other waste; but such term does not mean sewage from vessels within the meaning of section 312 of the Federal Water Pollution Control Act, as amended (33 U.S.C. §1322). Oil within the meaning of section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. §1321), shall be included only insofar as such oil is taken on board a vessel or aircraft for the purpose of dumping."

(b) Section 3 of such Act is amended to add a new subsection (l) to read as follows:

"(l) 'Convention' shall mean the Convention on the Prevention of Marine Pollution By Dumping of Wastes and Other Matter."

SEC. 2. Section 101 of the Marine Protection, Research, and Sanctuaries Act of 1972 is amended to add new subsections (d) and (e) to read as follows:

"(d) No person shall load any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or except as may be authorized in a permit issued under this title, any other material for the purpose of transporting it for dumping into ocean waters, if such loading (1) is by a vessel or aircraft registered in the United States or flying the United States flag and (2) occurs in the territory of any foreign State not a Contracting Party to the Convention. Any permit issued for such loading shall be

subject to regulations issued under section 108 hereof by the Secretary of the Department in which the Coast Guard is operating.

"(e) No person shall transport any material by a vessel or aircraft registered in the United States or flying the United States flag for the purpose of dumping such material in ocean waters when the loading of the material occurs in the territory of a foreign State Party to the Convention, except pursuant to a permit issued by the foreign State in which the material was loaded.

SEC. 3. (a) The first sentence of subsection 102(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 is amended to read as follows:

"Except in relation to dredged material, as provided for in section 103 of this title, and in relation to radiological, chemical, and biological warfare agents and high-level radioactive waste, as provided for in section 101 of this title, the Administrator may issue permits, after notice and opportunity for public hearings --

(1) for the transportation from the United States of material for the purpose of dumping it in ocean waters, or (2) in the case of an agency or instrumentality of the United States, for the transportation from a location outside the United States of material for the purpose of dumping it in ocean waters, or (3) for the loading by a vessel or aircraft registered in the United States or flying the United States flag, in the territory of any foreign State not a Contracting Party to the Convention, of material for the purpose of transporting it for dumping it in ocean waters, or (4) for the dumping of material into the waters described in section 101(b) --

where the Administrator determines that such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities."

(b) Subsection 103(a) of the Act is amended to delete "for the transportation of dredged material for the purpose of dumping it in ocean waters" and to insert in its stead the following: "for the transportation, loading, and dumping of dredged material, in

the instances set out in paragraphs (1) through (4) of subsection 102(a),".

SEC. 4. Section 109 of the Marine Protection, Research, and Sanctuaries Act of 1972 is amended to read as follows:

"SEC. 109. (a) The provisions of this Act shall be construed in a manner which is consistent with the provisions of the Convention, or any amendments thereto which, as interpreted by the United States, are binding upon the United States.

"(b) It is the policy of the Congress that the President shall undertake to seek effective international action and cooperation to ensure that all Parties to the Convention shall carry out their requirements and obligations under the Convention and may formulate, present, or support specific proposals in the forum provided by the international organization charged with providing administrative, scientific, and technical services to the Parties to the Convention."

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill would amend section 3 of the Marine Protection, Research, and Sanctuaries Act of 1972, which sets out definitions. The definition of material would extent the Act's coverage to include oil taken on board a vessel or aircraft for the purpose of dumping. The Convention applies to such oil (Annex I (5)) while it excludes oil pollution from the normal operation of ships (Art. III(1)(b)). As to pollution from ship operation, the Convention contains a pledge by the Parties to promote other oil pollution protection measures in fora such as that provided by the Inter-Governmental Maritime Consultative Organization (IMCO) (Art. XII(a)).

Section 2 of the bill would amend section 101 of the Marine Protection, Research, and Sanctuaries Act of 1972 to add new subsections (d) and (e). The new subsection (d) would partially implement Articles VI(2)(b) and VII(1)(a) of the Convention on the Prevention of Marine Pollution By Dumping of Wastes and Other Matter. Article VI(2)(b) provides that a Contracting Party to the Convention shall exercise permit control over matter intended for dumping "loaded by a vessel or aircraft registered in its territory or flying its flag, when the loading occurs in the territory of a State not party to this Convention." The new subsection 101(d) would enforce the permit requirement by prohibiting the loading of material by a vessel or aircraft registered in the United States or flying the United States flag where the purpose of the loading was for ultimate dumping and where the material was loaded in the territory of any foreign State not a Contracting Party to the Convention.

The new subsection 101(e) would round out the requirement that a Party to the Convention exercise control over vessels or aircraft of its flag or registry (Art. VII(a)(1)). The subsection would prohibit any transportation of material for the purpose of dumping by a vessel or aircraft registered in the United States or flying its flag when the material is loaded in a State Party to the Convention, except pursuant to a permit issued by the State of

loading. In such a situation the United States could not issue a permit to a U.S. vessel or aircraft, thus avoiding any possibility of conflicting permit requirements and ensuring that all Party States have clearly defined responsibilities.

Section 3(a) of the bill would amend subsection 102(a) to actually provide authority for the Administrator to grant the permits contemplated by Article VI(2)(b) of the Convention. Section 3(b) of the bill would amend section 103(a) of the Act to authorize the Secretary of the Army to grant similar permits for dredged material.

Article VI(2)(b) of the Convention was inserted to provide control over the vessels of a Contracting Party that might hold themselves out as "dumping ships" for wastes generated in States which are not Contracting Parties to the Convention. The dumping of such wastes would otherwise be outside the coverage of the Convention. The Marine Protection, Research, and Sanctuaries Act of 1972 had not taken into account such a control measure because there were no known instances of U.S. flag vessels engaged in the practice of transporting wastes for dumping purposes other than from U.S. territory. In the unlikely event that any U.S. ships might wish to transport wastes from Non-Party States to the Convention, the addition of the added jurisdiction over U.S. flag vessels would modestly increase the administrative burdens involved in implementing the Act.

Section 4 of the bill makes the only other change involved in implementation. It modifies existing section 109 of the Act to recognize the existence of the Convention and to clearly reflect the interest of the United States in seeing that all parties to the Convention carry out their obligations under it.

CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER

The Contracting Parties to this Convention,

Recognizing that the marine environment and the living organisms which it supports are of vital importance to humanity, and all people have an interest in assuring that it is so managed that its quality and resources are not impaired;

Recognizing that the capacity of the sea to assimilate wastes and render them harmless, and its ability to regenerate natural resources, is not unlimited;

Recognizing that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

Recalling Resolution 2749 (XXV) of the General Assembly of the United Nations on the principles governing the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction;

Noting that marine pollution originates in many sources, such as dumping and discharges through the atmosphere, rivers, estuaries, outfalls and pipelines, and that it is important that States use the best practicable means to prevent such pollution and develop products and processes which will reduce the amount of harmful wastes to be disposed of;

Being convinced that international action to control the pollution of the sea by dumping can and must be taken without delay but that this action should not preclude discussion of measures to control other sources of marine pollution as soon as possible; and

Wishing to improve protection of the marine environment by encouraging States with a common interest in particular geographical areas to enter into appropriate agreements supplementary to this

Convention;

Have agreed as follows:

Article I

Contracting Parties shall individually and collectively promote the effective control of all sources of pollution of the marine environment, and pledge themselves especially to take all practicable steps to prevent the pollution of the sea by the dumping of waste and other matter that is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

Article II

Contracting Parties shall, as provided for in the following Articles, take effective measures individually, according to their scientific, technical and economic capabilities, and collectively, to prevent marine pollution caused by dumping and shall harmonize their policies in this regard.

Article III

For the purposes of this Convention:

1. (a) "Dumping" means:
   (i) any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
   (ii) any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea.

   (b) "Dumping" does not include:
   (i) the disposal at sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;
   (ii) placement of matter for a purpose other

than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.

(c) The disposal of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources will not be covered by the provisions of this Convention.

2. "Vessels and aircraft" means waterborne or airborne craft of any type whatsoever. This expression includes air cushioned craft and floating craft, whether self-propelled or not.

3. "Sea" means all marine waters other than the internal waters of States.

4. "Wastes or other matter" means material and substance of any kind, form or description.

5. "Special permit" means permission granted specifically on application in advance and in accordance with Annex II and Annex III.

6. "General permit" means permission granted in advance and in accordance with Annex III.

7. "The Organisation" means the Organisation designated by the Contracting Parties in accordance with Article XIV(2).

Article IV

1. In accordance with the provisions of this Convention Contracting Parties shall prohibit the dumping of any wastes or other matter in whatever form or condition except as otherwise specified below:

(a) the dumping of wastes or other matter listed in Annex I is prohibited;

(b) the dumping of wastes or other matter listed in Annex II requires a prior special permit;

(c) the dumping of all other wastes or matter requires a prior general permit.

2. Any permit shall be issued only after careful consideration of all the factors set forth in Annex III, including prior studies of the characteristics of the dumping site, as set forth in Sections B and C of that Annex.

3. No provision of this Convention is to be interpreted as preventing a Contracting Party from prohibit-

ing, insofar as that Party is concerned, the dumping of wastes or other matter not mentioned in Annex I. That Party shall notify such measures to the Organisation.

Article V

1. The provisions of Article IV shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur. Such dumping shall be so conducted as to minimize the likelihood of damage to human or marine life and shall be reported forthwith to the Organisation.

2. A Contracting Party may issue a special permit as an exception to Article IV(1)(a), in emergencies, posing unacceptable risk relating to human health and admitting no other feasible solution. Before doing so the Party shall consult any other country or countries that are likely to be affected and the Organisation which, after consulting other Parties, and international organisations as appropriate, shall in accordance with Article XIV promptly recommend to the Party the most appropriate procedures to adopt. The Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organisation of the action it takes. The Parties pledge themselves to assist one another in such situations.

3. Any Contracting Party may waive its rights under paragraph (2) at the time of, or subsequent to ratification of, or accession to this Convention.

Article VI

1. Each Contracting Party shall designate an appropriate authority or authorities to:

(a) issue special permits which shall be required prior to, and for, the dumping of matter

listed in Annex II and in the circumstances provided for in Article V(2);

(b) issue general permits which shall be required prior to, and for, the dumping of all other matter;

(c) keep records of the nature and quantities of all matter permitted to be dumped and the location, time and method of dumping;

(d) monitor individually, or in collaboration with other Parties and competent International Organisations, the condition of the seas for the purposes of this Convention.

2. The appropriate authority or authorities of a Contracting Party shall issue prior special or general permits in accordance with paragraph (1) in respect of matter intended for dumping:

(a) loaded in its territory;

(b) loaded by a vessel or aircraft registered in its territory or flying its flag, when the loading occurs in the territory of a State not party to this Convention.

3. In issuing permits under sub-paragraphs (1)(a) and (b) above, the appropriate authority or authorities shall comply with Annex III, together with such additional criteria, measures and requirements as they may consider relevant.

4. Each Contracting Party, directly or through a Secretariat established under a regional agreement, shall report to the Organisation, and where appropriate to other Parties, the information specified in sub-paragraphs (c) and (d) of paragraph (1) above, and the criteria, measures and requirements it adopts in accordance with paragraph (3) above. The procedure to be followed and the nature of such reports shall be agreed by the Parties in consultation.

Article VII

1. Each Contracting Party shall apply the measures required to implement the present Convention to all:

(a) vessels and aircraft registered in its territory or flying its flag;

(b) vessels and aircraft loading in its territory or territorial seas matter which is to be dumped;

(c) vessels and aircraft and fixed or floating

platforms under its jurisdiction believed to be engaged in dumping.

2. Each Party shall take in its territory appropriate measures to prevent and punish conduct in contravention of the provisions of this Convention.

3. The Parties agree to co-operate in the development of procedures for the effective application of this Convention particularly on the high seas, including procedures for the reporting of vessels and aircraft observed dumping in contravention of the Convention.

4. This Convention shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However each Party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Convention, and shall inform the Organisation accordingly.

5. Nothing in this Convention shall affect the right of each Party to adopt other measures, in accordance with the principles of international law, to prevent dumping at sea.

Article VIII

In order to further the objectives of this Convention, the Contracting Parties with common interests to protect in the marine environment in a given geographical area shall endeavour, taking into account characteristic regional features, to enter into regional agreements consistent with this Convention for the prevention of pollution, especially by dumping. The Contracting Parties to the present Convention shall endeavour to act consistently with the objectives and provisions of such regional agreements, which shall be notified to them by the Organisation. Contracting Parties shall seek to co-operate with the Parties to regional agreements in order to develop harmonized procedures to be followed by Contracting Parties to the different conventions concerned. Special attention shall be given to co-operation in the field of monitoring and scientific research.

Article IX

The Contracting Parties shall promote, through collaboration within the Organisation and other international bodies, support for those Parties which

request it for:

(a) the training of scientific and technical personnel;

(b) the supply of necessary equipment and facilities for research and monitoring;

(c) the disposal and treatment of waste and other measures to prevent or mitigate pollution caused by dumping;

preferably within the countries concerned, so furthering the aims and purposes of this Convention.

Article X

In accordance with the principles of international law regarding State responsibility for damage to the environment of other States or to any other area of the environment, caused by dumping of wastes and other matter of all kinds, the Contracting Parties undertake to develop procedures for the assessment of liability and the settlement of disputes regarding dumping.

Article XI

The Contracting Parties shall at their first consultative meeting consider procedures for the settlement of disputes concerning the interpretation and application of this Convention.

Article XII

The Contracting Parties pledge themselves to promote, within the competent specialised agencies and other international bodies, measures to protect the marine environment against pollution caused by:

(a) hydrocarbons, including oil, and their wastes;

(b) other noxious or hazardous matter transported by vessels for purposes other than dumping;

(c) wastes generated in the course of operation of vessels, aircraft, platforms and other man-made structures at sea;

(d) radio-active pollutants from all sources, including vessels;

(e) agents of chemical and biological warfare;

(f) wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources.

The Parties will also promote, within the appropriate international organisation, the codification of signals

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to be used by vessels engaged in dumping.

Article XIII

Nothing in this Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction. The Contracting Parties agree to consult at a meeting to be convened by the Organisation after the Law of the Sea Conference, and in any case not later than 1976, with a view to defining the nature and extent of the right and the responsibility of a coastal State to apply the Convention in a zone adjacent to its coast.

Article XIV

1. The Government of the United Kingdom of Great Britain and Northern Ireland as a depositary shall call a meeting of the Contracting Parties not later than three months after the entry into force of this Convention to decide on organisational matters.

2. The Contracting Parties shall designate a competent Organisation existing at the time of that meeting to be responsible for Secretariat duties in relation to this Convention. Any Party to this Convention not being a member of this Organisation shall make an appropriate contribution to the expenses incurred by the Organisation in performing these duties.

3. The Secretariat duties of the Organisation shall include:

(a) the convening of consultative meetings of the Contracting Parties not less frequently than once every two years and of special meetings of the Parties at any time on the request of two-thirds of the Parties;

(b) preparing and assisting, in consultation with the Contracting Parties and appropriate International Organisations, in the development and implementation of procedures referred to in sub-paragraph (4)(e) of this Article;

(c) considering enquiries by, and information from the Contracting Parties, consulting

with them and with the appropriate International Organisations, and providing recommendations to the Parties on questions related to, but not specifically covered by the Convention;

(d) conveying to the Parties concerned all notifications received by the Organisation in accordance with Articles IV(3), V(1) and (2). VI(4), XV, XX and XXI.

Prior to the designation of the Organisation these functions shall, as necessary, be performed by the depositary, who for this purpose shall be the Government of the United Kingdom of Great Britain and Northern Ireland.

4. Consultative or special meetings of the Contracting Parties shall keep under continuing review the implementation of this Convention and may, inter alia:

(a) review and adopt amendments to this Convention and its Annexes in accordance with Article XV;

(b) invite the appropriate scientific body or bodies to collaborate with and to advise the Parties or the Organisation on any scientific or technical aspect relevant to this Convention, including particularly the content of the Annexes;

(c) receive and consider reports made pursuant to Article VI(4);

(d) promote co-operation with and between regional organisations concerned with the prevention of marine pollution;

(e) develop or adopt, in consultation with appropriate International Organisations procedures referred to in Article V(2) including basic criteria for determining exceptional and emergency situations, and procedures for consultative advice and the safe disposal of matter in such circumstances, including the designation of appropriate dumping areas, and recommend accordingly;

(f) consider any additional action that may be required.

5. The Contracting Parties at their first consultative meeting shall establish rules of procedure as

necessary.

Article XV

1. (a) At meetings of the Contracting Parties called in accordance with Article XIV amendments to this Convention may be adopted by a two-thirds majority of those present. An amendment shall enter into force for the Parties which have accepted it on the sixtieth day after two-thirds of the Parties shall have deposited an instrument of acceptance of the amendment with the Organisation. Thereafter the amendment shall enter into force for any other Party 30 days after that Party deposits its instrument of acceptance of the amendment.

(b) The Organisation shall inform all Contracting Parties of any request made for a special meeting under Article XIV and of any amendments adopted at meetings of the Parties and of the date on which each such amendment enters into force for each Party.

2. Amendments to the Annexes will be based on scientific or technical considerations. Amendments to the Annexes approved by a two-thirds majority of those present at a meeting called in accordance with Article XIV shall enter into force for each Contracting Party immediately on notification of its acceptance to the Organisation and 100 days after approval by the meeting for all other Parties except for those which before the end of the 100 days make a declaration that they are not able to accept the amendment at that time. Parties should endeavour to signify their acceptance of an amendment to the Organisation as soon as possible after approval at a meeting. A Party may at any time substitute an acceptance for a previous declaration of objection and the amendment previously objected to shall thereupon enter into force for that Party.

3. An acceptance or declaration of objection under this Article shall be made by the deposit of an instrument with the Organisation. The Organisation shall notify all Contracting Parties of the receipt of such instruments.

4. Prior to the designation of the Organisation, the Secretarial functions herein attributed to it, shall be performed temporarily by the Government of the United Kingdom of Great Britain and Northern Ireland, as one of the depositaries of this Convention.

Article XVI

This Convention shall be open for signature by any State at London, Mexico City, Moscow and Washington from 29 December 1972 until 31 December 1973.

Article XVII

This Convention shall be subject to ratification. The instruments of ratification shall be deposited with the Governments of Mexico, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

Article XVIII

After 31 December 1973, this Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Governments of Mexico, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

Article XIX

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.
2. For each Contracting Party ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such Party of its instrument of ratification or accession.

Article XX

The depositaries shall inform Contracting Parties:

(a) of signatures to this Convention and of the deposit of instruments of ratification, accession or withdrawal, in accordance with Articles XVI, XVII, XVIII and XXI, and
(b) of the date on which this Convention will enter into force, in accordance with Article XIX.

Article XXI

Any Contracting Party may withdraw from this Convention by giving six months' notice in writing to a depositary, which shall promptly inform all Parties of such notice.

Article XXII

The original of this Convention of which the

English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Governments of Mexico, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America who shall send certified copies thereof to all States.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorised thereto by their respective Governments have signed the present Convention.

DONE in quadruplicate at London, Mexico City, Moscow and Washington, this twenty-ninth day of December, 1972.

ANNEX I

1. Organohalogen compounds.
2. Mercury and mercury compounds.
3. Cadmium and cadmium compounds.
4. Persistent plastics and other persistent synthetic materials, for example, netting and ropes, which may float or may remain in suspension in the sea in such a manner as to interfere materially with fishing, navigation or other legitimate uses of the sea.
5. Crude oil, fuel oil, heavy diesel oil, and lubricating oils, hydraulic fluids, and any mixtures containing any of these, taken on board for the purpose of dumping.
6. High-level radio-active wastes or other high-level radio-active matter, defined on public health, biological or other grounds, by the competent international body in this field, at present the International Atomic Energy Agency, as unsuitable for dumping at sea.
7. Materials in whatever form (e.g. solids, liquids, semi-liquids, gases or in a living state) produced for biological and chemical warfare.
8. The preceding paragraphs of this Annex do not apply to substances which are rapidly rendered harmless by physical, chemical or biological processes in the sea provided they do not:

(i) make edible marine organisms unpalatable, or
(ii) endanger human health or that of domestic animals.

The consultative procedure provided for under Article

XIV should be followed by a Party if there is doubt about the harmlessness of the substances.

9. This Annex does not apply to wastes or other materials (e.g. sewage sludges and dredged spoils) containing the matters referred to in paragraphs 1-5 above as trace contaminants. Such wastes shall be subject to the provisions of Annexes II and III as appropriate.

ANNEX II

The following substances and materials requiring special care are listed for the purposes of Article VI(1)(a).

A. Wastes containing significant amounts of the matters listed below:

arsenic)
lead)
copper) and their compounds
zinc)

organosilicon compounds

cyanides

fluorides

pesticides and their by-products not covered in Annex I.

B. In the issue of permits for the dumping of large quantities of acids and alkalis, consideration shall be given to the possible presence in such wastes of the substances listed in paragraph A and to the following additional substances:

beryllium)
chromium) and their compounds
nickel)
vanadium)

C. Containers, scrap metal and other bulky wastes liable to sink to the sea bottom which may

present a serious obstacle to fishing or navigation.

D. Radio-active wastes or other radio-active matter not included in Annex I. In the issue of permits for the dumping of this matter, the Contracting Parties should take full account of the recommendations of the competent international body in this field, at present the International Atomic Energy Agency.

ANNEX III

Provisions to be considered in establishing criteria governing the issue of permits for the dumping of matter at sea, taking into account Article IV(2), include:

A. Characteristics and composition of the matter

1. Total amount and average composition of matter dumped (e.g. per year).
2. Form, e.g. solid, sludge, liquid, or gaseous.
3. Properties: physical (e.g. solubility and density), chemical and biochemical (e.g. oxygen demand, nutrients) and biological (e.g. presence of viruses, bacteria, yeasts, parasites).
4. Toxicity.
5. Persistence: physical, chemical and biological.
6. Accumulation and biotransformation in biological materials or sediments.
7. Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials.
8. Probability of production of taints or other changes reducing marketability of resources (fish, shellfish, etc.).

B. Characteristics of dumping site and method of deposit

1. Location (e.g. co-ordinates of the dumping area, depth and distance from the coast), location in relation to other areas (e.g. amenity areas, spawning, nursery and fishing areas and exploitable resources).
2. Rate of disposal per specific period (e.g. quantity per day, per week, per month).
3. Methods of packaging and containment, if any.
4. Initial dilution achieved by proposed method of release.
5. Dispersal characteristics (e.g. effects of currents, tides and wind on horizontal transport and

vertical mixing).

6. Water characteristics (e.g. temperature, pH, salinity, stratification, oxygen indices of pollution-dissolved oxygen (DO), chemical oxygen demand (COD), biochemical oxygen demand (BOD) -- nitrogen present in organic and mineral form including ammonia, suspended matter, other nutrients and productivity.

7. Bottom characteristics (e.g. topography, geochemical and geological characteristics and biological productivity).

8. Existence and effects of other dumpings which have been made in the dumping area (e.g. heavy metal background reading and organic carbon content).

9. In issuing a permit for dumping, Contracting Parties should consider whether an adequate scientific basis exists for assessing the consequences of such dumping, as outlined in this Annex, taking into account seasonal variations.

C. General considerations and conditions

1. Possible effects on amenities (e.g. presence of floating or stranded material, turbidity, objectionable odour, discolouration and foaming).

2. Possible effects on marine life, fish and shellfish culture, fish stocks and fisheries, seaweed harvesting and culture.

3. Possible effects on other uses of the sea (e.g. impairment of water quality for industrial use, underwater corrosion of structures, interference with ship operations from floating materials, interference with fishing or navigation through deposit of waste or solid objects on the sea floor and protection of areas of special importance for scientific or conservation purposes).

4. The practical availability of alternative land-based methods of treatment, disposal or elimination, or of treatment to render the matter less harmful for dumping at sea.

Controlling Pollution

IMCO Conventions

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

February 15, 1973

Dear Mr. [President/Speaker]:

There is transmitted herewith a draft of a proposed bill,

> "To amend the Oil Pollution Act, 1971, (75 Stat. 402), as amended, to implement the 1969 and 1971 amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended; and for other purposes."

The proposed bill would incorporate into the existing domestic law which implements the original 1954 Oil Pollution Convention the latest amendments to the Convention adopted by the Intergovernmental Maritime Consultative Organization (IMCO) by Resolution A.175(VI) on October 21, 1969; Resolution A.232 (VII) on October 12, 1971, and Resolution A.246(VII) on October 15, 1971. You will recall that ratification of the 1969 amendments was advised and consented to by the Senate on September 20, 1971. Additionally in May 1972 and 1971 amendments were submitted to the Senate for their advice and consent. The submission of draft legislation at this time is in accord with the Executive Branch intention of seeking legislative implementation at the earliest possible time.

The 1969 convention changes, particularly as they impose more stringent constraints on oil and oily mixture discharges from vessels anywhere, represent another advancing step toward remedy of ocean oil pollution, a major international as well as national environmental problem. Those amendments abandon the concept which prohibited discharges within certain zones (generally within 50 miles of land) and which discouraged but did not prohibit indiscriminate discharges in the open sea beyond the zones. Under the amendments and the legislation here proposed, discharges will be prohibited anywhere unless certain conditions are met. Those conditions relate to discharge rate, oily mixture dilution, total quantity of

oil discharged, and distance from land. For example, a tanker will be prohibited from any discharges within 50 miles of land, and beyond that distance may only discharge while proceeding enroute and so long as a discharge of oil content does not exceed 60 liters per mile, and provided that the total quantity of oil discharged on a ballast voyage does not exceed 1/15,000 of the total cargo-carrying capacity of the vessel.

The 1971 amendments apply the distance from land criterion for discharges of oil and oily mixtures to the area of the Great Barrier Reef as if it were land, and concern tank arrangements and limitations of tank size for new tank vessels. The objective of the amendments relating to tank arrangements and tank size is to limit the quantity of oil which can escape into the sea as the result of collision or other vessel casualty.

In addition to the criminal penalties now provided for violations of the 1961 Act these proposed amendments would make civil penalties also available for more flexible and effective enforcement. Article VI of the Oil Pollution Convention requires that penalties which a country imposes for unlawful discharges by domestic vessels beyond its territorial sea shall not be less than those for the same infringements within the territorial sea. That requirement will be satisfied because the civil penalties proposed in the draft bill are equal to or larger in amount than those contained in section 311 of the Federal Water Pollution Control Act (P.L. 92-500).

It would be appreciated if you would lay this proposal before the [Senate/House of Representatives]. A similar proposal has been submitted to the [President of the Senate/Speaker of the House of Representatives].

The Office of Management and Budget advises that this proposed legislation is consistent with the Administration's objectives.

Sincerely,

/s/Claude Brinegar

Honorable Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

Honorable Carl Albert
Speaker of the House of Representatives
Washington, D. C. 20515

S. 1067
H.R. 5451

A BILL

To amend the Oil Pollution Act, 1961 (75 Stat. 402), as amended, to implement the 1969 and the 1971 amendments to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended; 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 Oil Pollution Act Amendments of 1973.

SEC. 2. The Oil Pollution Act, 1971 (75 Stat. 402), as amended, (33 U.S.C. 1001-1015), is amended as follows:

(1) Section 2 (33 U.S.C. 1001) is amended --

(A) by redesignating subsections (c), (d), (e) and (f), as subsections (d), (e), (f), and (g), respectively;

(B) by adding a new subsection (c) to read, "(c) The term 'instantaneous rate of discharge of oil content' means the rate of discharge of oil in liters per hour at any instant divided by the speed of the ship in knots at the same instant;";

(C) in subsection (c) [redesignated (d) by subparagraph (A) of this paragraph]:

(1) by deleting the word "marine"; and

(2) by deleting the figures "D-86/59" at the end of the sentence and inserting in lieu thereof the phrase "D.86-71 or any later revisions subject to regulatory acceptance by the Coast Guard";

(D) in subsection (e) [redesignated (f) by subparagraph (A) of this paragraph] by changing the period to a semicolon at the end of the first sentence thereof and by amending the second sentence to read "an 'oily mixture' means a mixture with any oil content;";

(E) by repealing subsection (g); and

(F) by amending subsection (h) to read "The term 'Secretary' means the Secretary of the department in which the Coast Guard is operating;".

(G) in subsection (j) by changing the period to a semicolon and by adding the following to the sentence:

"except that, for the purpose of this Act 'from the nearest land' off the northeastern coast of Australia means a line drawn from a point on the coast of Australia

in latitude 11° South, longitude 142°08' East to a point in latitude 10°35' South, longitude 141°55' East --

thence to a point latitude 10°00' South, longitude 142°00' East

thence to a point latitude 9°10' South, longitude 143°52' East

thence to a point latitude 9°00' South, longitude 144°30' East

thence to a point latitude 13°00' South, longitude 144°00' East

thence to a point latitude 15°00' South, longitude 146°00' East

thence to a point latitude 18°00' South, longitude 147°00' East

thence to a point latitude 21°00' South, longitude 153°00' East

thence to a point on the coast of Australia in latitude 24°42' South, longitude 153°15' East."

(2) Section 3 (33 U.S.C. 1002) is amended to read as follows:

"SEC. 3. Subject to the provisions of sections 4 and 5, the discharge of oil or oily mixture from a ship is prohibited unless --

(a) the ship is proceeding enroute; and

(b) the instantaneous rate of discharge of oil content does not exceed 60 liters per mile, and

(c) (1) for a ship, other than a tanker--

(i) the oil content of the discharge is less than 100 parts per 1,000 parts of the mixture, and

(ii) the discharge is made as far as practicable from land;

(2) for a tanker, except dischargers from machinery space bilges which shall be governed by the above provisions for ships other than tankers, --

(i) the total quantity of oil discharged on a ballast voyage does not exceed 1/15,000 of the total cargo-carrying capacity, and

(ii) the tanker is more than 50 miles from the nearest land.".

(3) Section 4 (33 U.S.C. 1003) is amended --

(A) by changing the word "shall" to "does" in the introductory clause thereof;

(B) by changing the semicolon to a period at

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the end of subsection (b) thereof; and

(C) by repealing subsection (c) thereof.

(4) Section 5 (33 U.S.C. 1004) is amended to read as follows:

"SEC. 5 Section 3 does not apply to the discharge of tanker ballast from a cargo tank which, since the cargo was last carried therein, has been so cleaned that any effluent therefrom, if it were discharged from a stationary tanker into clean calm water on a clear day, would produce no visible traces of oil on the surface of the water.".

(5) Insert a new section 6, to read as follows, following section 5:

"SEC. 6. (a) Every tanker to which this Act applies and built in the United States and for which the building contract is placed on or after the effective date of this section shall be constructed in accordance with the provisions of Annex C to the convention, relating to tank arrangement and limitation of tank size.

(b) Every tanker to which this Act applies and built in the United States and for which the building contract is placed, or in the absence of a building contract the keel of which is laid or which is at a similar state of construction, before the effective date of this section, shall, within two years after that date, comply with the provisions of Annex C to the convention if

(1) the delivery of the tanker is after 1 January 1977; or

(2) the delivery of the tanker is not later than 1 January 1977 and the building contract is placed after 1 January 1972, or in cases where no building contract has previously been placed, the keel is laid or the tanker is at a similar stage of construction, after 30 June 1972.

(c) A tanker required under this section to be constructed in accordance with Annex C to the convention and so constructed shall carry on board a certificate issued by the Secretary attesting to that compliance. A tanker which is not required to be constructed in accordance with Annex C to the convention shall carry on board a certificate to that effect issued by the Secretary, or if a tanker does comply with Annex C though not required to do so, she may carry

on board a certificate issued by the Secretary attesting to that compliance. Tankers under the flag of the United States are prohibited from engaging in domestic or foreign trade without an appropriate certificate issued under this section.

(d) Certificates issued to foreign tankers pursuant to the convention by other nations party thereto shall be accepted by the Secretary as of the same force as certificates issued by him. If the Secretary has clear grounds for believing that a foreign tanker required under the convention to be constructed in accordance with Annex C entering ports of the United States or using off-shore terminals under United States control does not in fact comply with Annex C, he may request the Secretary of State to seek consultation with the Government with which the tanker is registered. If after consultation or otherwise, the Secretary is satisfied that such tanker does not comply with Annex C, he may for this reason deny such tanker access to ports of the United States or to off-shore terminals under United States control until such time as he is satisfied that the tanker has been brought into compliance.

(e) If the Secretary is satisfied that any other foreign tanker which, if registered in a country party to the convention, would be required to be constructed in accordance with Annex C, does not in fact comply with the standards relating to tank arrangement and limitation of tank size of Annex C, then he may deny such tanker access to ports of the United States or to off-shore terminals under United States control."

(6) Section 6 (33 U.S.C. 1005) is renumbered section 7 and is amended to read as follows:

"SEC. 7. (a) Any person who willfully discharges oil or oily mixture from a ship in violation of this Act or the regulations thereunder shall be fined not more than $10,000 for each violation or imprisoned not more than one year, or both.

(b) In addition to any other penalty prescribed by law any person who willfully or negligently discharges oil or oily mixture from a ship in violation of this Act or any regulation thereunder shall be liable to a civil penalty of not more than $10,000 for each violation and any person who otherwise violates this Act or any regulation thereunder shall be liable to a civil

penalty of not more than $5,000 for each violation.

(c) A ship from which oil or oily mixture is discharged in violation of this Act or any regulation thereunder is liable for any pecuniary penalty under this section and may be proceeded against in the district court of any district in which the vessel may be found.

(d) The Secretary may assess any civil penalty incurred under this Act or any regulation thereunder and, in his discretion, remit, mitigate, or compromise any penalty. No penalty may be assessed unless the alleged violator shall have been given notice and the opportunity to be heard on the alleged violation. Upon any failure to pay a civil penalty assessed under this Act, the Secretary may request the Attorney General to institute a civil action to collect the penalty. In hearing such action, the district court shall have authority to review the violation and the assessment of the civil penalty de novo."

(7) Section 7 is renumbered section 8.

(8) Section 8 (33 U.S.C. 1007) is renumbered section 9 and is amended --

(A) in subsection (a) by amending the first sentence to read as follows:

"In the administration of sections 1-12 of this Act, the Secretary may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel, facilities or equipment of other Federal agencies or the States.";

(B) in subsection (a) by amending the first part of the second sentence which precedes the first use of the word "shall" to read:

"For the better enforcement of the provisions of said sections, officers of the Coast Guard and other persons employed by or acting under the authority of the Secretary";

(C) in subsection (a) by deleting from the last sentence thereof the words "and of the Bureau of Customs" and the words "in a prohibited zone or in a port of the United States"; and

(D) in subsection (b) by deleting in the first sentence thereof the words "of the Department in which the Coast Guard is operating" and by deleting the second sentence thereof in its entirety.

(9) Section 9 (33 U.S.C. 1008) is renumbered section 10 and is amended --

(A) by amending subsection (c) to read as follows:

"(C) The oil record book shall be completed -- on each occasion, on a tank-to-tank basis, whenever any of the following operations takes place in the ship:

(1) for tankers:

(i) loading of oil cargo;

(ii) transfer of oil cargo during voyage;

(iii) discharge of oil cargo;

(iv) ballasting of cargo tanks;

(v) cleaning of cargo tanks;

(vi) discharge of dirty ballast;

(vii) discharge of water from slop tanks;

(viii) disposal of residues;

(ix) discharge overboard of bilge water containing oil which has accumulated in machinery spaces while in port, and the routine discharge at sea of bilge water containing oil unless the latter has been entered in the appropriate log book;

(2) for ships other than tankers:

(i) ballasting or cleaning of bunker fuel tanks;

(ii) discharge of dirty ballast or cleaning water from bunker fuel tanks;

(iii) disposal of residues;

(iv) discharge overboard of bilge water containing oil which has accumulated in machinery spaces while in port, and the routine discharge at sea of bilge water containing oil unless the latter has been entered in the appropriate log book. In the event of such discharge or escape of oil or oily mixture as is referred to in section 4 of this Act, a statement shall be made in the oil record book of the circumstances of, and reason for, the discharge or escape.";

(B) by changing the figure "9" in subsection (d) to read "10"; and

(C) by repealing subsection (f).

(10) Section 10 (33 U.S.C. 1009) is renumbered section 11 and is amended to make the sectional enumeration read as follows:

"Sections 3, 4, 5, 6, 7, 9, and 10."

(11) Section 11 is renumbered section 12 and is amended by deleting the words "any prohibited zone" in subsection (b) thereof and by substituting therefor the words "violation of the convention but outside the territorial sea of the United States".

(12) Section 12 (33 U.S.C. 1011) is repealed.

(13) Sections 14 and 15 are renumbered sections 13 and 14, respectively.

(14) Section 16 (33 U.S.C. 1014) is renumbered section 15 and is amended by adding between the words "provisions of" and the word "the" the words "section 311 of", and by deleting the words "Oil Pollution Act, 1924," and substituting therefor the words "Federal Water Pollution Control Act,".

(15) Section 17 (33 U.S.C. 1015) is repealed.

SEC. 3. (a) Except as provided in subsection (c) of this Section, this amending Act is effective upon the date of its enactment or upon the date amendments to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended, adopted by the Assembly of the Inter-Governmental Maritime Consultative Organization on October 21, 1969, October 12, 1971, and October 15, 1971, are ratified or accepted with the advice and consent of the Senate of the United States, whichever is the later date.

(b) Any rights or liabilities existing on the effective date of this Act shall not be affected by the enactment of this Act. Any regulations or procedures promulgated or effected pursuant to the Oil Pollution Act, 1961, as previously amended, remain in effect until modified or superceded under the authority of the Oil Pollution Act, 1961, as amended by this Act. Any reference to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, in any law or regulation shall be deemed to be a reference to the convention as revised or amended by the latest amendments in respect of which the United States has deposited an instrument of ratification or acceptance.

(c) Notwithstanding the foregoing provisions of this Section, subsection (d) and (e) of Section 6 of the Oil Pollution Act, 1961, as amended by Section 2 of this bill, shall be effective upon the date of their enactment or upon the date the International

Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended by the amendments adopted by the Assembly of the Inter-Governmental Maritime Consultative Organization on October 15, 1971, enters into force pursuant to Article XVI of that convention as amended, whichever is later; and no authority shall be exercised pursuant to Article VI bis (3) and (4) of such amendments prior to the effective date of such subsections.

COMPARATIVE TYPE SHOWING CHANGES IN
EXISTING LAW MADE BY PROPOSED BILL

(Matter proposed to be deleted is enclosed in brackets; new matter is underlined).

OIL POLLUTION ACT, 1961 (33 U.S.C. 1001-1015)

Public Law 87-167; 75 Stat. 402 as amended P.L. 89-551; 80 Stat. 372. An Act to implement the provisions of the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That: This Act, to implement the provisions of the International Convention for the Prevention of the Sea by Oil, 1954, as amended, may be cited as the "Oil Pollution Act, 1961, as amended".

SEC. 2. DEFINITIONS.--As used in this Act, unless the context otherwise requires--

(a) The term "convention" means the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended;

(b) The term "discharge" in relation to oil or to an oily mixture means any discharge or escape howsoever caused;

(c) The term "instantaneous rate of discharge of oil content" means the rate of discharge of oil in liters per hour at any instant divided by the speed of the ship in knots at the same instant;

[(c)] (d) The term "heavy diesel oil" means [marine] diesel oil, other than those distillates of which more than 50 per centum, by volume distills at a temperature not exceeding three hundred and forty degrees centigrade when tested by American Society for the Testing of Materials standard method [D. 86/59] D. 86-71 or any later revisions subject to regulatory acceptance by the Coast Guard.

[(d)] (e) The term "mile" means a nautical mile of six thousand and eighty feet or one thousand eight hundred and fifty-two meters;

[(e)] (f) The term "oil" means crude oil, fuel oil, heavy diesel oil, and lubricating oil, and "oily" shall be construed accordingly [.];[An] an "oily mixture" means a mixture with [an] any oil content; [of one hundred parts or more in one million parts of mixture.]

[(f)] (g) The term "person" means an individual, partnership, corporation, or association; and any owner, operator, agent, master, officer, or employee of a ship;

[(g) The term "prohibited zones" means the zones described in section 12 of this Act as modified by notices, if any, of extension or reduction issued by the Secretary;]

(h) The term "Secretary" means the Secretary of the [Army;] department in which the Coast Guard is operating;

(i) The term "ship", subject to the exceptions provided in paragraph (1) of this subsection, means any seagoing vessel of any type whatsoever of American registry or nationality, including floating craft, whether self-propelled or towed by another vessel making a sea voyage; and "tanker", as a type included within the term "ship", means a ship in which the greater part of the cargo space is constructed or adapted for the carriage of liquid cargoes in bulk and which is not, for the time being, carrying a cargo other than oil in that part of its cargo space.

(1) The following categories of vessels are excepted from all provisions of this Act:

(i) tankers of under one hundred and fifty tons gross tonnage and other ships of under five hundred tons gross tonnage.

(ii) ships for the time being engaged in the whaling industry when actually employed on whaling operations.

(iii) ships for the time being navigating the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of Saint Lambert lock at Montreal in the Province of Quebec, Canada.

(iv) naval ships and ships for the time being used as naval auxiliaries.

(j) The term "from the nearest land" means from the baseline from which the territorial sea of the territory in question is established in accordance with the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958; except that, for the purpose of this Act "from the nearest land" off the northeastern coast of Australia means a line drawn from a point on the coast of Australia in latitude 11° south, longitude 142°08' East

to a point in latitude 10°35' South, longitude 141°55' East--

thence to a point latitude 10°00' South, longitude 142°00' East

thence to a point latitude 9°10' South, longitude 143°52' East

thence to a point latitude 9°00' South, longitude 144°30' East

thence to a point latitude 13°00' South, longitude 144°00' East

thence to a point latitude 15°00' South, longitude 146°00' East

thence to a point latitude 18°00' South, longitude 147°00' East

thence to a point latitude 21°00' South, longitude 153°00' East

thence to a point on the coast of Australia in latitude 24°42' South, longitude 153°15' East.

SEC. 3. Subject to the provisions of sections 4 and 5, [it shall be unlawful for any person to discharge oil or oily mixture from:

[(a) a tanker within any of the prohibited zones.

[(b) a ship, other than a tanker, within any of the prohibited zones, except when the ship is proceeding to a port not provided with facilities adequate for the reception, without causing undue delay, it may discharge such residues and oily mixture as would remain for disposal if the bulk of the water had been separated from the mixture: Provided, such discharge is made as far as practicable from land.

[(c) a ship of twenty thousand tons gross tonnage or more, including a tanker, for which the building contract is placed on or after the effective date of this Act. However, if in the opinion of the master, special circumstances make it neither reasonable nor practicable to retain the oil or oily mixture on board, it may be discharged outside the prohibited zones. The reasons for such discharge shall be reported in accordance with the regulations prescribed by the Secretary.] the discharge of oil or oily mixture from a ship is prohibited unless--

(a) the ship is proceeding enroute; and

(b) the instantaneous rate of discharge of oil content does not exceed 60 liters per mile, and

(c) (1) for a ship, other than a tanker--

(i) the oil content of the discharge is less than 100 parts per 1,000,000 parts of the mixture, and

(ii) the discharge is made as far as practicable from land;

(2) for a tanker, except discharges from machinery space bilges which shall be governed by the above provisions for ships other than tankers,--

(i) the total quantity of oil discharged on a ballast voyage does not exceed 1/15,000 of the total cargo-carrying capacity, and

(ii) the tanker is more than 50 miles from the nearest land.

SEC. 4. Section 3 [shall] does not apply to--

(a) the discharge of oil or oily mixture from a ship for the purpose of securing the safety of a ship, preventing damage to a ship or cargo, or saving life at sea; or

(b) the escape of oil, or of oily mixture, resulting from damage to a ship or unavoidable leakage, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the leakage for the purpose of preventing or minimizing the escape[;].

[(c) the discharge of residue arising from the purification or clarification of fuel oil or lubricating oil: Provided, That such discharge is made as far from land as practicable.]

SEC. 5. Section 3 [shall] does not apply to the discharge [from the bilges of a ship of an oily mixture containing no oil other than lubricating oil which has drained or leaked from machinery spaces.] of tanker ballast from a cargo tank which, since the cargo was last carried therein, has been so cleaned that any effluent therefrom, if it were discharged from a stationary tanker into clean calm water on a clear day, would produce no visible traces of oil on the surface of the water.

SEC. 6.

(a) Every tanker to which this Act applies and built in the United States and for which the building contract is placed on or after the effective date of this section shall be constructed in accordance with the provisions of Annex C to the convention, relating to tank arrangement and limitation of tank size.

(b) Every tanker to which this Act applies and

built in the United States and for which the building contract is placed, or in the absence of a building contract the keel of which is laid or which is at a similar state of construction, before the effective date of this section, shall, within two years after that date, comply with the provisions of Annex C to the convention if

(1) the delivery of the tanker is after 1 January 1977; or

(2) the delivery of the tanker is not later than 1 January 1977 and the building contract is placed after 1 January 1972, or in cases where no building contract has previously been placed, the keel is laid or the tanker is at a similar stage of construction, after 30 June 1972.

(c) A tanker required under this section to be constructed in accordance with Annex C to the convention and so constructed shall carry on board a certificate issued by the Secretary attesting to that compliance. A tanker which is not required to be constructed in accordance with Annex C to the convention shall carry on board a certificate to that effect issued by the Secretary, or if a tanker does comply with Annex C though not required to do so, she may carry on board a certificate issued by the Secretary attesting to that compliance. Tankers under the flag of the United States are prohibited from engaging in domestic or foreign trade without an appropriate certificate issued under this section.

(d) Certificates issued to foreign tankers pursuant to the convention by other nations party thereto shall be accepted by the Secretary as of the same force as certificates issued by him. If the Secretary has clear grounds for believing that a foreign tanker required under the convention to be constructed in accordance with Annex C entering ports of the United States or using offshore terminals under United States control does not in fact comply with Annex C, he may request the Secretary of State to seek consultation with the government with which such tanker is registered. If, after consultation or otherwise, the Secretary is satisfied that the tanker does not comply with Annex C, he may for this reason deny such tanker access to ports of the United States or to offshore terminals under United States control until such time as he is satisfied that the tanker has been brought into compliance.

(e) If the Secretary is satisfied that any other foreign tanker which, if registered in a country party to the convention, would be required to be constructed in accordance with Annex C, does not in fact comply with the standards relating to tank arrangement and limitation of tank size of Annex C, then he may deny such tanker access to ports of the United States or to offshore terminals under United States control.

SEC. [6] 7. [Any person who violates any provision of the Act, except section 8(b) and 9, or any regulations prescribed in pursuance thereof, is guilty of a misdeameanor, and upon conviction shall be punished by a fine not exceeding $2,500 nor less than $500, or by imprisonment not exceeding one year, or by both such fine and imprisonment, for each offense. And any ship (other than a ship owned and operated by the United States) from which oil is discharged in violation of this Act, or any regulation prescribed in pursuance thereof, shall be liable for the pecuniary penalty specified in this section, and clearance of such ship from a port of the United States may be withheld until the penalty is paid, and said penalty shall constitute a lien on such ship which may be recovered in proceedings by libel in rem in the district court of the United States for any district within which the ship may be.]

(a) Any person who willfully discharges oil or oily mixture from a ship in violation of this Act or the regulations thereunder shall be fined not more than $10,000 for each violation or imprisoned not more than one year or both.

(b) In addition to any other penalty prescribed by law any person who willfully or negligently discharges oil or oily mixture from a ship in violation of this Act or any regulation thereunder shall be liable to a civil penalty of not more than $10,000 for each violation, and any person who otherwise violates this Act or any regulation thereunder shall be liable to a civil penalty of not more than $5000 for each violation.

(c) A ship from which oil or oily mixture is discharged in violation of this Act or any regulation thereunder is liable for any pecuniary penalty under this section and may be proceeded against in the district court of any district in which the vessel may be found.

(d) The Secretary may assess any civil penalty

incurred under this Act or any regulation thereunder and, in his discretion, remit, mitigate, or compromise any penalty. No penalty may be assessed unless the alleged violator shall have been given notice and the opportunity to be heard on the alleged violation. Upon any failure to pay a civil penalty assessed under this Act, the Secretary may request the Attorney General to institute a civil action to collect the penalty. In hearing such action, the district court shall have authority to review the violation and the assessment of the civil penalty de novo.

SEC. [7] 8. The Coast Guard may, subject to the provisions of section 4450 of the Revised Statutes, as amended (46 U.S.C. 239), suspend or revoke a license issued to the master or other licensed officer of any ship found violating the provisions of this Act or the regulations issued pursuant thereto.

SEC. [8] 9. In the administration of sections 1-12 of this Act, the Secretary may [make use of the organization, equipment, and agencies, including engineering, clerical, and other personnel, employed under his direction in the improvement of rivers and harbors and in the enforcement of laws for the improvement of rivers and harbors and in the enforcement of laws for the preservation and protection of navigable waters] utilize by agreement, with or without reimbursement, law enforcement officers or other personnel, facilities or equipment of other Federal agencies or the States. For the better enforcement of the provisions of said sections, [the officers and agents of the United States in charge of river and harbor improvements and persons employed under them by authority of the Secretary, and officers and employees of the Bureau of Customs and the Coast Guard] officers of the Coast Guard and other persons employed by or acting under the authority of the Secretary shall have power and authority and it shall be their duty to swear out process and to arrest and take into custody, with or without process, any person who may violate any of said provisions: Provided, That no person shall be arrested without process for a violation not committed in the presence of some one of the aforesaid officials: And provided further, That whenever any arrest is made under the provisions of said sections the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United

States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in cases of crimes against the United States. Representatives of the Secretary [and of the Bureau of Customs] and Coast Guard of the United States may go on board and inspect any ship [in a prohibited zone or in a port of the United States] as may be necessary for enforcement of this Act.

(b) To implement article VII of the convention, ship fittings and equipment, and operating requirements thereof, shall be in accordance with regulations prescribed by the Secretary. [of the Department in which the Coast Guard is operating. Any person found violating these regulations shall, in addition to any other penalty prescribed by law, be subject to a civil penalty not in excess of $100.]

SEC. [9] 10. (a) The Secretary shall have printed separate oil record books containing instructions and spaces for inserting information in the form prescribed by the Convention, which shall be published in regulations prescribed by the Secretary.

(b) If subject to this Act, every ship using oil fuel and every tanker shall be provided, without charge, an oil record book which shall be carried on board. The provisions of Section 140 of Title 5, United States Code, shall not apply. The ownership of the booklet shall remain in the United States Government. This book shall be available for inspection as provided in this Act and for surrender to the United States Government pursuant to regulations of the Secretary.

[(c) The oil record book shall be completed on each occasion, whenever any of the following operations takes place in the ship:

[(1) ballasting of and discharge of ballast from cargo tanks of tankers;

[(2) cleaning of cargo tanks of tankers;

[(3) settling in slop tanks and discharge of water from tankers;

[(4) disposal from tankers of oily residues from slop tanks or other sources;

[(5) ballasting, or cleaning during voyage, of bunker fuel tanks of ships other than tankers;

[(6) disposal from ships other than tankers of oily residues from bunker fuel tanks or other sources;

[(7) accidental or other exceptional discharges or escapes of oil from tankers or ships other than tankers.]

(c) The oil record book shall be completed on each occasion, on a tank-to-tank basis, whenever any of the following takes place in the ship:

(1) for tankers:

(i) loading of oil cargo;

(ii) transfer of oil cargo during voyage;

(iii) discharge of oil cargo;

(iv) ballasting of cargo tanks;

(v) cleaning of cargo tanks;

(vi) discharge of dirty ballast;

(vii) discharge of water from slop tanks;

(viii) disposal of residues;

(ix) discharge overboard of bilge water containing oil which has accumulated in machinery spaces while in port, and the routine discharge at sea of bilge water containing oil unless the latter has been entered in the appropriate log book;

(2) for ships other than tankers:

(i) ballasting or cleaning of bunker fuel tanks;

(ii) discharge of dirty ballast or cleaning water from bunker fuel tanks;

(iii) disposal of residues;

(iv) discharge overboard of bilge water containing oil which has accumulated in machinery spaces while in port, and the routine discharge at sea of bilge water containing oil unless the latter has been entered in the appropriate log book.

In the event of such discharge or escape of oil or oily mixture, as is referred to in section[s 3(c) and] 4 of this Act, a statement shall be made in the oil record book of the circumstances of, and reason for, the discharge or escape.

(d) Each operation described in section [9] 10 (c) of the Act shall be fully recorded without delay in the oil record book so that all the entries in the book appropriate to that operation are completed. Each page of the book shall be signed by the officer or officers in

charge of the operations concerned and, when the ship is manned, by the master of the ship.

(e) Oil record books shall be kept in such manner and for such length of time as set forth in the regulations prescribed by the Secretary.

[(f) If any person fails to comply with the requirements imposed by or under this section, he shall be liable on conviction to a fine not exceeding $1,000 nor less than $500 and if any person makes an entry in any records kept in accordance with this Act or regulations prescribed thereunder by the Secretary which is to his knowledge false or misleading in any material particular, he shall be liable on conviction to a fine not exceeding $1,000 nor less than $500 or imprisonment for a term not exceeding six months, or both.]

SEC. [10] 11. The Secretary may make regulations for the administration of sections 3, 4, 5, 6, 7 [8(a)], 9 and [12] 10.

SEC. [11] 12. (a) The Secretary may make regulations empowering such persons as may be designated to go on board any ship to which the convention applies, while the ship is within the territorial jurisdiction of the United States, and to require production of any records to be kept in accordance with the convention.

(b) Should evidence be obtained that a ship registered in another country party to the convention has discharged oil in violation of the convention but outside the territorial sea of the United States [any prohibited zone], such evidence should be forwarded to the State Department for action in accordance with article X of the convention.

[SEC. 12. Prohibited zones, publications of reduction or extension of zones

[(a) All sea areas within fifty miles from the nearest land shall be prohibited zones, subject to extensions or reduction effectuated in accordance with the terms of the Convention, which shall be published in regulations prescribed by the Secretary.

[(b) With respect to the reduction or extension of the zones described under the terms of the Convention, the Secretary shall give notice thereof by publication of such information in Notices to Mariners issued by the United States Coast Guard and United States Navy.]

SEC. [14] 13. There is authorized to be appropriated

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such sums as may be necessary to carry out the provisions of this Act.

SEC. [15] 14. If a provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

SEC. [16] 15. Nothing in this Act or in regulations issued hereunder shall be construed to modify or amend the provisions of section 311 of the [Oil Pollution Act, 1924,] Federal Water Pollution Control Act, or of section 89 of Title 14.

[SEC. 17. (a) This Act shall become effective upon the date of its enactment or upon the date the amended Convention becomes effective as to the United States, whichever is the later date.

[(b) Any rights or liabilities existing on the effective date of this Act shall not be affected by the enactment of this Act. Any procedures or rules or regulations in effect on the effective date of this Act shall remain in effect until modified or superseded under the authority of the Act. Any reference in any other law or rule or regulation prescribed pursuant to law to the "International Convention for the Prevention of the Pollution of the Sea by Oil, 1954," shall be deemed to be a reference to that Convention as revised by the "amendments of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954," which were adopted by a Conference of contracting Governments convened at London on April 11, 1962. Any reference in any other law or rule or regulation prescribed pursuant to law to the "Oil Pollution Act, 1961," approved August 30, 1961, shall be deemed to be a reference to that Act as amended by this Act.]

THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

February 15, 1973

Dear Mr. [President/Speaker]:

There is transmitted herewith a proposed bill,

> "To implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969."

The proposed bill would, as stated in the title, implement the Convention, which was ratified by the Senate on September 20, 1971. The Convention permits a coastal nation to take whatever action it deems necessary to prevent, mitigate or eliminate a threat of oil pollution resulting from a maritime accident beyond that coastal state's territorial sea. That authority is subject to reasonable safeguards. The Convention addresses internationally some of the types of issues which arose in 1967 following the grounding of the Torrey Canyon off the southeast coast of England.

The bill places the authority for action in the Secretary of the department in which the Coast Guard is operating. In appropriate circumstances, actions could be taken against United States and foreign vessels. Exercise of that authority is conditioned by the requirement for an express determination by the Secretary that there exists a grave and imminent danger to the coastline or related interests of the United States from pollution or threat of pollution of the sea by oil. The bill provides necessary regulatory authority for the Secretary and sanctions for the effective enforcement of that authority.

The Secretary would be authorized to use the revolving fund established pursuant to the Federal Water Pollution Control Act as one means of funding extraordinary Federal activities under the bill. The revolving fund is now available for Federal clean-up of oil and related activities, in areas subject to United States jurisdiction. Activities on the high seas under this bill will be

similar.

No effort is made in the Convention or this bill to articulate the various types of actions which could be taken. It not possible to define all the possible incidents because their specific nature may become known only as an emergent situation develops. Under those circumstances, the full exercise of Executive Branch discretion should be available. At the same time, however, the Convention and the proposed bill contain a number of constraints to assure that the Secretary's actions will be reasonable under the circumstances. Some specific criteria upon which actions must be based are included.

It would be appreciated if you would lay the proposed bill before the [Senate/House of Representatives]. A similar proposal has been submitted to the [President of the Senate/Speaker of the House of Representatives].

The Office of Management and Budget has advised that enactment of this proposal would be consistent with the Administration's objectives.

Sincerely,

/s/Claude Brinegar

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Honorable Carl Albert
Speaker of the House of Representatives
Washington, D.C. 20515

S. 1070

A BILL

To implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969.

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 "Intervention on the High Seas Act".

Sec. 2. As used in this Act --

(1) "Ship" means --

(A) any sea going vessel of any type whatsoever, and

(B) any floating craft, except an installation or device engaged in the exploration and exploitation of the resources of the sea-bed and the ocean floor and the subsoil thereof;

(2) "Oil" means crude oil, fuel oil, diesel oil and lubricating oil;

(3) "Convention" means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969;

(4) "Secretary" means the Secretary of the department in which the Coast Guard is operating; and

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands and the Trust Territory of the Pacific Islands.

Sec. 3. Whenever a ship collision, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to the ship or her cargo creates, as determined by the Secretary, a grave and imminent danger to the coastline or related interests of the United States from pollution or threat of pollution of the sea by oil which may reasonably be expected to result in major harmful consequences, the Secretary may, except as provided for in section 10, without liability for any damage to the owners or operators of the ship, to her cargo or crew, or to underwriters or other parties interested therein, take measures on the high seas, in accordance with the provisions of the Convention and this Act, to prevent, mitigate or eliminate that danger.

Sec. 4. In determining whether there is grave and

imminent danger of major harmful consequences to the coastline or related interests of the United States, the Secretary shall consider the interests of the United States directly threatened or affected including but not limited to, fish, shellfish and other living marine resources, wildlife, coastal zone and estuarine activities, and public and private shorelines and beaches.

Sec. 5. Upon a determination under section 3 of this Act of a grave and imminent danger to the coastline or related interests of the United States, the Secretary may --

(1) coordinate and direct all public and private efforts directed at the removal or elimination of the threatened pollution damage;

(2) directly or indirectly undertake the whole or any part of any salvage or other action he could require or direct under subsection (1) of this section; and

(3) remove, and, if necessary, destroy the ship and cargo which is the source of the danger.

Sec. 6. Before taking any measure under section 5 of this Act, the Secretary shall --

(1) consult, through the Secretary of State, with other countries affected by the marine casualty, and particularly with the flag country of any ship involved;

(2) notify without delay the Administrator of the Environmental Protection Agency and any other persons known to the Secretary, or of whom he later becomes aware, who have interests which can reasonably be expected to be affected by any proposed measures; and

(3) consider any views submitted in response to the consultation or notification required by subsections (1) and (2) of this section.

Sec. 7. In cases of extreme urgency requiring measures to be taken immediately, the Secretary may take those measures rendered necessary by the urgency of the situation without the prior consultation or notification as required by section 6 of this Act or without the continuation of consultations already begun.

Sec. 8. (a) Measures directed or conducted under this Act shall be proportionate to the damage, actual or threatened, to the coastline or related interests of the United States and may not go beyond what is reasonably necessary to prevent, mitigate, or eliminate that damage.

(b) In considering whether measures are pro-

portionate to the damage the Secretary shall, among other things, consider --

(1) the extent and probability of imminent damage if those measures are not taken;

(2) the likelihood of effectiveness of those measures; and

(3) the extent of the damage which may be caused by those measures.

Sec. 9. In the direction and conduct of measures under this Act the Secretary shall use his best endeavors to --

(1) assure the avoidance of risk to human life;

(2) render all possible aid to distressed persons, including facilitating repatriation of ship's crews; and

(3) not unnecessarily interfere with rights and interests of others, including the flag state of any ship involved, other foreign states threatened by damage, and persons otherwise concerned.

Sec. 10. (a) The United States shall be obligated to pay compensation to the extent of the damage caused by measures which exceed those reasonably necessary to achieve the end mentioned in section 3.

(b) Actions against the United States seeking compensation for any excessive measures may be brought in the United States Court of Claims, in any District Court of the United States, and in those courts enumerated in section 460 of title 28, United States Code. For purposes of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii, and the Trust Territory of the Pacific Islands shall be included within the judicial districts of both the District Court of the United States for the District of Hawaii and the District Court of Guam.

Sec. 11. The Secretary of State shall notify without delay foreign states concerned, the Secretary-General of the Inter-Governmental Maritime Consultative Organization, the persons affected by measures taken under this Act.

Sec. 12. (a) Any person who --

(1) willfully violates a provision of this Act or a regulation issued thereunder; or

(2) willfully refuses or fails to comply with any lawful order or direction given pursuant to this Act; or

(3) willfully obstructs any person who is acting in compliance with an order or direction under this Act, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

(b) In a criminal proceeding for an offense under paragraphs (1) or (2) of subsection (a) of this section it shall be a defense for the accused to prove that he used all due diligence to comply with any order or direction or that he had reasonable cause to believe that compliance would have resulted in serious risk to human life.

Sec. 13. (a) The Secretary, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, may nominate individuals to the list of experts provided for in Article III of the Convention.

(b) The Secretary of State, in consultation with the Secretary, shall designate or nominate, as appropriate and necessary, the negotiators, conciliators, or arbitrators provided for by the Convention and the Annexes thereto.

Sec. 14. No measures may be taken under authority of this Act against any warship or other ship owned or operated by a country and used, for the time being, only on government non-commercial service.

Sec. 15. This Act shall be interpreted and administered in a manner consistent with the Convention and other international law. Except as specifically provided, nothing in this Act may be interpreted to prejudice any otherwise applicable right, duty, privilege or immunity or deprive any country or person of any remedy otherwise applicable.

Sec. 16. The Secretary may issue reasonable rules and regulations which he considers appropriate and necessary for the effective implementation of this Act.

Sec. 17. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be available to the Secretary for Federal actions and activities under section 5 of this Act.

Sec. 18. This Act shall be effective upon the date of enactment, or upon the date the Convention becomes effective as to the United States, whichever is later.

THE SECRETARY OF STATE

WASHINGTON

January 31, 1973

Dear Mr. [President/Speaker]:

There is transmitted herewith a draft of a proposed act,

> "To implement the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage."

This act was first transmitted to the Congress on September 8, 1972. The proposed act would incorporate in domestic law, provisions embodied in the two Conventions establishing a regime for prevention of and compensation for oil pollution damage from tankers. The International Convention on Civil Liability for Oil Pollution Damage, which was negotiated in 1969 at a conference covened by the Inter-Governmental Maritime Consultative Organization (IMCO), has been favorably reported to the Senate by the Senate Foreign Relations Committee. Action by the Senate is pending. The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, also an IMCO Convention, has been transmitted to the Senate for advice and consent. The submission of draft legislation at this time is in accord with Executive Branch intention of seeking legislative implementation at the earliest possible time.

Title I of the proposed act implements provisions of the Civil Liability Convention making a tanker owner strictly liable to governments and private persons for oil pollution damage in the territory, including the territorial sea, of the United States or any other country party to the Civil Liability Convention, and for preventive measures, wherever taken, in respect of such damage. An owner may limit his liability to the lesser

of $144* per ton or $15,120,000* by constituting a fund in the amount of his liability limit in the appropriate court. The act also requires that the owner of a vessel capable of or actually carrying more than 2,000 tons of oil in bulk as cargo carry insurance or another guarantee of financial security in the amount of the limit which may be applied to his liability.

Title II of the act implements the provisions of the Compensation Fund Convention making the Compensation Fund (an international entity) strictly liable up to $32,400,000 per incident for oil pollution damage insofar as that amount exceeds applicable limits in the Civil Liability Convention and for the entire amount in respect of certain incidents of damage where the owner may avail himself of a defense under that Convention. The Compensation Fund will be financed by contributions levied on receivers of oil importing more than 150,000 tons of contributing oil on the basis of a fixed sum per ton of oil, set on the basis of need from time to time.

Title II also implements the provisions of the Compensation Fund Convention which provides for the indemnification by the Fund of a portion of the liability of the owner or his guarantor under the Liability Convention. The amount which may be indemnified is that portion of liability which exceeds $108 per ton or $9,000,000, whichever is the less, and which does not exceed $144 per ton or $15,120,000, whichever is the less. The obligation to indemnify is subject to defeat if the incident causing the pollution damage arose from the

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* Throughout this letter and the attached sectional analysis, dollar figures are expressed in terms of U.S. dollars taking account of P.L. 92-268, the Par Value Modification Act. The messages from the President transmitting the Conventions to the Senate (Exec. G, 91st Cong., 2d Sess., May 20, 1970; Exec. K, 91st Cong., 2d Sess., May 5, 1972) have expressed dollar figures in terms of 1970 U.S. dollars. The Conventions and the act themselves provide that the limit is the national currency equivalent of specified amounts of Poincare francs.

willful misconduct of the owner or, to the proportionate extent the incident, through the actual fault or privity of the owner, was caused by the ship's failure at the time of the incident to comply with the provisions of named IMCO Conventions which operate to have a pollution prevention effect.

Title III of the act gathers the provisions of law required by both Conventions regarding subrogation and apportionment of claims where applicable liability limits may be exceeded. It also includes a provision (Section 302(b)) empowering a District Court of the United States to adopt a plan for prompt and equitable distribution of monies in such cases.

The provisions of the act are explained in greater detail in the attached sectional analysis. The act would supersede that part of the Federal Water Pollution Control Act as amended relating to money damages for oil pollution and financial security, that only insofar as a given oil pollution incident is within the scope of the Conventions. No express language of supersession has been provided, however, pending review of recent changes to that Act.

Prompt consideration and early enactment of this legislation are respectfully urged.

The Office of Management and Budget has advises that the enactment of this legislation is consistent with the objectives of the Administration.

Sincerely,

/s/ Marshall Wright
Acting Assistant Secretary
for Congressional Relations

Honorable Spiro T. Agney
President of the Senate
Washington, D.C. 20510

Honorable Carl Albert
Speaker of the House
of Represenatives
Washington, D.C. 20515

S. 841
H.R. 4391

AN ACT

To implement the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

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 "Oil Pollution Compensation Act of 1972."

"TITLE I - INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

"Sec. 101. For the purposes of this Title, the term -

"(a) 'Ship' means any sea-going vessel and any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo.

"(b) 'Person' means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency, or instrumentality, any State, or any political subdivision of, or any political entity within a State, any foreign government or country, or any political subdivision of any such government or country, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

"(c) 'Owner' means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However in the case of a ship owned by a country and operated by a company which in that country is registered as the ship's operator, 'owner' shall mean such company.

"(d) 'State of the ship's registry' and other references to registration of a ship in a State mean in relation to registered ships the country of registration of the ship, and in relation to unregistered ships the country whose flag the ship is flying. Registration of a ship in the United States includes the licensing or enrollment of a ship.

"(e) 'Oil' means any persistent oil, such as crude oil, fuel oil, heavy diesel oil, lubricating oil and whale oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

"(f) 'Pollution damage' means loss or damage caused

outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and in cludes the costs of prevention measures (including the actual cost of removal of the oil) and further loss or damage caused by preventive measures. In the preceding sentence, 'contamination' includes, but is not limited to, contamination which is the escape or discharge or any quantity of oil, at such times and locations or under such circumstances and conditions, as are determined, pursuant to paragraph (3) of Sec. 11(b) of the Federal Water Pollution Control Act, as amended, to be harmful to the public health or welfare of the United States.

"(g) 'Preventive measures' means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.

"(h) 'Incident' means any occurrence, or series of occurrences having the same origin, which causes pollution damage.

"(i) 'Liability Convention' means the International Convention on Civil Liability for Oil Pollution Damage, 1969.

"(j) 'Escape' or 'discharge' includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"(k) 'United States,' when used in a geographic sense, means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and all other territories or possessions of the United States.

"(l) 'Franc' means a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred.

"(m) 'Ton' means 2240 pounds.

"(n) 'Guarantor' means any person providing insurance or other financial security pursuant to the provisions of Section 103 of this Title or of Article VII, paragraph 1 of the Liability Convention.

"(o) 'Ship's tonnage' means the net tonnage of the ship with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage. In the case of

a ship which cannot be measured in accordance with the normal rules of tonnage measurement, the ship's tonnage shall be deemed to be 40% of the weight in tons of oil which the ship is capable of carrying.

"(p) 'District Court of the United States' includes the courts enumerated in Title 28, Section 460, United States Code.

"Sec. 102. (a) Except as provided in subsections (b) and (c) of this section, the owner of a ship at the time of the incident, or where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused as a result of the incident.

"(b) The owner shall not be liable for pollution damage if he proves that the damage

(1) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or

(2) was wholly caused by an act or omission done with intent to cause damage by a third party, or

(3) was wholly caused by the negligence or wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

"(c) If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from negligence of that person, the owner may be exonerated to the same extent from his liability to such person.

"(d) This section applies exclusively to pollution damage (other than preventive measures) caused on the territory, including the territorial sea, of the United States or of any foreign country which is party to the Liability Convention, and to preventive measures, wherever taken, to prevent or minimize such damage.

"(e) Nothing in this Act shall prejudice any right of recourse of the owner against third parties.

"(f) When oil has escaped or has been discharged from two or more ships, and pollution damage results therefrom, the owners of all the ships concerned, unless exonerated under subsection (b), and, to the extent not exonerated under subsection (c), shall be jointly and severally liable for all such damage which is not

reasonably separable.

"(g) (1) Subject to paragraph (2) of this subsection, the owner of a ship shall be entitled to limit his liability under this Act in respect of any one incident to an aggregate amount equal to the dollar equivalent of 2,000 francs for each ton of the ship's tonnage; provided that the aggregate amount of an owner's liability in respect of any one incident shall not exceed the dollar equivalent of 210 million francs. The dollar equivalent of a franc shall in any action brought pursuant to this Title be calculated as of the date the fund referred to in paragraph (3) of this subsection is constituted.

(2) If the incident occurred as a result of the actual fault or privity of the owner, he shall not be entitled to avail himself of the limitation provided in paragraph (1) of this subsection.

(3) For the purpose of availing himself of the benefit of limitation provided for in paragraph (1) of this subsection the owner shall constitute a fund in an amount equal to the limit of his liability under this Title in a Court in which an action is brought under subsection 104(b) of this Title, or the owner shall constitute a fund in such amount in accordance with Article V of the Liability Convention in any court of a foreign country having jurisdiction as provided in Article IX of the Liability Convention in which an action under that Convention is brought or with another competent authority of such a country. A fund constituted in the United States may be constituted either by depositing the sum or producing a bank guarantee or other guarantee considered to be adequate by the Court.

(4) A guarantor shall be entitled to constitute a fund in accordance with this subsection on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even in the event of actual fault or privity of the owner but its constitution shall in that case not prejudice the rights of any claimant against the owner.

"(h) (1) Where the owner, after an incident, has constituted a fund in accordance with subjection (g) of this section and is entitled to limit his liability,

(A) no person having a claim for pollution damage arising out of that incident shall be entitled to

exercise any right against any other assets of the owner in respect of such claim;

(B) a District Court of the United States shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid arrest.

(2) Paragraph (1) of this subsection shall apply only if the claimant has access to the Court administering the fund and the fund is actually available in respect of his claim.

"(i) Any claim for compensation for pollution damage may be brought directly against the guarantor of the owner's liability for pollution damage. In such case, the defendant may, irrespective of the actual fault or privity of the owner, avail himself of the limits of liability prescribed in subsection (g)(1) of this section. He may further avail himself of the defenses (other than the bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defense that the pollution damage resulted from the willful misconduct of the owner himself, but the defendant shall not avail himself of any other defense which he might have been entitled to invoke in proceedings brought by the owner against him. The defendent shall in any event have the right to require the owner to be joined in the action.

"Sec. 103.(a) The owner of a ship registered in the United States which is capable of carrying more than 2,000 tons of oil in bulk as cargo shall maintain insurance or other financial security in the sums fixed by applying the limits of liability prescribed in subsection (g)(1) of Section 102 of this Title. Any sums provided by insurance or by other financial security maintained in accordance with the preceding sentence shall be available exclusively for the satisfaction of claims under this Title.

"(b) After determining that insurance or other financial security in the sums fixed by applying the limits of subsection (g)(1) of Section 102 has been obtained, the President shall issue a certificate to each ship registered in the United States which is capable of

carrying more than 2,000 tons of oil in bulk as cargo attesting that such insurance or other financial security has been obtained. After making such a determination, the President may also issue a certificate to a ship capable of carrying more than 2,000 tons of oil in bulk as cargo which is registered in a State not party to the Liability Convention. The certificate shall be in the form annexed to the Liability Convention and shall contain:

(1) name of the ship and port of registration;

(2) name and principal place of business of owner;

(3) type of security;

(4) name and principal place of business of insurer or other person giving security, and where appropriate, place of business where the insurance or security is established;

(5) period of validity of certificate which shall not be longer than the period of validity of the insurance or other security.

"(c) The certificates shall be carried on board all ships to which the certificates are issued and a copy shall be retained by the President.

"(d) No certificate shall be issued if the insurance or other financial security can cease, for reasons other than the expiration of the period of validity of the insurance or security specified in the certificate, before three months have elapsed from the date on which notice of its termination is given to the President. The President shall determine such other requirements related to the financial capability of the owner's guarantor as may be desirable to carry out the purposes of this Act for the issuance of the certificate or the termination of its validity.

"(e) Certificates issued or certified under the authority of another State party to the Convention shall have the same force as certificates issued pursuant to this subsection. The Secretary of State shall request consultation with the State of a ship's registry if the President seeks to determine whether the guarantor named in the ship's certificate is financially capable for the purposes of this Act. If the President determines that such guarantor is not financially capable for the purposes of this Act, he may take such lawful action as he

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deems appropriate, including but not limited to the barring of the ship's from any or all ports of the United States.

"(f) No ship registered in the United States to which this section applies shall engage in trade unless a certificate has been issued pursuant to this section.

"(g) No ship registered in the United States which is capable of carrying more than 2,000 tons of oil in bulk as cargo, and no other ship, wherever registered, actually carrying more than 2,000 tons of oil in bulk as cargo, shall enter or leave a port in the United States, or be permitted to arrive at or leave an offshore terminal in the territorial waters of the United States unless the ship has on board a valid certificate issued by the United States or a foreign country party to the Convention. Any ship required by the preceding sentence to have such a valid certificate on board which enters the territorial waters or the contiguous zone of the United States enroute to a port or terminal installation (as defined in subsection 201(e) of Title II) in the United States, and which fails to have such valid certificate on board, shall for each such failure be liable for a civil penalty of not more than 10,000 dollars. The President may assess and compromise such penalty. No penalty shall be assessed until notice and an opportunity for hearing on the charge has been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the owner shall be considered by the President.

"(h) Any ship owned by the United States or any foreign country which carries a certificate issued by the President, or, if a ship owned by a foreign country, by the country owning the ship, stating the ownership of the ship and that the ship's liability is covered to the limit prescribed by subsection (g)(1) of Section 102 shall be deemed to have complied with the foregoing requirements of this section. The certificate shall resemble as closely as possible the model described in subsection (b) of this section.

"(i) The President is authorized to delegate the administration of this section, including the powers to make determinations and to make and revise regulations, and to redelegate such powers, to the heads of those Federal departments, agencies, and instrumentalities

which he determines to be appropriate.

"Sec. 104. (a) Rights of compensation under this Title shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought later than six years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the six years' period shall run from the date of the first occurrence.

"(b) (1) Subject to paragraph 2 of this subsection, the several District Courts of the United States shall have jurisdiction over any actions arising under this Act if the action is brought in respect of an incident which has caused all or part of the pollution damage (other than preventive measures) on the territory, including the territorial sea, of the United States or in respect of preventive measures, wherever taken, to prevent or minimize such damage.

(2) Actions authorized under the above subsection may be brought in any judicial district in which one of the plaintiffs or one of the defendants resides or in which pollution damage, including preventive measures taken to prevent or minimize such damage, has occurred or could reasonably be expected to have occurred if such preventive measures had not been taken. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii and the Trust Territory of the Pacific Islands shall be included within the judicial districts of both the District Court of the United States for the District of Hawaii and the District Court of Guam.

(3) If the fund referred to in subsection (g) (3) of Section 102 has been constituted in a District Court of the United States or in a competent court of a foreign country party to the Liability Convention, that court shall have exclusive jurisdiction regarding all matters relating to the apportionment and distribution of the fund.

"(c) Subject to the provisions of Section 302 of Title III of this Act, any judgment given by a foreign court with jurisdiction in accordance with Article IX of the Liability Convention which is enforceable in the country of origin and which is no longer subject to

ordinary forms of review therein, shall be enforceable in the courts of the United States except:

(1) where the judgment was obtained by fraud; or

(2) where the defendant was not given reasonable notice and a fair opportunity to present his case.

"(d) (1) The provisions of this Title shall not apply to warships or other ships owned or operated by a country and used, for the time being, only on Government non-commercial services.

(2) With respect to ships owned by the United States and used for commercial purposes, the United States, in actions brought against it in the United States and in other jurisdictions identified in Article IX of the Liability Convention, waives all defenses based on its status as a sovereign state.

"TITLE II - INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE

"Sec. 201. For the purposes of this Title, the term -

"(a) 'Convention' means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

"(b) 'The Fund' means the 'International Oil Pollution Fund' established by the Convention.

"(c) 'Liability Convention,' 'ship,' 'State of the ship's registry' and other references to registration of a ship in a State, 'person,' 'owner,' 'oil,' 'pollution damage,' 'preventive measures,' 'incident,' 'franc,' 'ship's tonnage,' 'escape,' 'discharge,' 'United States' when used in a geographic sense, 'ton,' 'guarantor,' and 'District Court of the United States' have the same meaning as in Title I of this Act, except that (1) 'oil' shall be confined to persistent hydrocarbon mineral oils for the purposes of this Title, and (2) 'ton' in relation to oil means a metric ton.

"(d) 'Contributing oil' means crude oil and fuel oil as defined in subparagraph (1) and (2) below:

(1) 'Crude oil' means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes crude oils from which certain distillate fractions have been removed ('topped crudes') and to which certain distillate fractions have been added ('spiked' or 'reconstituted' crudes).

(2) 'Fuel oil' means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to 'American Society for Testing Materials Specification for Number Four Fuel Oil' (Designation D 396-69) or heavier.

"(e) 'Terminal installation' means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.

"Sec. 202. (a) Contributions to the Fund shall be made by any person who has received, in total quantities exceeding 150,000 tons in the calendar year preceding the year in which his contribution is calculated,

(1) in the ports or terminal installations in the territory of the United States, contributing oil carried by sea to such ports or terminal installations;

(2) in any installations situated in the territory of the United States, contributing oil which has been carried by sea and discharged in a port or terminal installation of a country not party to the Convention, provided that contribution in respect of contributing oil so carried and discharged shall be made only by the first receiver in the United States.

"(b) Any person

(1) who is a subsidiary of or an entity commonly controlled by a person or related group of persons required under subsection (a) of this section to make contributions to the Fund and who receives contributing oil as provided in subsection (a) of this section in any amount in the same calendar year as such person or related group of persons, or

(2) who is one of two or more subsidiaries of or entities commonly controlled by a person or related group of persons and such subsidiaries or entities receive, as provided in subsection (a) of this section an amount of contributing oil exceeding 150,000 tons in the aggregate in the same calendar year,

shall also make contributions to the Fund. The President shall by regulation determine which persons shall be deemed to be subsidiaries, commonly controlled entities and related groups of persons for the purposes of this subsection.

"(c) Any person required by subsection (a) or (b)

of this section to contribute to the Fund shall, upon notification by the Director of the Fund be liable to pay the Fund the amount of his initial and annual contribution calculated pursuant to Article 11 and Article 12 of the Convention, as specified by the Director. Such person shall pay the Fund such portion thereof in cash as may from time to time be requested by the Director, and shall give such security for the remaining portions thereof, including amounts in arrears, as the Director may require pursuant to regulations of the Fund. Such person shall be liable to pay interest to the Fund in respect of amounts in arrears at a rate determined by the Fund.

"(d) Any person liable to contribute to the Fund and who fails to make a payment or to provide security to the Fund as required by the preceding subsection within three months from the date such payment is due or the provision of security is required, shall for each such failure be liable for a civil penalty of not more than 5,000 dollars. The President may assess and compromise such penalty. No penalty shall be assessed until the person has been given notice and an opportunity for a hearing on such charges. In determining the amount of such penalty or the amount agreed upon in compromise, the demonstrated good faith of the persons and the amount of the contribution due shall be considered by the President.

"(e) (1) Subject to paragraph (2) of this subsection, any person liable to contribute to the Fund and who fails to make a payment or to provide security to the Fund as required by subsection (c) of this section shall be liable in an action brought in the several District Courts of the United States by the Director of the Fund for the amount due or to provide such other relief as the court may determine is appropriate.

(2) Upon a determination of the President that a person to which the judicial power of the United States does not extend in the circumstances set forth in Amendment XI to the Constitution of the United States is liable to contribute an amount to the Fund, and that such person has failed to make payment of that amount or any part thereof for more than three months from the date the payment was due, the President shall take such measures as he deems appropriate to collect such unpaid

amount and any interest (as provided in subsection (c) of this section) on behalf of the Fund, including the prosecution of an action therefor against such person in a court of the United States. Upon receipt of the sums collected, the President shall forthwith pay such sums to the Fund.

"(f) The Fund shall have capacity under the laws of the United States to contract, to acquire and dispose of real and personal property, and to institute and be party to legal proceedings. The Director of the Fund shall be the legal representative of the Fund. The Director shall be deemed irrevocably to have appointed the Secretary of State his agent for service of process in any action against the Fund in any court of the United States.

"(g) The President shall communicate to the Director of the Fund the name and address of any person who is liable to contribute to the Fund under subsection (b) of this section and data regarding the relevant quantities of contributing oil received by such person during the preceding calendar year. The President may require any person who may be liable to contribute to the Fund to furnish such information as he may from time to time deem appropriate for purposes of the preceding sentence. Communications by the President to the Director shall, in any civil action or administrative proceeding arising our of alleged failure to contribute or provide security to the Fund as required herein, be prima facie evidence of the facts stated therein.

"(h) The President is authorized to delegate the administration of this section, including the powers to make determinations, and to make and revise regulations, and to redelegate such powers, to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate.

"Sec. 203. Sections 204 and 205 of this Title respectively apply exclusively to pollution damage (other than preventive measures) caused on the territory, including the territorial sea, of the United States and any foreign country which is party to the Convention and to preventive measures, wherever taken to prevent or minimize such damage, and, with regard to indemnification of owners and guarantors, to pollution damage (other than preventive measures) caused on the territory, including

the territorial sea, of the United States and any foreign country party to the Liability Convention by a ship registered in a State party to the Convention, and to preventive measures, wherever taken, to prevent or minimize such damage.

"Sec. 204. (a) Any person suffering pollution damage arising out of an incident occurring more than one hundred and twenty days after the entry into force of the Convention shall be entitled to compensation from the fund if that person has been unable to obtain full and adequate compensation for the damage under the terms of Title I or the Liability Convention either

(1) because no liability for the damage arises under Title I or the Liability Convention; or

(2) because the owner liable for the damage under Title I or the Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under section 103 of Title I or Article VII of the Liability Convention does not cover or is insufficient to satisfy the claims for compensation for the damage, provided that an owner shall be deemed to be financially incapable of meeting his obligations and financial security shall be deemed to be insufficient if the person suffering damage has been unable to obtain full satisfaction of the amount due him under Title I or the Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him; or

(3) because the damages exceed the owner's liability under the Liability Convention as limited pursuant to subsection 102(g) of Title I or Article V, paragraph 1 of the Liability Convention or under the terms of any other international convention in force or open for signature, ratification or accession on December 18, 1971.

Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily for preventive measures shall be treated as pollution damage for purposes of this section.

"(b) The Fund shall incur no obligation under the preceding subsection if:

(1) it proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection or was caused by oil which has escaped or

been discharged from a warship or other ship owned or operated by the United States or a foreign country and used at the time of the incident only on government non-commercial service; or

(2) the claimant cannot prove that the damage resulted from an incident involving one or more ships.

"(c) If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered damage or from the negligence of that person, the Fund may be exonerated to the same extent from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the owner may have been exonerated under subsection 102(c) of Title I or Article III, paragraph 3 of the Liability Convention. Notwithstanding any other provision of this Act, the Fund shall not to any extent be exonerated with regard to pollution damage resulting from the taking of preventive measures compensable under subsection (a) of this section.

"(d) The aggregate amount of compensation payable by the Fund under this Act shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under Title I or the Liability Convention for pollution damage, including any sums in respect of which the Fund is under an obligation to indemnify the owner pursuant to Section 205 of this Title shall not exceed the dollar equivalent of 450 million francs; provided, however, that if the Fund shall decide to change the figure 450 million francs, such total sum shall, with respect to incidents occurring after the date of such change, in no case exceed the dollar equivalent of the amount decided on by the Fund, and further provided, that all pollution damage resulting from a single natural phenomenon of an exceptional, inevitable, and irresistible character in every case shall be deemed to have arisen out of a single incident.

"Sec. 205. (a) An owner or his guarantor shall be entitled to reimbursement from the Fund, for that portion of the aggregate amount of liability for pollution damage under Title I or the Liability Convention arising out of an incident occurring more than one hundred and twenty days after the entry into force of the Convention which:

(1) is in excess of an amount equal to the dollar equivalent of 1500 francs for each ton of the ship's tonnage or of an amount equal to the dollar equivalent of 125 million francs, whichever is less; and,

(2) is not in excess of an amount equal to the dollar equivalent of 2,000 francs for each ton of the ship's tonnage or an amount equal to the dollar equivalent of 210 million francs, whichever is the less; provided, however, that the Fund shall incur no obligation under this paragraph where the pollution damage resulted from the willful misconduct of the owner himself.

"(b) If the Fund proves that

(1) as a result of the actual fault or privity of the owner, the ship from which the oil causing pollution damage (including preventive measures) escaped or was discharged did not comply with the requirements laid down in (A) the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended in 1962; or (B) the International Convention for the Safety of Life at Sea, 1960; or (C) the International Convention on Load Lines, 1966; or (D) the International Regulations for Preventing Collisions at Sea, 1960; or any amendment which has been determined to be of an important nature under Article XVI(5) of the Convention mentioned in (A), under Article IX(e) of the Convention mentioned in (B) or under Article 29(3)(d) or (4)(d) of the Convention mentioned in (C); provided, however, that any such amendment has been in force for at least twelve months at the time of the incident; and,

(2) the incident or damage was wholly or partially caused by such non-compliance;

the Fund shall, to the same extent, be exonerated from its obligations under the preceding subsection, without regard to whether the ship was bound by the law of the State of the ship's registry to comply with such requirements.

"(c) If the Fund decides that a new convention shall replace an instrument or a part thereof for the purpose of paragraph 3 of Article 5 of the Convention, the ship shall on the effective date of such replacement be required to comply with the requirements of the new convention for the purposes of the preceding subsection; provided, however, that any ship registered at the time of an incident in any State party to the Convention

(including the United States) which is not a party to the new convention and which has declared to the Director of the Fund that it does not accept such replacement and has not terminated such declaration shall be required for the purposes of the preceding subsection to comply only with the requirements referred to in that subsection until such declaration is withdrawn or the State becomes party to the new convention.

"(d) Any ship complying with the requirements in an amendment to an instrument specified in subsection (b) or with the requirements in a new convention, where the amendment or the convention is designed to replace in whole or in part such instrument, shall be considered as complying with the requirements of subsection (b).

"(e) If the Fund shall have assumed the obligations of a guarantor of part of an owner's liability, the owner shall, upon proof of such assumption, be deemed to have complied with Section 103 of Title I of this Act and Article VII of the Liability Convention with respect to that part of his liability. Where the Fund, acting as a guarantor, has paid compensation for pollution damage in accordance with Title I of this Act or the Liability Convention, it shall have a right of recovery from the owner to the extent that the Fund would have been exonerated pursuant to subsection (b) of this section from its obligations under subsection (a) of this section to indemnify the owner or his guarantor.

"(f) Expenses reasonably incurred and sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as included in the owner's liability for the purposes of this Section.

"Sec. 206. (a) The Several District Courts of the United States shall have jurisdiction over actions against the Fund for compensation or indemnification under Sections 204 or 205 of this Title. Such actions may be brought no sooner than 240 days after entry into force of the Convention and shall be brought only before a court competent under Section 104(b) of Title I of this Act.

"(b) Subject to the provisions for consolidation of the Federal Rules of Civil Procedures, where an action for compensation for pollution damage has been brought before a District Court of the United States or a court of another country competent under Article IX of the Liability Convention, against the owner or his guarantor,

such court or courts shall have exclusive jurisdiction over actions against the Fund for compensation or indemnification under Section 204 or 205 of this Title in respect of pollution damage arising out of the same incident and involving the same defendant or his guarantor. However, where an action for compensation for pollution damage under the Liability Convention has been brought before a court of a country party to the Liability Convention but not to the Convention, any action against the Fund for such compensation or indemnification may be brought before any District Court of the United States having jurisdiction under Section 104(b) of Title I.

"(c) The Fund may intervene of right as a party in any legal proceedings instituted against an owner or his guarantor under Title I of this Act.

"(d) Subject to subsection (e) of this section, the Fund shall not be bound by any judgment or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

"(e) Where an action under Title I for compensation for pollution damage has been brought against an owner or his guarantor in a District Court of the United States, each party to the proceedings shall be entitled to notify the Fund of the proceedings. Where such notification has been timely made and in accordance with the practice of the Federal Courts, any judgment rendered by the court in such proceedings shall, after it has become final and enforceable in the United States, become binding upon the Fund in the sense that the facts and findings in that judgment may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

"(f) Rights to compensation under Section 204 of this Title or to indemnification under Section 205 of this Title shall be extinguished unless an action is brought thereunder or notification has been made pursuant to the preceding subsection within three years from the date when the pollution damage occurred, provided that no action shall be brought more than six years after the date of the incident which caused the pollution damage.

"(g) Notwithstanding the provisions of the preceding subsection, the right of an owner or guarantor to seek

indemnification from the Fund pursuant to Section 205(a) shall in no case be extinguished sooner than six months from the date the owner or his guarantor acquired knowledge of the commencement of an action against him under Title I of this Act or under the Liability Convention.

"(h) Subject to the provisions of Section 302 of Title III of this Act, any judgment given against the Fund by a court having jurisdiction as provided in Article 7, paragraphs (1) or (3) of the Convention shall, when it is enforceable in the country of origin, and which is no longer subject to ordinary forms of review therein, be enforceable in the courts of the United States except on the same conditions as are prescribed in Section 104 of Title I.

"Sec. 207. The Fund, its assets and income, including contributions, shall be exempt from all direct taxation in the United States.

TITLE III - APPORTIONMENT OF CLAIMS AND SUBROGATION; EXCLUSIVE REMEDY; EFFECTIVE DATE

"Sec. 301. For the purposes of this Title, the term -

"(a) 'Owner's fund' means a fund constituted as provided in Section 102 of Title I of this Act.

"(b) 'Compensation Fund' means the Fund as defined in Section 201 of Title II of this Act.

"(c) 'Owner,' 'guarantor,' 'person,' 'pollution damage,' 'preventive measures,' 'Liability Convention,' and 'District Court of the United States' have the same meaning as in Title I of this Act.

"(d) 'Convention' has the same meaning as in Title II of this Act.

"Sec. 203. (a) Subject to Section 303 of this Title -

(1) An owner's fund shall be distributed among the claimants in proportion to their established claims. Claims in respect of preventive measures taken by the owner shall rank equally with other claims against the owner's fund.

(2) Where the aggregate amount of damage arising out of any one incident exceeds the amount referred to in Section 204(d) of Title II of this Act, the amount available thereunder for compensation of such damage under this Act shall be distributed in such a manner that the proportion between any established claim and the

amount of compensation actually recovered by the claimant under the Liability Convention and this Act shall be the same for all claimants.

"(b) On the petition of any claimant, owner, guarantor, the Compensation Fund, or any other interested person, any District Court of the United States in which an owner's fund is constituted pursuant to Section 102 of Title I of this Act or if no fund is constituted, any District Court having jurisdiction of an action against the Compensation Fund may determine that liability arising from an incident may exceed the limit of liability under this Act. Whenever such determination is made:

(1) Total payments made by or for all claimants as a result of such incident shall not exceed 20 per centum of such limit of liability without the prior approval of the court;

(2) The court shall not authorize payments in excess of 20 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subsection (a) of this Section; and

(3) Any other interested person may submit to such District Court a plan for the disposition of pending claims and for the distribution of remaining moneys available. Such a plan shall include an allocation of appropriate amounts for claims which may not be made until a later time. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of moneys available for each claimant. Any person compensated or indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this subsection, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States.

"Sec. 303. (a) If, before an owner's fund is distributed, the owner, any of his servants or agents, the owner's guarantor, or the Compensation Fund has as a result of the incident in question, paid compensation for pollution damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Act.

"(b) The right of subrogation provided for in subsection (a) of this section may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage which he may have paid but only to the extent that such subrogation is otherwise permitted under law.

"(c) Subject to the provisions of Section 205 of Title II, the Compensation Fund shall, in respect of any amount of compensation for pollution damage paid by the Compensation Fund in accordance with Section 204 of Title II, acquire by subrogation the rights that the person so compensated may enjoy under Title I or the Liability Convention against the owner liable for the damage or his guarantor.

"(d) Nothing in this Act shall prejudice any right of recourse or subrogation of the Compensation Fund against persons other than those referred to in the preceding subsection. In any event the right of the Compensation Fund to subrogation to the rights of persons referred to in the preceding paragraph shall be no less favorable than that of an insurer of a person to whom compensation or indemnification has been paid.

"(e) Without prejudice to any other rights of subrogation or recourse against the Compensation Fund which may exist, the United States or any foreign country party to the Convention, or any agency thereof, shall acquire by subrogation the rights which a person it has compensated for pollution damage in accordance with the provisions of national law would have enjoyed under the Convention.

"Sec. 304. No action for compensation for such damage or preventive measures shall be maintained in the United States against an owner, a guarantor, or the Compensation Fund, otherwise than in accordance with this Act. No action for such damage or preventive measures shall be maintained in the United States against an owner's servants or agents.

"Sec. 305. This Act shall be effective upon the later of the date of its enactment or the date of the entry into force of the Convention."

Sectional Analysis

TITLE I - INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

Sec. 101. This Section includes definitions of terms for purposes of Title I of the Act. Generally, these definitions are taken verbatim from the Civil Liability Convention itself. A "ship" is any seagoing vessel or seaborne craft actually carrying oil in bulk as cargo. "Oil" includes any persistent oil carried as cargo or in a ship's bunkers. The definition of "person" (subsection (b)), "State of the ship's registry" (subsection (d)), and "pollution damage" (subsection (f)), are consistent with the Convention but have been modified for clarity and to take account of circumstances prevailing in the United States and in United States law.

Sec. 102. This Section is the basic liability section of the Title. It provides that the owner of a ship at the time of an incident giving rise to pollution damage is liable for pollution damage caused as a result of the incident. The defenses of the owner are confined to:

1. Act of war, hostilities, civil war, insurrection, or act of God;

2. An act or omission done with intent to cause damage by a third party; or

3. The negligence or wrongful act of a government or other authority in the exercise of responsibility for the maintenance of lights or other navigational aids.

An owner's liability for pollution damage may be reduced proportionally to the extent the owner proves that the damage was caused by an act or omission done with intent to cause damage by the claimant or by the claimant's negligence. The Section provides that a ship owner may limit his liability to $144* per ship's ton or $15,120,000,* whichever is lesser, by the constitution of a fund in an amount equal to the ship owner's liability in a United States court or in a foreign court having jurisdiction under the Convention. The owner may avail himself of the limit only if the incident did not occur as a result of the owner's fault or privity. The

*Dollar figures throughout are 1972 U.S. dollars. The Convention expresses figures in terms of Poincare gold francs.

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Section also provides that if the owner has constituted a fund, the fund shall be the only property of the owner reachable in payment for covered pollution damage, if the claimant has access to the court in which the fund is constituted, and if the fund is actually available in respect of the claim. The Section also provides that an action may be brought directly against a guarantor (insurer) of the owner's liability for pollution damage. The Section applies to pollution damage caused on the territory, including the territorial sea of the United States or any foreign country party to the Liability Convention, and to preventive measures, wherever taken, to prevent or minimize such damage.

Sec. 103. Section 103 requires the owner of a ship registered in the United States which is capable of carrying more than 2,000 tons of oil in bulk as cargo to maintain insurance or other financial security in the amount of the limit of the owner's liability under Section 102. Such a vessel is required to carry a certificate attesting that insurance or other financial security in that amount is maintained. No ship registered in the United States which is required to have such a certificate may engage in trade unless a certificate has been issued to it. No U.S. ship capable of carrying more than 2,000 tons of oil in bulk as cargo and no other ship, wherever registered, actually carrying more than 2,000 tons of oil in bulk as cargo, may enter or leave a port in the United States or arrive at or leave an offshore terminal in the territorial waters of the United States unless the ship has such a certificate issued by the United States or a foreign country party to the Convention. The Section also provides for a civil penalty of up to $10,000 to be imposed upon any ship required to have a certificate and failing to do so if it enters the U.S. territorial waters or contiguous zone en route to a port or terminal installation in the U.S.

Sec. 104. This Section provides that rights of compensation are extinguished unless an action is brought within three years of the date the damage occurred or not later than six years from the date of the incident which caused the damage. If the incident consists of a series of occurrences, the six-year period runs from the date of the first occurrence. The Section confers jurisdiction to entertain actions for pollution damage

on the several District Courts of the United States and its territories. It provides that a judgment of a foreign court having jurisdiction in accordance with Article IX of the Liability Convention, which is final in the country of origin, shall be enforceable in the United States unless the judgment was obtained by fraud or the defendant was not given reasonable notice and a fair opportunity to present his case. Article IX of the Liability Convention provides that the courts of any Contracting State have jurisdiction if an incident has occurred causing pollution damage in the territory, including the territorial sea of such a State, or if preventive measures have been taken to prevent or minimize such damage. Pursuant to the Convention, subsection (d) exempts warships or other ships owned or operated by a government and used for the time being only on government non-commercial service, since pollution damage from such ships is not covered by the Convention. It also waives the sovereign immunity of the United States with respect to actions brought against the United States for pollution damage from any ships owned by the United States and used for commercial purposes. Foreign governments are required by the Convention to make the same waiver.

TITLE II - INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE

Sec. 201. This Section incorporates by reference the definitions of Title I and adds other definitions required by the Compensation Fund Convention. It confines the definition of oil to persistent hydrocarbon mineral oils for the purposes of the Title in accordance with the Compensation Fund Convention. The Liability Convention includes damage arising from the introduction of whale oil and other oils that are not hydrocarbon mineral oils. Damage from these sources was not included in the Compensation Fund Convention because the contribution system of the Convention could not be practicably adapted to their inclusion.

Sec. 202. This Section provides that contributions to the Compensation Fund (an international entity) shall be made by any person who receives more than 150,000 tons of contributing oil (crude and fuel oil) in the relevant calendar year, carried by sea to ports or terminal installations in the territory of the United States or to

ports or terminal installations of a country not party to the Convention and received in the United States, provided that contribution in respect of contributing oil carried to a non-party country is to be made only by the first receiver in the United States. The Section provides for the aggregation of receipts of contributing oil of subsidiaries, commonly controlled entities, and related groups of persons. It provides that a person required to contribute must do so upon notification by the Director of the Compensation Fund and give security for portions not called for in cash or amounts in arrears if the Director so requires pursuant to regulations of the Compensation Fund. The obligation to contribute or provide security is enforceable in the several district courts and a person failing to make payment or to provide security may be liable for a civil penalty of not more than $5,000 for each such failure. The United States is obliged to communicate to the Director of the Compensation Fund the names and addresses of persons from time to time liable to contribute to the Compensation Fund.

Sec. 203. This Section provides for the same geographical coverage of this Title in respect of pollution damage as is provided for in Title I. It also provides that the indemnification provision for the benefit of owners of ships and guarantors (Sec. 205) applies to owners of ships registered in a State party to the Convention and to their guarantors.

Sec. 204. This Section is the basic liability Section of the Title. It provides that the Compensation Fund is liable for pollution damage arising out of an incident occurring more than 120 days after the entry into force of the Compensation Fund Convention* if (1) no liability arises under the Liability Convention; (2) because the owner is financially incapable of fully paying under the Liability Convention and his financial security is inadequate; or (3) because the damage exceeds the owner's liability under the Liability Convention or under the terms of any other applicable Convention limiting ship owner liability such as the 1957 Brussels Convention on Limitation of Shipowner's Liability.** Reasonable

* The purpose of the 120 day delay is for organization of the Fund after the Convention enters into force.

** The United States is not party to this Convention.

costs incurred by an owner voluntarily for preventive measures are treated as pollution damage under the Section in order to induce an owner to take prompt action. The defenses of the Fund are limited to:

1. Act of war, hostilities, civil war or insurrection; or

2. That the damage was caused by a warship or other ship owned or operated by a government on non-commercial service.

If the ship causing damage cannot be identified, a claimant must prove that the damage came from one or more ships. Hence the Compensation Fund is liable for a number of incidents of pollution damage subject to defenses under the Liability Convention (compare Title I, Section 102). The liability of the Fund may be reduced proportionally to the extent that the Fund proves that damage results from an act or omission done with the intent to cause damage by the person who suffered the damage or the negligence of that person. The Fund must be exonerated to the same extent that the owner is exonerated under Title with respect to such a person. However, the Fund may not be to any extent exonerated with regard to pollution damage resulting from the taking of compensable preventive measures. The aggregate amount of compensation payable by the Fund is limited so that the total sum of the amount paid by it and under the Liability Convention does not exceed $32,400,000 or after a decision of the Assembly of the Fund to increase the limit for future incidents, any higher amount decided upon up to $64,800,000. All pollution damage arising out of a single act of God is deemed under this Section, to have arisen from a single incident.

Sec. 205. This Section provides that the Fund must reimburse an owner or his guarantor for that portion of his liability under the Liability Convention which exceeds $108 per ship's ton or $9,000,000, whichever is less, and which does not exceed $144 per ship's ton or $15,120,000, whichever is less, if the pollution damage did not result from the willful misconduct of the owner.* The Fund may be exonerated from this obligation of reimbursement proportionally to the extent that the incident or damage

*The section also contains a limitation to incidents occurring more than 120 days after entry into force of the Compensation Fund Convention.

was, as a result of the actual fault or privity of the owner, caused by the failure of the ship to comply with the 1954 Oil Pollution Convention, as amended in 1962, the SOLAS Convention, 1960, the Loadline Convention, 1966, or the Collision Regulations, 1960 or any amendment to those Conventions which was determined to be of an important nature and which has been in force for 12 months at the time of the incident. The Section also provides that if the Fund itself assumes directly the obligations of a guarantor of part of an owner's liability, the owner may to the extent the obligations are assumed substitute the guarantee of the Fund for the certification required by Title I.

Sec. 206. Section 206 provides that a United States or foreign court having jurisdiction over an action for pollution damage under the Liability Convention shall have exclusive jurisdiction over an action against the Fund which involves the same parties and the same set of circumstances. It provides that the Fund may intervene of right as a party in any legal proceedings against an owner of his guarantor, and provides that where the Fund has been notified that proceedings have begun, the Fund will be bound by the decision even if it has not actually intervened. Section 206 also provides a statute of limitations for actions against the Fund by claimants, owners and guarantors. The period given a claimant in which to bring action is the same period the claimant has under Title I, Section 104, for actions against an owner or guarantor. It provides that judgments given against the Fund by a court having jurisdiction as provided by the Convention shall be enforceable in the United States when final, except on the same conditions that a final judgment against an owner or a guarantor may be set aside (Title I, Section 104(c)).

Sec. 207. This Section provides that the Fund's assets and income shall be exempt from direct taxation in the United States.

TITLE III - APPORTIONMENT OF CLAIMS AND SUBROGATION; EXCLUSIVE REMEDY; EFFECTIVE DATE

Sec. 301. This Section defines terms within the context of this Title.

Sec. 302. Section 302 provides that, where the total amount of all claims arising out of a single incident of pollution damage exceeds an applicable limit of

liability, each claimant shall be paid that part of his claim which is proportionate to the total amount of the established claims. It also provides that a district court may adopt a plan of distribution to assure that a claimant in these circumstances receives his proportionate amount and to enable a court to make disbursements pending the final determination of the total claims.

Sec. 303. Section 303 provides for rights of subrogation of an owner, his servant or agents, his guarantor or the Compensation Fund where compensation is paid by any of these persons to the claimant prior to distribution of a fund constituted under Title I. The purpose of this provision is to encourage prompt out of court settlement of claims. Likewise rights of subrogation are provided for other persons to the extent permitted under law. The United States or any foreign country may acquire a claim against the Fund by paying compensation for pollution damage under its national law.

Sec. 304. Pursuant to the Conventions, this Section provides that the remedies of Act are the exclusive remedy for claims for pollution damage or preventive measures against the owner, the guarantor, or the Fund, and that no action for such claims may be maintained against the owner's servants or agents.

Sec. 305. This Section provides that the act shall be effective upon the later of its date of enactment or the date of entry into force of the Compensation Fund. The Compensation Fund Convention cannot enter into force before the Liability Convention. Although the Liability Convention may enter into force before the Compensation Fund Convention, it is not contemplated that the United States would become a party to the Liability Convention before the entry into force of the Compensation Fund Convention.

Managing the Land

National Land Use Policy

THE SECRETARY OF THE INTERIOR

WASHINGTON

February 28, 1973

Dear Mr. [President/Speaker]:

The President announced today in his Environment and Natural Resources State of the Union Message to Congress his intention to propose legislation "To establish a national policy encouraging States to develop and implement land use programs." Enclosed is that proposed bill.

We recommend that the bill be referred to the appropriate committee and that it be promptly considered and enacted.

Land use reform has received increasing public attention in recent years. President Nixon made it a keystone of his environmental program in his February 8, 1971, message to Congress in which he discussed the profound effect of land use decisions on our daily lives and "the institutional reform so badly needed."

The 92nd Congress made real progress toward developing sound Federal legislation on land use reform. Hearings held by the Interior Committees of both houses captured wide public interest and fostered extensive public debate on a variety of issues and proposals. The Senate Interior Committee reported out a bill, S. 632, which passed the Senate on September 19, 1972.

S. 632 as it passed the Senate was the product of the public debate and of a constructive dialogue between the legislative and executive branches. It incorporated, in our view, the principal features of the Administration's proposal which the President outlined in his February 8, 1971, message.

The progress which the 92nd Congress made in this field should be the springboard for the 93rd Congress, so that this important bill can be speedily enacted. The enclosed bill, therefore, is patterned on S. 632 as it passed the Senate. It incorporates the concept stressed by President Nixon two years ago that a principal thrust of the bill should be to encourage States to exercise their basic authority to deal with land use issues which spill over local jurisdictional boundaries. It leaves local jurisdictions in full control of local land use issues and carefully defines the Federal role to preserve the basic authority of the State to establish land use priorities.

The importance of the legislation forwarded herewith is to establish, at the State level, a framework within which specific programs to meet particular problems can be carried out in a fully coordinated manner and against a background of a comprehensive land use program which covers all the States' land and water resources. The point was repeatedly stressed in the hearings on this legislation that most of our present land use problems stem from a piecemeal, fragmented, and uncoordinated approach to land use decision-making. Unless we can reverse this pattern, we will not be able to meet the challenge which lies ahead of us of planning for the future growth of this country.

The Office of Management and Budget has advised that the enactment of the attached proposed legislation would be in accord with the program of the President.

Sincerely,

/s/ Rogers C.B. Morton
Secretary of the Interior

Hon. Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Hon. Carl Albert
Speaker of the House
of Representatives
Washington, D.C., 20515

S. 924
H.R. 4862

A BILL

To establish a national policy encouraging states to develop and implement land use programs.

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 "Land Use Policy and Planning Assistance Act of 1973."

TITLE I--FINDINGS, POLICY, AND PURPOSE

Findings

Section 101. (a) The Congress hereby finds that there is a national interest in a more efficient system of land use planning and decisionmaking and that the rapid and continued growth of the Nation's population, expanding urban development, proliferating transportation systems, large-scale industrial and economic growth, conflicts in patterns of land use, fragmentation of governmental entities exercising land use planning powers, and the increased size, scale, and impact of private actions, have created a situation in which land use management decisions of wide public concern often are being made on the basis of expediency, tradition, short-term economic considerations, and other factors which too frequently are unrelated or contradictory to the real concerns of a sound national land use policy.

(b) The Congress finds that the task of land use planning and management is made more difficult by the lack of understanding of, and the failure to assess, the land use impact of Federal, regional, State, and local programs and private endeavors which do not possess or are not subject to readily discernible land management goals or guidelines; and that a national land use policy is needed to develop a national awareness of, and ability to measure, the land use impacts inherent in most public and private programs and activities.

(c) The Congress finds that adequate data and information on land use and systematic methods of collection, classification, and utilization thereof are either lacking or not readily available to public and private land use decisionmakers; and that a national land use policy must place a high priority on the procurement and dissemination of useful land use data.

(d) The Congress finds that a failure to conduct competent land use planning has, on occasion, resulted in delay, litigation, and cancellation of proposed significant development, including, but not limited to, facilities for the development, generation, and transmission of energy, thereby too often wasting human and economic resources, creating a threat to public services, and invoking decisions to locate activities in areas of least public and political resistance, but without regard to sound environmental, economic, and social land use considerations.

(e) The Congress finds that many Federal agencies conduct or assist activities which have a substantial impact on the use of land, location of population and economic growth, and the quality of the environment, and which, because of the lack of a consistent land use policy, often result in needless, undesirable, and costly conflicts among the Federal agencies and among Federal, State, and local governments, thereby subsidizing undesirable and costly patterns of development; and that a concerted effort is necessary to coordinate existing and future Federal policies and programs and public and private decisionmaking in accordance with a national land use policy.

(f) The Congress finds that while the primary responsibility and constitutional authority for land use planning and management of non-Federal lands rests with State and local government, the manner in which this responsibility is exercised has a tremendous influence upon the utility, the value, and the future of the public domain, the national parks, forests, seashores, lakeshores, recreation and wilderness areas, wildlife refuges, and other Federal lands; and that the failure to plan or, in some cases, the existence of poor or ineffective planning at the State and local levels poses serious problems of broad national or regional concern and often results in irreparable damage to commonly owned assets of great national importance.

(g) The Congress finds that, because the land use decisions of the Federal Government, including those concerning the Federal lands, often have a significant impact upon statewide and local environments and patterns of development, a national land use policy ought to take into consideration the needs and interests, and invite

the participation of, State and local governments and members of the public.

(h) The Congress finds that Federal, regional, State and local decisions and programs which establish or influence the location of land uses often determine whether people of all income levels and races have or are denied access to decent shelter, to adequate employment, and to quality schools, health facilities, police and fire protection, mass transportation, and other public services; and that such decisions and programs should seek to provide the maximum freedom and opportunity, consistent with sound and equitable land use planning and management standards, for all citizens to live and conduct their activities in locations of convenience and personal choice.

Declaration of Policy

SEC. 102. (a) To promote the general welfare and to provide full and wise application of the resources of the Federal Government in strengthening the environmental, recreational, economic, and social well-being of the people of the United States, the Congress declares that it is a continuing responsibility of the Federal Government, consistent with the responsibility of State and local government for land use planning and management, to undertake the development and implementation of a national land use policy which shall incorporate environmental, esthetic, economic, social, and other appropriate factors. Such policy shall serve as a guide for national decisionmaking in Federal and federally assisted programs which have land use impacts and in programs which affect the pattern of uses on the Federal lands, and shall provide a framework for the development of State and local land use policies.

(b) The Congress further declares that it is the national policy to--

(1) favor patterns of land use planning, management, and development which are in accord with sound environmental, economic, and social values and which encourage the wise and balanced use of the Nation's land resources;

(2) assist State governments to develop and implement land use programs for non-Federal lands which will incorporate environmental, esthetic, economic, social, and other appropriate factors, and to develop a framework for the formulation, coordination, and implementation of

State and local land use policies;

(3) assist the State and local governments to improve upon their present land use planning and management efforts with respect to areas of critical environmental concern, key facilities, development and land use of regional benefits, and large scale development;

(4) facilitate increased coordination in the administration of Federal programs and in the planning and management of Federal lands and adjacent non-Federal lands so as to encourage sound land use planning and management; and

(5) promote the development of systematic methods for the exchange of land use, environmental, economic, and social data and information among all levels of government.

(c) the Congress further declares that intelligent land use planning and management can and should be a singularly important process for preserving and enhancing the environment, encouraging beneficial economic development, and maintaining conditions capable of improving the quality of life.

Purpose

SEC. 103. It is the purpose of this Act--

(a) to establish a national policy to encourage and assist the several States to more effectively exercise their constitutional responsibilities for the planning and management of their land base through the development and implementation of State land us programs designed to achieve economically and environmentally sound uses of the Nation's land resources;

(b) establish a grant-in-aid program to assist State and local governments and agencies to hire and train the personnel, and establish the procedures, necessary to develop and implement State land use programs;

(c) establish reasonable and flexible Federal requirements to give individual States guidance in, and to condition the distribution of certain Federal funds on, the establishment and implementation of State land use programs;

(d) establish the authority and responsibility of the Secretary of the Interior to administer the grant-in-aid program, to review statewide land use processes and methods and State land use programs for conformity to the provisions of this Act, and to assist the

coordination of activities of Federal agencies with State land use programs;

(e) develop and maintain a national policy with respect to federally conducted and federally assisted projects having land use implications; and

(f) coordinate planning and management of Federal lands and planning and management of adjacent non-Federal lands.

TITLE II

Program Development Grants

SEC. 201. (a) The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to make not more than two annual grants to each State to assist that State in developing land use program meeting the requirements set forth in section 202 of this Act. Such grants shall not exceed 66-2/3 percent of the costs of program development. Prior to making the first grant, the Secretary shall be satisfied that such grant will be used in development of a land use program meeting the requirements set forth in section 202. Prior to making a second grant, the Secretary shall be satisfied that the State is adequately and expeditiously proceeding with the development of a land use program meeting the requirements of section 202.

(b) States receiving grants pursuant to this section shall submit to the Secretary not later than one year after the date of awarded of the grants a report on work completed toward the development of a State land use program. A State land use program meeting the requirements of section 202 of this Act shall satisfy the requirements for such a report.

(c) The authority to make grants under this section expires three years from date of enactment.

Program Management Grants

SEC. 202. Following his review of a State's land use program, the Secretary is authorized to make three annual grants to that State to assist it in managing the State land use program. Successive grants for this purpose may be made annually to any State resubmitting its land use program for review by the Secretary. Grants made pursuant to this section shall not exceed 66-2/3% of the cost of managing the land use program. Grants authorized by this section shall be made by the Secretary only if, in his judgment:

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(a) the State has developed a statewide land use planning process, which process shall include--

(1) the establishment of a method for the compilation and revision of data related to inventorying areas of critical environmental concern, areas impacted by key facilities and development of land use of regional benefit;

(2) the establishment of a method for the compilation and continuing revision of data related to population densities and trends, economic characteristics and projections, recreational needs, transportation projections and trends, environmental conditions and trends, governmental service needs related to the areas, and facilities covered in subsection (a)(1).

(3) the establishment of a method for the preparation and continuing revision of an inventory of governmental organization and financial resources available for land use planning and management within the State and of State and local programs and activities which have a land use impact of more than local concern;

(4) the provision, where appropriate, of technical assistance for, and training programs for State and local agency personnel concerned with, the development and implementation of State and local land use programs;

(5) the establishment of arrangements for the exchange of land use planning information and data among State agencies and local governments, with the Federal Government, among the several States and interstate agencies, and with members of the public;

(6) the establishment of a method for assuring that all State and local agency programs and services which significantly affect land use are consistent with the State land use program;

(7) the conducting of public hearings, preparation of reports, and soliciting of comments on reports concerning the statewide land use planning process or aspects thereof;

(8) a process for public education and the participation by the public and the appropriate officials or representatives of local governments in the planning process and the formulation of guidelines, rules, and regulations for the administration of the planning process;

(9) the consideration of the interstate aspects of land use issues which involve two or more States.

(10) a method for exercising State control over the use of land within areas of critical environmental concerns and area impacted by key facilities;

(11) a method to control development in areas prone to natural hazards such as flood plains so as to avoid loss of life or property.

(12) a method for assuring that local regulations do not restrict or exclude development and land use of regional benefit;

(13) a policy for influencing the location of new communities and a method for assuring appropriate controls over the use of land around new communities;

(14) a method for controlling proposed large-scale development of more than local significance in its impact upon the environment;

(15) a system of controls and regulations pertaining to areas and developmental activities previously listed in this subsection which are designed to assure that any source of air, water, noise or other pollution will not be located where it would result in a violation of any applicable air, water, noise or other pollution standard or implementation plan;

(16) a method for periodically revising and uprating the State land use program to meet changing conditions; and

(17) a detailed schedule for implementing all aspects of the program.

(18) methods for insuring that Federal lands within the State, including but not limited to units of the national park system, wilderness areas, and game and wildlife refuges, are not damaged or degraded as a result of inconsistent land use patterns in the same immediate geographical region.

For purposes of complying with paragraphs (1) through (18) of this subsection (a), any one or a combination of the following general techniques is acceptable: (i) direct State land use planning and regulation; or (ii) State administrative review of local land use plans, regulations and implementation with full powers to approve or disapprove.

(b) the State has an eligible State land use planning agency established by the Governor of such State or by law, which agency shall--

(1) have primary authority and responsibility for

the development and administration of a State land use program provided for in this section;

(2) have a competent and adequate interdisciplinary professional and technical staff and, whenever appropriate, the services of special consultants;

(3) give priority to the development of an adequate data base for a statewide land use planning process using data available from existing sources wherever feasible;

(4) coordinate its activities with the planning activities of all State agencies undertaking federally financed or assisted planning programs insofar as such programs relate to land use; the regulatory activities of all State agencies enforcing air, water, noise, or other pollution standards; all other relevant planning activities of State agencies; flood plain zoning plans approved by the Secretary of the Army pursuant to the Flood Control Act of 1960, as amended; the planning activities of areawide agencies designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262-3), as amended, and Title IV of the Intergovernmental Cooperation Act of 1968; the planning activities of local governments; and the planning activities of Federal agencies;

(5) have authority to provide a process for public education and citizen participation including but not limited to conducting public hearings, with adequate public notice, allowing full public participation in the development of the State land use program; and

(6) have authority to make available to the public promptly upon request land use data and information, studies, reports, and records of hearings.

(c) In designating areas of critical environmental concern, the State has not excluded any areas of critical environmental concern to the Nation.

(d) In controlling land use in areas of critical environmental concern to the Nation, the State has procedures to prevent action (and, in the case of successive grants, the State has not acted) in substantial disregard for the purposes, policies and requirements of its land use program.

(e) State laws, regulations and criteria affecting areas and developmental activities listed in subsection

(a) of this section are in accordance with the policy, purpose and requirements of this Act; and that State laws, regulations and criteria affecting land use in the coastal zone and estuaries further take into account:

(1) the aesthetic and ecological values of wetlands for wildlife habitat, food production sources for aquatic life, recreation, sedimentation control, and shoreland storm protection; and

(2) the susceptibility of wetlands to permanent destruction through draining, dredging, and filling, and the need to restrict such activities.

(f) The State utilizes for the purpose of furnishing advice to the Federal Government as to whether Federal and federally assisted projects are consistent with the State land use program, procedures established pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968.

Federal Review and Determination of Grant Eligibility

SEC. 203. (a) During the five complete fiscal year period following the enactment of this Act, the Secretary, before making a grant pursuant to this Act, shall consult with the heads of all Federal agencies listed in subsection (d) of this section and of all other Federal agencies which conduct or participate in construction, development, assistance, or regulatory programs significantly affecting land use in the State, and with the National Advisory Board on Land Use Policy pursuant to subsection (c) of section 203 of this Act, and shall consider their views and recommendations.

(b) The Secretary shall determine a State eligible or ineligible for a grant pursuant to this Act not later than six months following receipt for review of the State's application for its first grant, a State's report on its previous grant, or the State's land use program pursuant to section 202.

(c) Pursuant to subsection (a) of this section, the Secretary shall consider the views of the heads of concerned agencies including but not limited to--

(1) the Department of Agriculture;

(2) the Department of Commerce;

(3) the Department of Defense;

(4) the Department of Health, Education, and Welfare;

(5) the Department of Housing and Urban Development;
(6) the Department of Transportation;
(7) the Atomic Energy Commission;
(8) the Federal Power Commission; and
(9) the Environmental Protection Agency.

(d) A State may at any time revise its State land use program: Provided, That such revision does not render the State land use program inconsistent with the requirements of this Act: And provided further, That any significant revision is reported to the Secretary. The Secretary shall determine whether such revision would render the State land use program inadequate for purposes of complying with the requirements of this Act, and shall inform the State of his determination.

Consistency of Federal Actions with State Land Use Programs

SEC. 204. (a) Federal projects and activities significantly affecting land use, including but not limited to permits and licenses, grant, loan, or guarantee programs, such as mortgage and rent subsidy programs and water and sewer facility construction programs, but excluding special and general revenue sharing, shall be consistent with State land use programs which conform to the provisions of section 202 of this Act, except in cases of overriding national interest as determined by the President. Procedures provided for in regulations issued by the Office of Management and Budget pursuant to the criteria specified in section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1365, 1262-3), as amended, and title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103-4), together with such additional procedures as the Office of Management and Budget may determine are necessary and appropriate to carry out the purposes of this Act, shall be utilized in the determination of whether Federal projects and activities are consistent with State land use programs funded under this Act.

(b) Any State or local government submitting an application for Federal assistance for any activity having significant land use implications in an area or for a use subject to a State land use program in a State found eligible for grants pursuant to this Act shall transmit to the relevant Federal agency the views of the State land use planning agency and/or the Governor and,

in the case of an application of a local government, the views of such local government and the relevant areawide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and/or title IV of the Intergovernmental Cooperation Act of 1968, as to the consistency of such activity with the program: Provided, That, if a local government certifies that a plan or description of an activity for which application is made by the local government has lain before the State land use planning agency and/or the Governor for a period of sixty days without indication of the views of the land use planning agency and/or the Governor, the application need not be accompanied by such views.

(c) Federal agencies conducting or assisting public works activities in areas not subject to a State land use program in a State found eligible for grants pursuant to this Act shall, to the extent practicable, conduct such activities in such a manner as to minimize any adverse impact on the environment resulting from decisions concerning land use.

Federal Actions in the Absence of State Eligibility

SEC. 205. (a) The Secretary shall have authority to terminate any financial assistance extended to a State under this Act and withdraw his determination of grant eligibility whenever the Secretary finds that the statewide land use planning process or the State use program does not meet the requirements of this Act.

(b) Where any major Federal action significantly affecting the use of non-Federal lands is proposed after three fiscal years from the date of enactment of this Act, in a State which has not been found eligible for grants pursuant to this Act, the responsible Federal agency shall hold a public hearing in such State at least one hundred eight days in advance of the proposed action concerning the effect of the action on land use, taking into account the relevant considerations set out in section 202 of this Act, and shall make findings which shall be submitted for review and comment by the Secretary and were appropriate, by the Secretary of Housing and Urban Development. Such findings of the responsible Federal agency and comments of the Secretary and, where appropriate, the Secretary of Housing and

Urban Development shall be made part of the detailed statement required by section 102(2)(C) of the National Environmental Policy Act (83 Stat. 852, 853). This section shall be subject to exception where the President determines that the interests of the United States so require.

(c) Section 15 of the Airport and Airway Development Act (P.L. 91-258, 84 Stat. 227) is amended by adding the following new subsection:

"(d) Any State which has not been found eligible for a management grant under section 202 of the National Land Use Policy Act by June 30, 1976, shall suffer a reduction of 7% of its entitlement to Federal funds apportioned for airport development pursuant to paragraphs (A) and (B) of subsection (a)(1) and paragraphs (A) and (B) of subsection (a)(2) of this section, in fiscal year 1977. If that State has not been found eligible by June 30, 1977, it shall suffer a reduction of 14% in fiscal year 1978, and if not found eligible by June 30, 1978, shall suffer a reduction of 21% in fiscal year 1979. Any funds so withheld shall be included in the aggregate of airport and airway development funds and shall be made available to States found eligible for financial assistance under section 202 of the National Land Use Policy Act according to the criteria prescribed for the apportionment of such funds, excluding for purposes of computation any State or States found ineligible for financial assistance under section 104 of the National Land Use Policy Act."

(d)(1) Section 104, title 23 of the United States Code is amended by adding the following subsection:

"(f) Any State which has not been found eligible for a management grant under section 202 of the National Land Use Policy Act by June 30, 1976, shall suffer a reduction of 7% of its entitlement to Federal-aid highway funds exclusive of planning and research which would otherwise be apportioned to such State in fiscal year 1977. If that State has not been found eligible by June 30, 1977, it shall suffer a reduction of 14% in fiscal year 1978, and if not found eligible by June 30, 1978, shall suffer a reduction of 21% in fiscal year 1979. Any funds so withheld shall be included in the aggregate of Federal-aid highway funds and shall be made available to State found eligible for assistance under section 202

of the National Land Use Policy Act according to criteria prescribed for the apportionment of Federal-aid highway funds, excluding for purposes of computation any State or States found ineligible for financial assistance under section 202 of the National Land Use Policy Act."

(2) Section 109(f), title 23 of the United States Code is amended by deleting "or control of" in the first sentence.

(e) Subsection 5(b) of the Land and Water Conservation Fund Act of 1965 (P.L. 88-578, 78 Stat. 897) is amended by adding after the second paragraph the following paragraph:

"Any State which has not been found eligible for a management grant under section 202 of the National Land Use Policy Act by June 30, 1976, shall suffer a reduction of 7% of its entitlement under paragraphs (1) and (2) of this subsection in fiscal year 1977. If that State has not been found eligible by June 30, 1977, it shall suffer a reduction of 14% in fiscal year 1978, and if not found eligible by June 30, 1978, shall suffer a reduction of 21% in fiscal year 1979. Any funds so withheld shall be included in the aggregate of land and water conservation funds and shall be made available according to the criteria prescribed for the apportionment of such funds, excluding for purposes of computation any State or States found ineligible for financial assistance under section 202 of the National Land Use Policy Act."

Title III - Administration of Land Use Policy

National Advisory Board on Land Use Policy

SEC. 301. (a) The Secretary is authorized and directed to establish a National Advisory Board on Land Use Policy (hereinafter referred to as the "Board").

(b) The Board shall be composed of:

(1) the Secretary of his designated representative who shall serve as Chairman;

(2) representatives of the Departments of Agriculture; Commerce; Defense; Health, Education, and Welfare; Housing and Urban Development; and Transportation; the Atomic Energy Commission; and the Environmental Protection Agency, appointed by the respective heads thereof;

(3) observers from the Council on Environmental Quality, the Federal Power Commission, appointed by the respective heads thereof; and

(4) representatives of such other Federal agencies, appointed by the respective heads thereof, as the Secretary may request to participate when matters affecting their responsibilities are under consideration.

(c) The Board shall meet regularly at such times as the Chairman may direct and shall--

(1) provide the Secretary with information and advice concerning the relationship of policies, programs, and activities established or performed pursuant to this Act to the programs of the agencies represented on the Board;

(2) render advice to the Secretary and to the agency designated pursuant to Section 402 concerning proposed guidelines, rules, and regulations for the implementation of the provisions of this Act;

(3) assist the Secretary and the agencies represented on the Board in the coordination of the review of State land use planning programs.

(4) provide advice on such land use policy matters as the Secretary may refer to the Board for its consideration; and

(5) provide reports to the Secretary on land use policy matters which may be referred to the Board by the heads of Federal agencies through their respective representatives on the Board.

Interstate Coordination

SEC. 302. (a) The States are authorized to make available to appropriate interstate entities a reasonable portion of the funds provided to such States under the provisions of this Act: Provided, however, That such interstate entities shall afford the public the same degree of participation as is required by Section and Provided further, That nothing in this subsection shall be construed to affect the allotment of funds as provided in Sections of this Act.

(b) By the adoption of an appropriate Act, Congress hereby authorizes States possessing coherent geographic, environmental, demographic, or economic characteristics which would serve as reasonable bases upon which to coordinate land use planning and programs in interstate areas to negotiate interstate compacts for the purpose of such coordination, with such terms and conditions as to them seem reasonable and appropriate: Provided, however, That such compacts shall provide for an

opportunity for participation in the coordination process by Federal and local governments and agencies as well as members of the public engaged in activities which affect or are affected by land use planning and programs.

Title IV - General

Definitions

SEC. 401. For the purpose of this Act--

(a) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(b) The term "local government" means any general purpose county or municipal government, or any regional combination thereof, or, where appropriate, any other public agency which has land use planning authority.

(c) The term "Federal lands" means any land owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except lands held in trust for the benefit of Indians, Aleuts, and Eskimos.

(d) The term "non-Federal lands" means all lands which are not "Federal lands" as defined in subsection (c) of this section and are not held by the Federal Government in trust for the benefit of Indians, Aleuts, and Eskimos.

(e) The term "areas of critical environmental concern" means areas as designated by the State on non-Federal lands where uncontrolled development could result in irreversible damage to important historic, cultural, or esthetic values, or natural systems or processes which are of more than local significance, or could unreasonably endanger life and property as a result of natural hazards of more than local significance. Such areas shall include--

(1) coastal wetlands, marshes, and other lands inundated by the tides;

(2) beaches and dunes;

(3) significant estuaries, shorelands, and flood plains of rivers, lakes, and streams;

(4) areas of unstable soils and high seismic activity;

(5) rare or valuable ecosystems;

(6) significant agricultural, grazing, and watershed lands;

(7) forests and related land which require long stability for continuing renewal;

(8) scenic or historic areas; and

(9) such additional areas as a State determines to be of critical environmental concern.

(f) The term "key facilities" means:

(1) public facilities on non-Federal lands which tend to induce development and urbanization of more than local impact, including but not limited to:

(A) any major airport designed to serve as a terminal for regularly scheduled air passenger service or one of State concern;

(B) interchanges between the Interstate Highway System and frontage access streets or highways; major interchanges between other limited access highways and frontage access streets or highways;

(C) frontage access streets and highways of State concern; and

(D) major recreational lands and facilities;

(2) major facilities on non-Federal lands for the development, generation, and transmission of energy.

(g) The term "development and land use of regional benefit" means land use and private development on non-Federal lands for which there is demonstrable need affecting the interests of constituents of more than one local government which outweighs the benefits of any applicable restrictive or exclusionary local regulations.

(h) The term "large scale development" means private development including new communities and large scale subdividions on non-Federal lands which, because of its magnitude or the magnitude of its effect on the surrounding environment, is likely to present issues of more than local significance in the judgment of the State. In determining what constitutes "large scale development" the State should consider, among other things, the amount of pedestrian or vehicular traffic likely to be generated; the number of persons likely to be present; the potential for creating environmental problems such as air, water, or noise pollution; the size of the site to be occupied; and the likelihood that additional or subsidiary development will be generated.

Guidelines

SEC. 402. The President is authorized to designate

an agency or agencies to issue guidelines to the Federal agencies to assist them in carrying out the requirements of this Act.

Biennial Report

SEC. 403. The Secretary, with the assistance of the Board, shall report biennially to the President and the Congress on land resources, uses of land, and the current and emerging problems of land use.

Utilization of Personnel

SEC. 404. Upon request of the Secretary, the head of any Federal agency is authorized:

(a) to furnish such information as may be necessary for carrying out the functions of this Act and as may be available to or procurable by such agency, and

(b) to detail to temporary duty, on a reimbursable basis, such personnel within his administrative jurisdiction as the Secretary may need or believe to be useful for carrying out the functions of this Act, each such detail to be without loss of seniority, pay, or other employee status.

Technical Assistance

SEC. 405. The Secretary may provide directly or through contracts, grants, or other arrangements, technical assistance to any State found eligible for grants pursuant to this Act to assist such State in the performance of its functions under this Act.

Hearings and Records

SEC. 406. (a) For the purpose of carrying out the provisions of this Act, the Secretary may hold such hearings, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of the proceedings and reports thereon as he deems advisable.

(b) the Secretary is authorized to administer oaths when he determines that testimony shall be taken or evidence received under oath.

(c) In the event the Secretary determines that a State is ineligible for grants pursuant to this Act, or, having found a State eligible for such grants, subsequently determines that grounds exist for withdrawal of such eligibility, he shall following adequate public notice, conduct a public hearing on such determination of ineligibility at which time the State and all other interested parties may be heard.

Financial Records

SEC. 407. (a) Each recipient of a grant pursuant to this Act shall make reports and evaluation in such form, at such times, and containing such information concerning the status, disposition, and application of Federal funds and the operation of the statewide land use planning process or State land use program as the Secretary may require by regulations published in the Federal Register, and shall keep and make available such records as may be required by the Secretary for the verification of such reports and evaluations.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of a recipient of a grant pursuant to this Act which are pertinent to the determination that funds granted are used in accordance with this Act.

Authorization of Appropriations

SEC. 408. For each of the five fiscal years following the enactment of this Act, there are authorized to be appropriated to the Secretary for grants to the States not more than $40,000,000 for each of the first two fiscal years and $30,000,000 for each of the next three fiscal years to carry out the purposes of this Act.

SEC. 409. For each of the five full fiscal years following enactment of this Act, there are authorized to be appropriated $10,000,000 annually to the Secretary of the Interior to be used exclusively for the administration of this Act. After the end of the fourth fiscal year after the enactment of this Act, the Secretary shall review the programs established by this Act and shall submit to Congress his analysis and such recommendations for amendments to the Act as he deems appropriate.

Effect on Existing Laws

SEC. 410. Nothing in this Act shall be construed--

(a) to expand or diminish Federal, interstate or State jurisdiction, responsibility, or rights in the field of land and water resources planning, development or control; to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of

two or more States, a State, or a region and the Federal Government; to limit the authority of Congress to authorize and fund projects;

(b) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties or his orrice except as new authority or responsibilities have been added by the provisions of this Act;

(c) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies which are authorized to develop or participate in the developmentof land and water resources or to exercise licensing or regulatory functions in relation thereto; or to affect the jurisdiction, powers, or perogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(d) as granting to the Federal Government any of the constitutional or statutory authority now possessed by State and local governments to zone non-Federal lands.

(e) to delay or otherwise limit the adoption and vigorous enforcement, by State, or standards, criteria, emission or effluent limitations, monitoring requirements, or implementation plans required by the Federal Water Pollution Control Act, the Clean Air Act, or other Federal laws controlling pollution; and

(f) to adopt any Federal policy or requirement which would prohibit or delay States or local governments from adopting or enforcing any law or regulation which results in prohibition or control to a degree greater than required by this Act of land use development in any area over which the State or local government exercises jurisdiction.

LAND USE POLICY & PLANNING ASSISTANCE ACT OF 1973
SECTION-BY-SECTION ANALYSIS

TITLE I - Findings, Policy and Purpose

SEC. 101. Congress recognizes in this section that there is a national interest in promoting better land use planning and decisionmaking. The section lists some of the factors which often cause land use decisions to be made on the basis of expediency and short term economic considerations without recognizing the real impacts. The section lists some of the undesirable results.

SECs. 102 and 103. Declaration of Policy and Purpose.

The policy and purpose of the Act is two fold: (a) to promote the Nation's wellbeing by better planning the use of its national lands and water resource heritage and (b) to assist and encourage each State to improve its land use planning and decision-making processes. This reflects the joint responsibility under the Federal system. Land use planning and management is primarily a State responsibility. However, because of the national importance of rational land use and because the natural systems on which all life depends do not recognize State boundaries, the Federal Government has an important responsibility for coordinating and assisting the States' efforts.

TITLE II

SEC. 201. Program Development Grants

This section authorizes the Secretary to make not more than two annual grants to each State to cover up to two-thirds of the cost of developing a program meeting the requirements of section 202. This authority expires 3 years after enactment.

SEC. 202 Program Management Grants

This section authorizes the Secretary to make not more than three annual grants to each State to cover up to two-thirds of the costs of managing its land use program.

Subsections (a)-(f) contain criteria which the program must meet to qualify for management grants. The criteria fall in two basic categories: (I) those designed to improve the States' land use planning capability and (II) those designed to improve the States' land use regulatory processes.

The first category requires States to develop methods for inventorying its resources and for projecting its

growth trends and resource needs, including the social and economic considerations involved. Resources include financial, and governmental as well as natural. The State must develop methods for exchanging planning information and for educating the public and soliciting its views. It is important to note that the requirements in this category are for methods to accomplish certain results not for the results themselves.

The second category requires that the State has methods to control land use. Under the present system, the authority to control land use resides in the State but is exercised, by delegation, almost exclusively by local governments, through local zoning boards. Some of the decisions made at the local level have important consequences of more than local significance (although the vast majority of such decisions do not). The second category of criteria requires the States to develop methods to reassert control over those decisions with greater than local significance. The bill sets forth four areas where the State must exercise control over such decisions:

1. Areas of critical environmental concern such as beaches, wetlands and flood plains. Any area where uncontrolled development could cause irreversible damage to important natural systems or historic, cultural or aesthetic values. It also includes areas where uncontrolled development could unreasonably endanger life or property as a result of natural hazards like floods and earthquakes.

2. Areas impacted by "key facilities", which is defined as public facilities which tend to induce growth and development of more than local significance. Highways, highway interchanges and airports are good examples of facilities which tend to attract rapid development.

3. Large scale development, such as large residential subdivisions or other private development which can have an impact outside of the local jurisdiction in which it is located. This also includes new communities.

4. Areas proposed for development of regional benefit. This includes such facilities as waste treatment plants, and low income housing, the benefits of which to a broader community outweigh the detriment to the smaller community which may seek to exclude it.

The State may choose to exercise its control over

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the decisions which it decides fall into these 4 areas either by direct control or by a procedure for reviewing local decisions. Federal lands and Indian trust lands are excluded by definition from these four areas.

The Secretary must be satisfied that the State program covers areas which are of critical environmental concern to the Nation and must have procedures to prevent action with respect to those areas which is in disregard of the policy, purpose and requirements of the State's land use program.

Subsection 202(a)(6) requires that all State and local agency programs and services which significantly affect land use be consistent with an approved State land use program. This provision will facilitate improvement of both the planning capability as well as the regulatory process.

SEC. 203. Federal Review and Determination of Grant Eligibility

The section provides that in determining State eligibility for a grant the Secretary shall consult with and consider the views of other Federal agencies. It also provides that he must act within six months and establishes procedures for a State to revise its plan.

SEC. 204 Consistency of Federal Actions with State Land Use Programs

This section requires that Federal projects and activities significantly affecting land use must be consistent with approved State land use programs which meet the requirements for receiving a management grant under section 202. This provision gives the States a means of influencing Federal activities in the State, including those on Federal lands where they impact non-Federal lands covered by the State land use program. It includes Federal permit and license programs as well as projects assisted with Federal funds. The only exception would be where the President or his delegate determines an overriding National interest.

State or local agencies applying for Federal funds must report whether the State land use planning agency or the Governor considers the proposed project to be consistent with the State Land Use Program.

SEC. 205. Federal Actions in the Absence of State Eligibility.

If a State fails to establish or maintain eligibility

for grants under the Act the following consequences may occur:

(a) It will not receive further grants under the Act.

(b) After 3 years from enactment, Federal agencies may not take any major action significantly affecting the use of non-Federal lands in that State without having first held a public hearing in that State at least 180 days in advance of the proposed action to explore the land use impact based on the considerations set forth in section 202.

However, where the Federal agency affected has not already established procedures involving public hearings with opportunities for public participation in the agency decision-making process and preparation of a detailed statement, then it is intended that this established procedure be followed concerning the effect of the proposed action on land use under this section or concerning consistency with land use programs under section 204.

(c) After June 30, 1976, the State shall lose in the next fiscal year 7% of the Federal funds that it would otherwise receive for airport development, highway construction, and recreation area acquisition and development. If the ineligibility persists beyond June 30, 1977, and June 30, 1978, the loss shall be 14% and 21% respectively in the next fiscal year. Highways, airports and major recreation facilities are major determinants of State and regional land use patterns; this provision would require the States to develop and manage a land use program as an additional requirement for receiving Federal funds for these purposes.

TITLE III - Administration of Land Use Policy

SEC. 301. National Advisory Board on Land Use Policy

This Advisory Board, composed of representatives of certain designated Federal agencies plus other undesignated agencies as the Secretary may request in particular circumstances, is designed to relate the policies and programs developed under the Act to the programs of the various Federal agencies and vice versa.

SEC. 302. Interstate Coordination

This section is intended to encourage the use of interstate organizations to implement those aspects of a State's land use program which involve issues which cross State boundaries or where greater efficiency may be achieved. Subsection (a) authorizes States to allocate a

portion of the Federal grant made under this Act to such interstate entities.

TITLE IV. General

SEC. 401. Definitions

The most significant definitions are: "areas of critical environmental concern", "key facilities", "development and land use of regional benefit" and "large scale development." These terms, as used in section 202 define the categories of land use decisions which have more than local significance and over which the State must assert control.

SEC. 402. Guidelines

This section authorized the President to designate an agency to issue guidelines to assist the Federal agencies in carrying out the requirements of the Act.

SEC. 403. Biennial Report

This section requires the Secretary to report biennially to the President and Congress on land resources and land use problems, current and emerging.

SEC. 404. Utilization of Personnel

This section authorizes any Federal agency, upon request by the Secretary, to furnish information or to detail personnel for temporary duty.

SEC. 405. Technical Assistance

The Secretary may provide technical assistance to States in the performance of their functions under the Act.

SEC. 406. Hearings and Records

This section authorizes the Secretary to hold hearings and requires him to do so if he determines that a State is ineligible for a grant.

SEC. 407. Financial Records

This section requires various reports and records to be kept and made available by the grant recipients.

SEC. 408. Authorization of Appropriations

This section authorizes the appropriation for grants of $40 million in each of the first two fiscal years following enactment.

Managing the Land

Powerplant Siting

THE SECRETARY OF THE INTERIOR

WASHINGTON

February 15, 1973

Dear Mr. [President/Speaker]:

In accordance with today's Presidential Message on the Environment, I am enclosing our proposed Electric Facilities Siting Act of 1973, which we recommend be enacted.

The bill addresses the increasingly serious problem of accommodating protection of the environment and expanding demand for electric power. Meeting future power requirements will mean building a substantial number of major new electric generation and transmission facilities. We currently estimate, for example, that between now and 1990 more than 300 new generating plants of the size covered by the bill (300 megawatts or more) will be required to meet power demands at projected rates of development. In siting major generation or transmission facilities, significant environmental problems may occur. Experience indicates that these problems can be extremely serious unless plans are made long in advance of proposed construction and are thoroughly considered by the public and affected governmental agencies. Also needed is complete public and governmental review of the facilities themselves and related sites beginning several years in advance of construction.

The bill requires all utilities to undertake long-range (10 years) planning for electric facilities, giving the public and governmental agencies full opportunity to review and comment on the plans developed. It requires utilities to apply for approval of particular electric facility sites 3 to 5 years before construction begins. For non-Federal electric utilities, application is made to a State certifying agency, which the bill calls on each State to designate. For Federal utilities, the Secretary of the Interior serves as the certifying agency. Other

necessary Federal authorizations are obtained for both Federal and non-Federal utilities by applying to the appropriate Federal agencies through a new Federal Electric Facilities Siting Panel, of which the Secretary of the Interior is chairman. The Panel is responsible for coordinating and expediting Federal reviews and for developing, with the certifying agencies, consolidated procedures and forms to be used in applying for sites.

The bill is based in substantial measure on the power plant siting legislation which the Administration proposed to the 92d Congress, but it makes a number of changes which further consideration and subsequent events indicate will improve it. It requires all governmental action on siting applications -- Federal, State and local -- to be completed within eighteen months of the date of application. It consolidates procedures for compliance with the National Environmental Policy Act so that one -- and only one -- environmental impact statement is prepared. The statement would be prepared by the certifying agency with full participation by those affected, including other Federal, State and local agencies, and it would be used by all agencies in making decisions subject to their jurisdiction.

Unless we act promptly, the problems we have been facing in locating electric facilities will become much worse. Because I am convinced that it will best serve the dual purposes of protecting environmental values while assuring an adequate supply of electricity, I urge the Congress to enact the enclosed legislation.

The Office of Management and Budget advises that enactment of this legislation would be in accord with the President's program.

Sincerely yours,

/s/ Rogers C.B. Morton
Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D. C.

Honorable Carl Albert
Speaker of the
House of Representatives
Washington, D. C.

Enclosure

S. 935
H.R. 4874

A BILL

To assure protection of environmental values while facilitating construction of needed electric power supply facilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SHORT TITLE

SEC. 1. This Act may be cited as the "Electric Facilities Siting Act of 1973."

FINDINGS AND PURPOSES

SEC. 2. The Congress, in furtherance of the national environmental policy as set forth in the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321), and the national electric energy policy as set forth in section 202(a) of the Federal Power Act (49 Stat. 848; 16 U.S.C. 824(a)), hereby finds and declares the national public interest in the environment, the interest of interstate commerce, the interest of public and private investors in electric utility facilities, and the interest of consumers of electric energy require--

(a) that electric facilities adequate to the Nation's need for a reliable electric power supply be constructed upon a timely basis, and in a manner consonant with the preservation of important environmental values and wise comprehensive use of the Nation's air, land, water and other resources for all beneficial purposes public and private;

(b) that all of the Nation's electric utilities should be required to engate in adequate open long-range planning, and certifying bodies should be established for the expeditious preconstruction review of electric facilities and related sites in order to avoid undue delays in the construction of needed electric facilities and to provide for full and timely consideration of environmental consequences in advance of such construction;

(c) that appropriate electric facilities and related sites should be subject to expeditious coordinated approval at the Federal and State levels.

DEFINITIONS

SEC. 3. As used in this Act--

(a) "electric utility" means any individual or corporation which owns or operates an electric facility, or plans to own or operate such facility, however organized or owned, whether investor owned, publicly owned or cooperatively owned, including a "State" or a "municipality" as defined in sections 3(6) and 3(7) of the Federal Power Act (49 Stat. 833; 16 U.S.C. 796), but not the United States or an agency, authority, or instrumentality thereof, or any corporation which directly or indirectly is wholly owned by the United States, its agencies, authorities or instrumentalities;

(b) "Federal electric utility" means the United States, an agency, authority, or instrumentality thereof, or any corporation which directly or indirectly is wholly owned by the United States, its agencies, authorities, or instrumentalities, which owns or operates an electric facility or plans to own or operate such facility;

(c) "electric facility" means electric generating equipment and associated facilities designed for, or capable of, operation at a capacity of 300 megawatts or more, or any additions thereto of 200 megawatts or more, or electric transmission lines and associated facilities designed for, or capable of, operation at a nominal voltage of 230 kilovolts or more, between phase conductors for alternating current or between poles for direct current, except that any facility subject to licensing pursuant to part I of the Federal Power Act (41 Stat. 1063, 41 Stat. 1353, 46 Stat. 797, 49 Stat. 838, 62 Stat. 275, 67 Stat. 587, 70 Stat. 226, 74 Stat. 407, 76 Stat. 447, 82 Stat. 616; 16 U.S.C. 792-823) shall not be subject to the provisions of sections 6, 7, and 8 of this Act;

(d) "Secretary" means the Secretary of the Interior;

(e) "certifying agency" means the State or regional agency, authority or other entity authorized and empowered to carry out the responsibilities provided for in this Act within the State or States affected, or the Secretary acting in a similar capacity in a State or for a Federal electric utility;

(f) "regional" means the governments of two or more States;

(g) "commencement of construction" means any clearing of the land, excavation, or other substantial action that would adversely affect the natural environment of the site or route but does not include changes desirable for the temporary use of the land for public recreational uses, necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental values;

(h) "certificate" means certificate of site and facility issued pursuant to sections 6 and 7;

(i) "Federal notice" means a notice transmitted by the Secretary acting as chairman of the Federal Electric Facilities Siting Panel, to the applicant and to the certifying agency when all required Federal authorizations have been received with respect to a proposed electric facility and site; and

(j) "State" means any of the fifty States, the District of Columbia or Puerto Rico.

LONG-RANGE PLANNING

SEC. 4. (a) Each electric utility and Federal electric utility shall prepare annually its long-range plans for electric facilities during the ensuing ten years, or for such other period as the Federal Power Commission shall specify. These plans shall be public and shall be completed pursuant to rules and regulations established by the Federal Power Commission as a part of the work of the Commission and of the national and regional electric reliability councils under section 202(a) of the Federal Power Act. These plans shall be part of a coordinated regional plan and shall:

(1) describe the general location, size and type of all electric facilities to be owned or operated by each reporting utility, the construction of which is projected to commence during the ensuing ten years or during such other period as the Federal Power Commission may specify, together with an identification of all existing facilities to be removed from utility service during such period or upon completion of construction of the projected electric facilities;

(2) identify the location of tentative or alternate siting for the construction of future electric

facilities over such period as the Commission may specify, including an inventory of electric power generating sites and the general location of associated electric transmission line routes and state the relationship of the identified sites, routes, and facilities, to environmental values, describing how potential adverse effects on such values will be avoided or minimized through the reporting utility's long-range planning process;

(3) reflect and describe such utility's efforts to coordinate the electric facility plans identified therein with those of other utilities so as to provide a coordinated regional plan for meeting the electric needs of the region;

(4) describe the reporting utility's actions to involve environmental protection, air, water and land-use planning agencies, in its long-range planning process so as to identify and minimize environmental problems at the earliest possible stage in the long-range planning and reporting process; and

(5) supply such additional information as the appropriate State certifying agency, the Secretary or the Federal Power Commission may, from time-to-time, prescribe upon the advice of interested State and Federal agencies to carry out the purposes of this Act.

(b) Each electric utility and Federal electric utility shall give initial public notice of the plans referred to in subsection (a), by filing through its regional electric reliability council, or individually if not a member of a reliability council, annually a copy of such plans, together with its projections of demand for electricity that the facilities would meet with the appropriate State certifying agency, the Secretary, the Federal Power Commission, the Environmental Protection Agency, and such other affected Federal, State, regional and local governmental authorities and citizens' environmental protection and resource planning groups requesting such plans.

DESIGNATION OF STATE CERTIFYING AGENCIES

SEC. 5. (a) In accordance with regulations of the Secretary, the several States, within twenty-four months from the date of enactment hereof, may designate either an existing or newly created State or regional

agency, for the certification of sites and electric facilities of any electric utility operating within its jurisdiction. Each State certifying agency shall provide for participation in its decision-making by State governmental components having responsibility for environmental protection, natural resources, planning and electric power service and may also provide for participation by the public. Such agency shall be constituted so as to accommodate and balance environmental and electric power development considerations in its decision-making pursuant to section 7.

(b) The Governor of each State which designates such an agency shall notify the Secretary of that fact. The Secretary shall within one month determine whether the authorities and procedures for such agency are in accord with the requirements of this Act, and if so, he shall issue an order of qualification with respect to such State, which unless revoked for cause shall constitute conclusive evidence of its authority to exercise the provisions of section 6 hereof in accordance with its terms.

(c) If no State certifying agency has been qualified in a State within twenty-five months from the date of enactment hereof (or its order of qualification is revoked), the Secretary shall have exclusive authority to carry out the functions which such State certifying agency would otherwise carry out with respect to any electric facility within such State. The Secretary shall be deemed the State certifying agency for such State and his authority shall continue until such State has qualified pursuant to subsection (b) hereof. Any proceedings for the certification of sites and electric facilities which are pending before the Secretary on the date of issuance of any order of qualification shall continue to be proceedings subject to the authority of the Secretary and shall require a Federal certificate before construction shall commence, except that the Secretary may in his discretion transfer such proceeding to the appropriate State certifying agency.

(d) Any State dissatisfied with the Secretary's action with respect to an order of qualification may appeal to the United States Court of Appeals for the circuit in which such State is located, with service

of summons and notice of appeal at any place within the United States, and the court shall have jurisdiction to affirm the Secretary's action, to set it aside in whole or in part, and for good cause shown, to remand the case to the agency for further deliberation: Provided, That the Secretary's findings of fact supported by substantial evidence shall be conclusive: And Provided further, That any judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. Upon the filing of an appeal, the Clerk of the Court of Appeals shall forthwith transmit a copy of the notice to the Secretary who shall file with the court the record upon which the appealed action was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of the record, the jurisdiction of the court shall be exclusive.

CERTIFICATION OF SITES AND FACILITIES

SEC. 6. (a) Effective three years from the date of the enactment hereof:

(i) no electric utility shall commence to construct or begin operation of an electric facility within a State unless it has received a certificate issued by the certifying agency and a Federal notice with respect to such facility; and

(ii) no Federal electric utility shall commence to construct or begin operation of an electric facility unless it has received from the Secretary a certificate and a Federal notice with respect to such facility.

Such facilities shall be constructed in accordance with the terms and conditions of the certificate and Federal notice. No certificate or Federal notice is required for electric facilities already in operation on said effective date or for electric facilities already under construction for which a sizable investment has been made as determined by the certifying agency. No certificate or Federal notice shall be required to begin operation of an electric facility, if a certificate and Federal notice had been received with respect to construction of such facility.

(b) All applications by an electric utility and a Federal electric utility for a certificate and a

Federal notice shall be filed with the appropriate certifying agency not more than five nor less than three years prior to the planned date of commencement of construction of the affected electric facility and such plans may be subject to reasonable modification during the period of review. Except for good cause shown, any site for which certification is sought and the approximate date on which the application for a certificate will be filed, shall have been specified in the electric utility's long-range plans and in the certifying agency's annual compilation not less than two years prior to the date of application. Any alternative to a site so identified, whether proposed by the certifying agency or by any other person, shall be so proposed not later than one year before the utility's specified date of application. Where the proposed site is so identified in advance, only the alternative sites so specified by the electric utility or the Federal electric utility, by the certifying agency or by other persons shall be considered by the certifying agency, together with the full range of alternatives for the electric facilities which the certifying agency may consider under section 7.

(c) As expeditiously as possible but in no event later than eighteen months after receipt of the complete application, the certifying agency shall issue or deny the certificate and the Secretary shall transmit the Federal notice or inform the applicant that it will not be transmitted because of a denial of one or more required Federal authorizations. All Federal, State, interstate or local departments or agencies having authority relative to issuance of the required certificate, or the Federal notice or other Federal, State, interstate or local authorizations shall act within such eighteen months period.

(d) The provisions of section 5 and subsection (a)(1) of this section notwithstanding, any electric utility may petition the Secretary for a certificate based upon the utility's showing of a failure of a State certifying agency to act upon a timely or conclusive basis with respect to any application, and that as a result the public interest in an adequate and reliable regional bulk power supply imperatively and unavoidably requires a decision with respect to

such certification. The Federal Power Commission shall prescribe by regulation the facts necessary to constitute the basis of such showing. Such applications shall be referred to the Federal Power Commission, and if it makes a finding that failure to act in a timely or conclusive manner will harm the public interest in an adequate and reliable bulk power supply, the Secretary shall, effective upon the date of such finding, have exclusive jurisdiction to act on the application for a certificate. The Secretary shall accord priority to all petitions for certificates filed under this subsection and shall resolve them in accordance with the provisions of section 7.

(e) Each certifying agency shall develop with the Panel a consolidated application form, which shall include the application form in subsection (f) and shall be the sole application necessary for all governmental authorizations, Federal, State, interstate or local. The application shall include the applicant's environmental impact report to aid the certifying agency in complying with subsection (g) of this section. The applicant shall file the application with the certifying agency and with the Federal Electric Facilities Siting Panel established pursuant to subsection (f) of this section.

(f) There is hereby established in the Department of the Interior a Federal Electric Facilities Siting Panel. The Panel shall include the Secretary of the Interior, who shall act as chairman, the Attorney General, the Administrator of the Environmental Protection Agency, the Chairman of the Federal Power Commission, or their designees, and representatives of other Federal agencies the approval of which is required in order to construct or operate the electric facility for which a certificate is sought. The Panel shall include the Chairman of the Atomic Energy Commission or his designee with respect to applications for nuclear facilities. The Panel is directed:

(i) to develop a unified Federal application form which shall be the sole application for all necessary Federal authorizations;

(ii) to develop with each certifying agency for use in its jurisdiction a consolidated application composed of the unified Federal application form and

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the certifying agency's application form;

(iii) to expedite and coordinate Federal reviews of applications under subsection (a) of this section;

(iv) to provide highest priority to electric facility applications being considered pursuant to subsection (d) of this section;

(v) to expedite and coordinate Federal participation in the preparation and review of the environmental impact statement required under subsection (g) of this section; and

(vi) to assemble and transmit to the Secretary, as chairman of the Panel, a notice of required authorization or denial thereof by each Federal entity represented on the Panel.

(g) The certifying agency shall prepare a detailed statement meeting the requirements of section 102 of the National Environmental Policy Act of 1969 and guidelines of the Council on Environmental Quality.

(h) For a period of forty-eight months from the date of enactment of this Act, the certifying agency may waive the requirements of subsections (a), (b), (e) or (g) of this section upon a showing of good cause by the electric utility or Federal electric utility or on its own motion when an application pursuant to this Act is filed: Provided, however, That if the requirements of subsection (g) are waived the requirements of section 102(2)(C) of the National Environmental Policy Act shall apply to all Federal agencies. In the event of a natural disaster at any time the requirements of subsection (b) may be waived by the certifying agency with respect to transmission lines.

(i) Upon a showing by an electric utility or a Federal electric utility of changed circumstances requiring significant modifications in the design characteristics of a facility for which a certificate has been issued, the certification proceedings may be reopened to consider changes necessary in the certificate to accommodate the proposed modifications. The appropriate certifying agency shall limit the scope of issues before it to those directly related to the proposed modifications. In the event that the

certifying agency modifies any of the provisions of the certificate, the remaining provisions shall continue in force.

(j) Notwithstanding the requirements of this section with regard to the time periods for submission of application for certification under this Act in advance of planned commencement of construction, construction may begin on any electric facility certified under this Act sixty days after issuance of the appropriate certificate, subject to such legal requirements as may be otherwise determined through the exercise of judicial review pursuant to section 13.

SEC. 7. (a) The certifying agency is authorized to issue a certificate of site and facility if such body finds, after having considered the environmental and economic costs and benefits of the facility if constructed on the site proposed by the utility or any alternative sites proposed thereto within the limitations of section 6(b); the impact of the use of the site or such alternative sites on any applicable land-use program; the availability of fuels; the need for electric power, including adequacy and reliability of electric power supplies; and other relevant factors, that the use of the site or route will not unduly impair important environmental values and will be reasonably necessary to meet electric power needs. If the certifying agency determines not to issue a certificate for the electric utility's or Federal electric utility's proposed site it may issue such a certificate for the construction of a facility on one of the alternative sites considered. If the certifying agency chooses to issue a certificate for a site other than that proposed by the electric utility or Federal electric utility, it must first find that the utility's site is unacceptable under the provisions of this subsection. The judgment of such certifying agency shall be conclusive on all questions of siting, land use, public convenience and necessity, aesthetics, and any other State or local requirements. Compliance with air and water quality requirements shall be determined by the duly authorized State, interstate or Federal air or water pollution control agencies. In the issuance of such certificates the certifying agency may impose such reasonable terms and conditions

as it deems necessary. The certificate shall show the applicant's action to meet the objectives of section 202(a) of the Federal Power Act regarding reliability and adequacy of service. Such certificates, when issued, shall be final and subject only to judicial review pursuant to section 13.

(b) The certifying agency shall assure full public review and adequate consideration of all environmental values, including the impact of adjacent States, available alternatives, and other relevant factors bearing on whether the objectives of this Act would be best served by the issuance of the certificate, consideration of which has not been reserved to other agencies by Federal statute or subsection (a).

(c) The certifying agency shall, within sixty days after it has published notice of receipt for an application under this section, make a finding as to whether there is significant public controversy concerning the electric facility. If the certifying agency finds there is significant public controversy concerning the electric facility, it shall conduct a public hearing as part of its certification process. If the certifying agency finds there is no significant public controversy, it shall continue its certification process pursuant to subsection (a) but shall not conduct a public hearing.

CERTIFYING AGENCY AUTHORITIES

SEC. 8. Each agency is authorized and directed --

(a) to issue such rules and regulations, after public notice and opportunity for comment, as may be required to carry out the provisions of the Act. For purposes of this Act, the Secretary shall have the authority of an agency (as defined in 5 U.S.C. 551(1)) which is conferred by the provisions of Subchapter II of Chapter 5 of Title 5 of the United States Code, 5 U.S.C. 551-559 (the Administrative Procedure Act). Certificates may be issued by the Secretary pursuant to the procedures of 5 U.S.C. 553.

(b) to review and comment on the long-range plans prepared and filed pursuant to section 4 hereof and make the information contained therein readily available to the general public and interested governmental agencies.

(c) to compile and publish each year a descrip-

tion of the proposed electric facility sites within its jurisdiction as identified in the long-range plans of the electric utilities and Federal electric utilities pursuant to section 4 or as proposed by any other source, identifying the location of such sites and the approximate year when construction is expected to commence, and to make such information readily available to the general public, to each newspaper of daily or weekly circulation within the area affected by the proposed site, and to other interested Federal, State, interstate and local departments or agencies; and

(d) upon receipt of an application for a certificate to publish appropriate notice in the affected area which describes the location and other pertinent details concerning the electric facilities and which provides the date of the proposed public hearing thereon.

EMINENT DOMAIN

SEC. 9. An electric utility holding a certificate which cannot acquire by contract, or is unable to agree with the owner (other than the United States Government), of property as to compensation to be paid for the necessary rights-of-way or other property needed for certified electric facilities, may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. In any proceeding brought in the district court of the United States, the petitioner may file with the petition or at any time before judgment a declaration of taking in the manner and with the consequences provided by sections 1, 2, and 4 of the Act of February 26, 1931 (46 Stat. 1421-1422; 40 U.S.C. §§ 258a, 258b and 258d), and the petitioner shall be subject to all of the provisions of said section which are applicable to the United States when it files a declaration of taking hereunder.

CONGRESSIONAL CONSENT TO INTERSTATE AGREEMENTS

SEC. 10. The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts not in conflict with any law of treaty of the United States for cooperative effort and mutual assistance in certificating electric

facilities and related sites, for the enforcement of their respective laws thereon, and for the establishment of such authorities or agencies, joint or otherwise, as they may deem desirable for implementing such agreements or compacts. The right to alter, amend, or repeal this section is expressly reserved.

FEES

SEC. 11. Each certifying agency and the Secretary are hereby authorized to assess and collect fees, including filing fees, in a just and equitable manner from every electric utility and Federal electric utility operating within the jurisdiction of the legal authorities and procedures of said agency, such assessment and collection to be in an amount not in excess of the cost of administration of the qualified agency's program pursuant to this Act (including that of the Federal Electric Facilities Siting Panel).

STUDIES AND INVESTIGATIONS

SEC. 12. Each State certifying agency and the Secretary are authorized to conduct the studies or investigations deemed appropriate to carry out the purposes of this Act. The Secretary shall develop a program of studies of new and evolving siting concepts for electric facilities and shall make the results of such studies public.

JUDICIAL REVIEW

SEC. 13. Any person who is aggrieved or adversely affected by any final order of the Secretary or any State certifying agency or any other Federal, State, interstate or local department or agency disposing of an application for a certificate, Federal notice or other required authorization relative to electric facilities for which a certificate is sought, by issuance or denial thereof, may appeal within sixty days thereafter to the United States Court of Appeals for the circuit in which there is located the principal place of business of the applicant electric utility or Federal electric utility, with service of summons and notice of appeal at any place within the United States, and the Court shall have exclusive jurisdiction to affirm the action of the Secretary or State certifying agency or other Federal, State, interstate or local department or agency or to set it aside in whole or in part and for good cause shown, to remand

the case for further deliberation: Provided, That scope of such review shall be limited to setting aside action which the Court finds was arbitrary, capricious or an abuse of discretion: And Provided further, That any judgment of the Court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. Upon a filing of an appeal, the Clerk of the Court of Appeals shall forthwith transmit a copy of the notice to the Secretary, State certifying agency or other Federal, State, interstate or local department or agency, which shall file with the Court the record upon which the appealed action was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of the record, the jurisdiction of the Court shall be exclusive.

OTHER AFFECTED LAWS

SEC. 14. (a) The provisions of this Act shall in no way alter or otherwise affect the jurisdiction of the Council on Environmental Quality or the requirements of the National Environmental Policy Act of 1969 except that a single detailed statement shall be prepared in connection with each certificate by the certifying agency and circulated in compliance with the Guidelines of the Council on Environmental Quality. Such statement shall fulfill the responsibilities of all participating Federal agencies under section 102 (2)(C) of that Act with respect to the proposed facilities.

(b) Except as provided in this Act any present requirements arising from any Federal law, which may be applicable to any natural person, artificial person, or interest of government, Federal or State shall continue to apply.

PENALTIES

SEC. 15. (a) Whoever --

(1) without first obtaining a certificate commences to construct an electric facility after three years after the date of enactment of this Act; or

(2) having first obtained a certificate constructs, operates or maintains an electric facility other than in compliance with the certificate; or

(3) causes any of the aforementioned acts to

occur, shall be liable to a civil penalty of not more than $10,000 for each violation or for each day of a continuing violation. The penalty shall be recoverable in a civil suit brought by the Attorney General on behalf of the United States in the United States district court for the district in which the defendant is located or for the District of Columbia.

(b) Whoever knowingly and willfully violates subsection (a) shall be fined not more than $10,000 for each violation for each day of a continuing violation, or imprisoned for not more than one year or both.

(c) In addition to any penalty provided in subsections (a) or (b), whenever the Secretary determines that a person is violating or is about to violate any of the provisions of this section, he shall refer the matter to the Attorney General who may bring a civil action on behalf of the United States in the district court for the district in which the defendant is located or for the District of Columbia to enjoin the violation and to enforce the Act or an order or certificate issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

SECTION-BY-SECTION ANALYSIS

SECTION 1 - Short Title - Electric Facilities Siting Act of 1973.

SECTION 2 -- Findings and Purposes - In furtherance of national environmental policy as set forth in National Environmental Policy Act of 1969 and of national electric energy policy as set forth in the Federal Power Act, Congress determines that the national public interest in the environment, interstate commerce, investors and consumers of electric energy require--

(a) that electric facilities needed for reliable power supply be constructed on a timely basis in consonance with environmental and natural resource values;

(b) that utilities should engage in adequate open long-range planning and bodies should be established to certify electric facilities prior to construction;

(c) that appropriate electric facilities and related sites should be subject to expeditious coordinated approval at the Federal and State levels.

SECTION 3. Definitions --

(a) "electric utility" is one of two types of regulated parties. The term applies to all non-Federal systems which own or operate electric facilities and includes States, municipals, individuals, corporations, cooperatives and any other types of organizations;

(b) "Federal electric utility" is the other type of regulated party and includes all Federal electric power suppliers, such as the Tennessee Valley Authority and the Bonneville Power Administration;

(c) "electric facilities" applies to electric generating equipment of 300 megawatts or more (or additions thereto of 200 megawatts or more) and transmission lines of 230 kilovolts and higher, together

with associated facilities. Hydroelectric facilities, which are licensed under Part I of the Federal Power Act, are excluded from the meaning of the term;

(d) "Secretary" -- Secretary of the Interior;

(e) "certifying agency" identifies the State or regional agencies who may certificate sites and facilities and includes the Secretary when he is acting in a similar capacity;

(f) "regional" - the governments of two or more States;

(g) "commencement of construction" - is defined in terms of site preparation which would adversely affect the natural environment but excludes temporary recreational use, preconstruction testing and monitoring to establish site suitability;

(h) "certificate" - is the certificate of site and facility issued pursuant to sections 6 and 7 which evidences approval by the certifying agency;

(i) "Federal notice" - a notice issued by the Secretary evidencing satisfaction of all Federal requirements; and

(j) "State" - any of the fifty states, the District of Columbia and Puerto Rico.

SECTION 4. Long-range Planning -- (a) establishes a statutory requirement that all electric utilities and Federal electric utilities prepare annually coordinated regional long-range plans for electric facilities; that the plans be made available to government and the public; and that they be part of a regional plan. The section requires the plans to contain certain specified information and permits the appropriate State certifying agency, the Secretary or the Federal Power Commission to require additional information needed to carry out the Act's purposes.

(b) requires that each electric utility and Federal

electric utility give initial public notice of such plans by filing annually copies thereof and projections of the electric demand they are intended to meet, with appropriate government agencies at the Federal, State, regional, and local levels and with interested citizens groups requesting them.

SECTION 5. Designation of State Certifying Agencies -- establishes a system for the certification of large electric facilities prior to their construction;

(a) affords the States an initial period of two years in which to establish a decision-making agency at the State or regional level to certify the electric facilities and related sites of non-Federal utilities. The agency may be either an existing agency of State government such as a natural resources agency or the public utility commission, or a newly created power plant siting agency. The section requires that the State certifying agencies provide for the participation in the decision-making process by environmental protection, natural resource, planning and electric power service agencies of the State government. Participation by the public may also be provided for.

(b) provides for notice to the Secretary by the governor of each State which designates a certifying agency, Secretarial review of the agency's authorities and procedures, and issuance of an order of qualification if they are in compliance with the Act, which shall constitute conclusive evidence of the agency's authority to exercise the provisions of section 6;

(c) authorizes a Secretarial certification procedure with respect to electric entities in any State which does not establish and qualify its procedures within twenty-five months after enactment or which has its qualification revoked; such Federal certification to continue in any State until the latter has a qualified certification procedure; authorizes transitional procedures which the Secretary may adopt in transferring pending matters to State certifying agencies;

(d) authorizes judicial review of Secretarial action

denying an order of qualification or revoking an effective certificate by a United States Court of Appeals, based on whether the Secretary's findings are supported by substantial evidence.

SECTION 6. Certification of Sites and Facilities -- implements the certification requirements for all electric facilities as follows:

(a)(i) Non-Federal Facilities -- prohibits electric utility from commencing construction or beginning operation of non-Federal electric facilities 3 years after enactment unless (a) a certificate of site and facility is obtained from the qualified State certifying agency (or lacking such a qualified agency, from the Secretary) and (b) a Federal notice is received from the Secretary evidencing receipt of all Federal authorizations;

(ii) Federal Facilities -- prohibits the commencement of construction or beginning of operation of Federal electric facilities 3 years after enactment unless (a) a certificate of site and facility is obtained from the Secretary; and (b) a Federal notice is received from the Secretary.

Certified facilities must be constructed in accordance with the certificate and Federal notice.

Facilities already operational 3 years after enactment and those under construction for which a sizable investment has been made need not be certified. If a certificate and Federal notice are obtained to construct an electric facility, no certificate or Federal notice need be obtained to operate the facility.

(b) requires that applications for a certificate be filed not more than 5 nor less than 3 years prior to commencement of construction. A utility is required to specify in its plans any site for which it intends to apply for a certificate not less than 2 years prior to the date on which it will apply. The certifying agency and other persons have until one year prior to the utility's specified application date to designate alternative sites. These requirements can be modified

for good cause. Only the sites designated in accordance with this procedure will be considered as appropriate alternative sites when the certifying agency reviews the application under section 7(a), although the agency may consider any alternatives with respect to the facilities to be constructed on the designated sites.

(c) requires all governmental action on an application to be complete within eighteen months of filing.

(d) permits any non-Federal electric utility to petition the Secretary for a certificate if the State certifying agency fails to act in a timely or conclusive manner on the application and if the adequacy and reliability of the regional bulk power supply system imperatively and unavoidably requires a decision. The Federal Power Commission is directed to prescribe by regulation the factual bases upon which to determine whether circumstances require the Secretary to act, and the Secretary would act upon a finding by the Commission that an adequate and reliable regional bulk power supply would be materially impaired by reason of a State's failure to act on a timely basis. The Secretary must accord priority consideration to such situations.

(e) directs each certifying agency to develop with the Federal Electric Facilities Siting Panel established by the Act a consolidated application form. The form will include a Federal section and the consolidated form will be the sole application necessary for all governmental authorizations. The form must also include an environmental impact report prepared by the utility to aid the certifying agency in meeting its responsibility to prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act.

(f) establishes a Federal Electric Facilities Siting Panel under the chairmanship of the Secretary and with the Attorney General, the Administrator of the Environmental Protection Agency, the Chairman of the Federal Power Commission, the Chairman of the Atomic Energy Commission (for nuclear facilities), or their designees, and representatives of other Federal agencies

the approval of which is required for the facility, as members. Functions of the Panel are specified.

(g) requires the certifying agency to prepare an environmental impact statement meeting the requirements of section 102 of the National Environmental Policy Act of 1969 with respect to each application for a certificate.

(h) permits the certifying agency to waive section 6(a), (b), (e) or (g) requirements for good cause during the first 48 months after enactment, but if the section 6(g) requirement is waived, the NEPA section 102(2)(C) requirement continues to apply to all Federal agencies.

(i) permits reopening of certification proceedings after a certificate is issued to accommodate facility design modifications, such as those required by a change in fuel. In the event the proceedings are reopened the issues are limited to those directly related to proposed modifications. Permitting such proceedings to be reopened thus allows the certifying agency to rely on its original proceedings in reissuing an application without the necessity for filing a completely new application.

(j) permits construction of facilities to begin within 60 days after issuance of a certificate for the facilities, unless judicial review of the certification proceedings is sought.

SECTION 7. Standards and Procedures for Certificates -- establishes standards and procedures to be used by certifying agencies when certifying electric facilities.

(a) authorizes certifying agency to issue certificate if it finds the site or route will not unduly impair environmental values and will be reasonably necessary to meet electric power needs. In making this determination the agency is directed to consider environmental and economic costs and benefits of the facility if constructed on any of the sites developed pursuant to section 6(b); the impact of the use of such sites on applicable land-use programs, the availability of fuels, the need for electric power, including

adequacy and reliability of supplies, and other relevant factors. The certifying agency can issue a certificate for any of the alternate sites developed in accordance with section 6(b). It may reject the site for which the utility seeks a certificate based on its consideration of all relevant factors, including a determination that one of the alternate sites developed pursuant to section 6(b) is preferable.

The section provides that the judgment of the agency is conclusive on all questions of siting, land use, State, public convenience and necessity, aesthetics and any other State or local requirements but that compliance with air and water quality requirements shall be determined by the duly authorized State, interstate or Federal air or water pollution control agencies.

It requires that the certificate shall show the applicant's action to meet the objectives of section 202(a) of the Federal Power Act regarding reliability and adequacy of electric service.

It authorizes the certifying agency to impose terms and conditions when issuing certificates, and provides that the certificates are final and subject only to judicial review.

(b) requires that the certifying agency assure full public review and give adequate consideration to all environmental values including the impact on adjacent States, and other relevant factors.

(c) permits the certifying agency to dispense with a public hearing when it finds there is no significant public controversy with respect to a particular site for which application has been made.

SECTION 8. Certifying Agency Authorities -- delineates the duties and authorities of certifying agencies, which are directed--

(a) to issue rules and regulations to carry out the Act. The Secretary is given the authority of an "agency" under the Administrative Procedure Act, including rule-making and subpoena power;

making and subpoena power;

(b) to review and comment on the long-range plans submitted by utilities pursuant to section 4 and to make such information public.

(c) to compile and publish annual descriptions of proposed electric facility sites, including the approximate year when construction is expected to begin, making such information generally available to the public;

(d) to publish upon receipt of an application, appropriate notice in the affected area of pertinent details concerning the application, which includes the date of the proposed public hearing thereon.

SECTION 9. Eminent Domain -- authorizes non-Federal utilities holding certificates to utilize eminent domain procedures in Federal or State courts to acquire needed non-Federal property. Where Federal courts are used, quick take procedures apply.

SECTION 10. Congressional Consent to Interstate Agreements -- gives advance consent of Congress to the negotiation and implementation of agreements or compacts to effectuate the certification procedures of the bill through authorities or agencies, joint or otherwise.

SECTION 11. Fees - authorizes each certifying agency and the Secretary to assess and collect fees from utilities operating within its jurisdiction to cover the agency's costs of administration, necessary studies and personnel. Such fees would defray expenses of the Federal Electric Facilities Siting Panel and its member agencies and could make the certification procedure entirely self-supporting.

SECTION 12. Studies and Investigations -- authorizes certifying agencies to conduct studies and investigations appropriate to carry out the Act's purposes and authorizes the Secretary to develop a coordinated program of studies of new and evolving siting concepts for electric facilities.

SECTION 13. Judicial Review -- subjects the orders and

decisions of the Secretary or any State certifying agency with respect to an application for a certificate to judicial review by a United States Court of Appeals based on the standard of whether action is arbitrary, capricious, or an abuse of discretion.

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Managing the Land

Environmental Protection Tax Act

Protecting Coastal Wetlands

Encouraging Rehabilitation of Older Buildings

Promoting Charitable Donations of Land for Conservation

OFFICE OF THE SECRETARY OF THE TREASURY
WASHINGTON, D.C. 20220

February 19, 1973

Dear Mr. [President/Speaker]:

In accordance with the President's Message of February 15, 1973, with respect to environmental legislation, I am enclosing a draft bill entitled the "Environmental Protection Tax Act of 1973," along with a section-by-section analysis, for consideration by the Congress.

The proposed legislation is designed to preserve the nature of our coastal wetland areas by generally reducing the Federal income tax benefits related to investments and improvements in those areas. The bill would additionally encourage greater rehabilitation, rather than demolition, of older buildings in our urban areas. The legislation is simply designed to make restoration of historic structures more appealing to private investors. Finally, the bill modifies certain restrictions on the deductibility of charitable gifts of partial interests in lands to be used for conservation purposes.

These proposals are described in more detail in the accompanying materials. It would be appreciated if you would lay the proposed legislation before the House of Representatives. A similar communication has been addressed to the [President of the Senate/Speaker of the House of Representatives].

We have been advised by the Office of Management and Bud Budget that there is no objection to the presentation of this draft bill to the Congress, and that its enactment would be in accord with the program of the President.

Sincerely yours,

/s/George P. Shultz

The Honorable
Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

The Honorable
Carl Albert
Speaker of the House
of Representatives
Washington, D.C. 20515

Enclosures

H.R. 5584

A BILL

To amend the Internal Revenue Code of 1954 to encourage the preservation of coastal wetlands, open space, and historic buildings and to encourage the preservation and rehabilitation of all structures, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I. SHORT TITLE, ETC.

Sec. 101. SHORT TITLE.

This Act may be cited as the "Environmental Protection Tax Act of 1973".

Sec. 102. AMENDMENT OF 1954 CODE.

Whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE II. PRESERVATION OF COASTAL WETLANDS

Sec. 201. DEPRECIATION OF IMPROVEMENTS ON HISTORIC SITES AND IN COASTAL WETLANDS.

(a) Section 167 (relating to depreciation) is amended by redesignating subsection "(n)" as subsection "(p)", and by inserting after subsection "(m)" the following new subsection:

"(n) STRAIGHT LINE METHOD IN CERTAIN CASES. --

"(1) IN GENERAL. In the case of any property in whole or in part constructed, reconstructed, erected, or used --

"(A) in coastal wetlands (as defined in section 7701 (a)(35)), or

"(B) on a site which was, on or after February 15, 1973, occupied by a certified historic structure (as defined in section 189 (d)(1)) which is demolished or substantially altered (other than by virtue of a certified rehabilitation as defined in section 189(d)(2)) after such date,

subsections (b), (j), (k), and (l) shall not apply, and the term 'reasonable allowance' as used in subsection (a) shall mean only an allowance computed

under the staright line method.

"(2) EXCEPTION. The limitations imposed by this subsection shall not apply to property which is not affixed to land or improvements, or to property which is a certified coastal wetlands improvement (as defined in section 7701 (a)(36))."

(b) The amendment made by this section shall apply to property placed in service after December 31, 1973.

Sec. 202. RECAPTURE ON DISPOSITION OF PROPERTY.

Section 1245 (relating to gain from disposition of certain depreciable property) is amended as follows:

(1) In section 1245(a) (2) strike out "or" at the end of subparagraph (C); insert "or" at the end of subparagraph (D); and immediately thereafter add a new subparagraph (E) to read as follows:

"(E) with respect to any property referred to in paragraph (3) (E), its adjusted basis recomputed by adding thereto all adjustments."

(2) In section 1245(a) (3), strike out "or" at the end of subparagraph (C), delete the period and insert", or" at the end of subparagraph (D), and immediately thereafter add a new subparagraph (E) to read as follows:

"(E) property placed in service in coastal wetlands after December 31, 1973 (other than certified coastal wetlands improvements)."

Sec. 203. SOIL AND WATER CONSERVATION EXPENDITURES AND LAND CLEARING EXPENDITURES.

(a) Section 175(c) (1) (relating to soil and water conservation expenditures) is amended --

(1) by striking out "or" at the end of subparagraph (A); by striking out "section" and inserting in lieu thereof, "section, or" at the end of subparagraph (B), and by inserting immediately after subparagraph (B) a new subparagraph (C) to read as follows:

"(C) any amount paid or incurred with respect to coastal wetlands (other than amounts paid or incurred with respect to certified coastal wetlands improvements)."

(2) by striking out "preceding sentences." in the flush material immediately following new subparagraph (C) and inserting in lieu thereof, "preceding sentences, except as provided in subparagraph

(C)."

(b) Section 182(d)(1) (relating to expenditures by farmers for clearing land) is amended by striking out "or" at the end of subparagraph (A), by striking out "section" and inserting in lieu thereof "section, or" at the end of subparagraph (B), and by adding a new subparagraph (C) at the end thereof to read as follows:

"(C) any amount paid or incurred with respect to coastal wetlands (other than amounts paid or incurred with respect to certified coastal wetlands improvements)."

(c) The amendments made by this section shall apply to taxable years beginning after December 31, 1973.

Sec. 204. CARRYING CHARGES ON COASTAL WETLANDS PROPERTY.

(a) Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding after section 279 the following new section:

"Sec. 280. CARRYING CHARGES ON COASTAL WETLANDS PROPERTY.

"(a) IN GENERAL. Deductions for the taxable year of amounts otherwise allowable under section 163 or 164, or under section 162 to the extent such amounts would also have been allowable under section 163 or 164, which are attributable to land under development and associated improvements in the coastal wetlands (other than land and associated improvements which are certified coastal wetlands improvements) shall be allowed only to the extent of net income derived from such coastal wetlands. If for any taxable year such deductions exceed such income, the excess shall be charged to capital account.

"(b) NET INCOME FROM COASTAL WETLANDS. For purposes of this section, 'net income from coastal wetlands' means gross income for the taxable year derived from land under development, and associated improvements in the coastal wetlands (other than land and associated improvements which are certified coastal wetlands improvements), reduced by all deductions directly connected with the production of such income, other than items of deduction described in section 163 or 164."

(b) The amendment made by this section shall apply to taxable years beginning after December 31, 1973.

(c) The Table of sections for part IX of subchapter B of chapter 1 is amended by adding at the end thereof:

"Sec. 280. Carrying charges on coastal wetlands property."

Sec. 205. DEFINITION OF COASTAL WETLANDS.

Section 7701 (a) (relating to definitions) is amended by adding after paragraph (34) the following new paragraph:

"(35) COASTAL WETLANDS. The term 'coastal wetlands' means those areas of open water, marsh, swamp, or other coastal wetlands which --

"(A) correspond to types 12 through 20 identified in Circular 39 of the Fish and Wildlife Service, United States Department of the Interior,

"(B) are of biological significance due to their production of or capacity to produce vegetation and other types of living organisms important to the maintenance of the ecology of the coastal zone,

"(C) are influenced by tidal water, and

"(D) lie shoreward within the territorial sea of the three fathom depth line as shown on National Oceans Survey Marine Charts,

and which are certified to the Secretary or his delegate as falling within the above definition by the Secretary of the Interior with the approval of the Secretary of Commerce."

(b) CERTIFIED COASTAL WETLANDS IMPROVEMENTS. Section 7701(a) (relating to definitions) is amended by adding after paragraph (35) the following new paragraph:

"(36) CERTIFIED COASTAL WETLANDS IMPROVEMENT. The term 'certified coastal wetlands improvement' means any improvement, change, or other alteration to coastal wetlands which the Secretary of the Interior, with the approval of the Secretary of Commerce, has certified to the Secretary or his delegate --

"(A) as not being in conflict with applicable regulations of Federal and State agencies relating to the protection of the coastal wetlands, and

"(B) as not requiring an environmentally undesirable degree of draining, dredging or filling in the coastal wetlands affected."

TITLE III. HISTORIC PRESERVATION

Sec. 301. AMORTIZATION OF REHABILITATION EXPENDITURES.

(a) Part VI of subchapter B of chapter 1 (relating to itemized deductions) is amended by adding at the end thereof the following new section:

"Sec. 189. AMORTIZATION OF CERTAIN REHABILITATION EXPENDITURES FOR CERTIFIED HISTORIC STRUCTURES.

"(a) ALLOWANCE OF DEDUCTION. Every person at his election, shall be entitled to a deduction with respect to the amortization of the amortizable basis of any certified historic structure (as defined in subsection (d)) based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any month shall be in lieu of the depreciation deduction with respect to such basis for such month provided by section 167. The 60-month period shall begin, as to any historic structure, at the election of the taxpayer, with the month following the month in which the basis is acquired, or with the succeeding taxable year.

"(b) ELECTION OF AMORTIZATION. The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the basis is acquired, or with the taxable year succeeding the taxable year in which such basis is acquired, shall be made by filing with the Secretary or his delegate, in such manner, in such form, and within such time, as the Secretary or his delegate may by regulations prescribe, a statement of such election.

"(c) TERMINATION OF AMORTIZATION DEDUCTION. A taxpayer who has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary or his delegate before the beginning of such month. The depreciation deduction provided under section 167

shall be allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such certified historic structure.

"(d) DEFINITIONS. For purposes of this section --

"(1) CERTIFIED HISTORIC STRUCTURE. The term 'certified historic structure' means a building or structure subject to the allowance for depreciation provided in section 167 which --

"(A) is listed in the National Register, or

"(B) is located in a Registered Historic District and is certified by the Secretary of the Interior or his delegate as being of historic significance to the District.

"(2) CERTIFIED REHABILITATION. The term 'certified rehabilitation' means any rehabilitation of a certified historic structure or of any other structure located in a Registered Historic District, which the Secretary of the Interior or his delegate has certified as being consistent with the historic character of such property or district.

"(3) AMORTIZATION BASIS. The term "amortizable basis' means the portion of the basis attributable to additions to capital account which --

"(i) are amounts expended for certified rehabilitation, and

"(ii) are described in section 167(o)(2).

"(e) DEPRECIATION DEDUCTION. The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be allowed with respect to the portion of the adjusted basis which is not the amortizable basis.

"(f) LIFE TENANT AND REMAINDERMAN. In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

"(g) CROSS REFERENCE.

"(1) for rules relating to the listing of buildings and structures in the National Register and for definitions of 'National Register' and 'Registered Historic District,' see section 470

et seq. of title 16 of the United States Code.

"(2) For special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1238."

(b) GAIN ON DISPOSITION OF REGISTERED STRUCTURES. Section 1238 (relating to amortization in excess of depreciation) is amended to read as follows:

"Sec. 1238. AMORTIZATION IN EXCESS OF DEPRECIATION.

"Gain from the sale or exchange of property, to the extent that the adjusted basis of such property is less than its adjusted basis determined without regard to section 168 or 189, shall be considered as ordinary income."

(c) CONFORMING AMENDMENTS.

(1) The table of sections for part VI of subchapter B of Chapter 1 is amended by inserting at the end thereof the following new item:

"Sec. 189. Amortization of rehabilitation expenditures on certified historic structures."

(2) The heading and first sentence of section 642(f) (relating to special rules for credits and deductions of estates and trusts) are amended to read as follows:

"(f) AMORTIZATION DEDUCTIONS. The benefit of the deductions for amortization provided by sections 168, 169, 184, 187, 188, and 189 shall be allowed to estates and trusts in the same manner as in the case of an individual."

(3) Section 1082(a)(2)(B) (relating to basis for determining gain or loss) is amended by striking out "or 188;" and inserting in lieu thereof "188, or 189;".

(4) Section 1250(b)(3) (relating to depreciation adjustments) is amended by striking out "or 188)." and inserting in lieu thereof "188, or 189)."

(d) EFFECTIVE DATE. The amendments made by this section shall apply with respect to additions to capital account made after February 15, 1973.

Sec. 302. DEMOLITION.

(a) DISALLOWANCE OF DEDUCTIONS. Part X of subchapter B of chapter 1 (relating to terminal railroad corporations and their shareholders) is amended by

redesignating section 281 as section 291 and part IX of such subchapter (relating to items not deductible) is amended by adding after section 280 the following new section:

"Sec. 281. DEMOLITION OF CERTAIN HISTORIC STRUCTURES.

"(a) GENERAL RULE. In the case of the demolition of a certified historic structure described in section 189(d)(1) (but without regard to paragraph (C) of that section) --

"(1) no deduction otherwise allowable under this chapter shall be allowed to the owner or lesee of such structure for --

"(A) any amount expended for such demolition, or

"(B) any loss sustained on account of such demolition.

"(2) Amounts described in paragraph (1) shall be treated as property chargeable to capital account with respect to the land on which the demolished structure was located.

"(b) SPECIAL RULE FOR REGISTERED HISTORIC DISTRICTS. For purposes of this section, any building or other structure located in a Registered Historic District shall be treated as a 'certified historic structure' unless the Secretary of the Interior of his delegate has certified, prior to the demolition of such structure, that such structure is not of historic significance to the District."

(b) EFFECTIVE DATE. The amendments made by this section shall apply with respect to demolitions commencing after the date of enactment of this bill.

(c) CONFORMING AMENDMENTS.

(1) The table of sections for part X of subchapter B of chapter 1 (relating to terminal railroad corporations and their shareholders) is amended by redesignating "Sec. 281" as "Sec. 291".

(2) The table of sections for part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding at the end thereof the following new item:

"Sec. 281. Demolition of certain historic structures."

TITLE IV. REHABILITATION

Sec. 401. SUBSTANTIALLY REHABILITATED PROPERTY.

(a) Section 167 (relating to depreciation) is

amended by inserting after subsection (n) the following new subsection:

"(o) SUBSTANTIALLY REHABILITATED PROPERTY.

"(1) GENERAL RULE. Pursuant to regulations prescribed by the Secretary or his delegate, the taxpayer may elect to compute the depreciation deduction attributable to substantially rehabilitated property as though the original use of such property commenced with him.

"(2) SUBSTANTIALLY REHABILITATED PROPERTY. The term 'substantially rehabilitated property' means property which is of a character subject to the allowance for depreciation under section 167, and is property described in section 1250 with respect to which the additions to capital account during the 24-month period ending on the last day of any taxable year, reduced by any amounts allowed or allowable as depreciation or amortization allowable thereto, exceeds the greater of--

"(A) the adjusted basis of such property, or

"(B) $5,000.

The adjusted basis of the property shall be determined as of the beginning of the first day of such 24-month period, or of the holding period of the property (within the meaning of section 1250(c)), whichever is later."

(b) EFFECTIVE DATE. The amendment made by this section shall apply with respect to additions to capital account occurring after June 30, 1974.

TITLE V. CHARITABLE TRANSFERS FOR CONSERVATION PURPOSES

Sec. 501. TRANSFERS OF PARTIAL INTERESTS IN PROPERTY FOR CONSERVATION PURPOSES.

(a) INCOME TAX DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS OF PARTIAL INTERESTS IN PROPERTY FOR CONSERVATION PURPOSES. Section 170 (f)(3) (relating to charitable contributions) is amended--

(1) by striking out "or" at the end of subparagraph (B)(i),

(2) by striking out "property,", at the end of subparagraph (B)(ii) and inserting in lieu thereof "property,"

(3) by adding after clause (ii) of subparagraph (B) the following new clauses:

"(iii) a lease on, option to purchase, or easement with respect to real property of not less than 30 years duration granted to an organization described in subsection (b)(1)(A) exclusively for conservation purposes, or

"(iv) a remainder interest in real property which is granted to an organization described in subsection (b)(1)(A) exclusively for conservation purposes." and

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

"(C) CONSERVATION PURPOSES DEFINED. For purposes of subparagraph (B), the term 'conservation purposes' means--

"(i) the preservation of land areas for public outdoor recreation or education, or scenic enjoyment:

"(ii) the preservation of historically important land areas or structures; or

"(iii) the protection of natural environmental systems."

(b) ESTATE TAX DEDUCTION FOR TRANSFERS OF PARTIAL INTERESTS IN PROPERTY FOR CONSERVATION PURPOSES. Section 2055(e)(2) (relating to deductions from gross estate) is amended by striking out "(other than a remainder interest in a personal residence or farm or an undivided portion of the decedent's entire interest in property)" and inserting in lieu thereof "(other than an interest described in section 170(f)(3)(B))."

(c) GIFT TAX DEDUCTION FOR TRANSFERS OF PARTIAL INTERESTS IN PROPERTY FOR CONSERVATION PURPOSES. Section 2522(c)(2) (relating to deductions from taxable gifts) is amended by striking out "(other than a remainder interest in a personal residence or farm or an undivided portion of the donor's entire interest in property)" and inserting in lieu thereof "(other than an interest described in section 170(f) (3)(B))."

(d) EFFECTIVE DATE. The amendments made by this section shall apply with respect to contributions and transfers made after February 15, 1973.

SECTION-BY-SECTION ANALYSIS

ENVIRONMENTAL PROTECTION TAX ACT OF 1973

TITLE I SHORT TITLE, ETC.

Title I labels the Act as the "Environmental Protection Tax Act of 1973," and specifies that all amendments contained in the Act are amendments to the Internal Revenue Code.

TITLE II PRESERVATION OF COASTAL WETLANDS

Section 201

Section 201 adds a new subsection (n) to section 167 of the Code, providing that the depreciation deduction for property constructed, reconstructed or erected in the coastal wetlands may be computed only by use of the straight line method of depreciation. A similar rule is applied in the case of buildings constructed on sites where a registered historic structure has been demolished.

The limitation of depreciation methods will apply with respect to property placed in service after December 31, 1973.

Section 202

Section 202 amends section 1245 of the Code to provide that gain on the disposition of improvements located in coastal wetlands will be treated as ordinary income to the extent of all depreciation deductions claimed with respect to such improvements. This amendment will apply to dispositions of property placed in service in the coastal wetlands after December 31, 1973.

Section 203

Section 203 of the bill adds a new subparagraph C to sections 175(c)(1) and 182 (d)(1) of the Code, providing, in effect, that certain land clearing expenditures and certain soil and water conservation expenditues (such as expenses for draining, dredging or filling) with regard to coastal wetlands are not deductible under the special rules of Code sections 175 and 182. Thus, these expenses would have to be capitalized.

Disallowance of deductions for these expenditures would apply to taxable years beginning after December 31, 1973.

Section 204

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Section 204 of the bill adds a new section 280 to the Code, providing in effect that no deduction for interest and taxes will be allowed where it is attributable to land under development and associated improvements in the coastal wetlands. However, these deductions would be allowed to the extent of any income derived from such coastal wetlands. The amount of such disallowed deductions is to be charged to the capital account.

This section will apply to taxable years beginning after December 31, 1973.

Section 205

Section 205 of the bill defines coastal wetlands as areas of open water, marsh, swamp, etc., corresponding to types 12 through 20 in Circular No. 39 of the Fish and Wildlife Service of the U.S. Department of Interior, which are of biological significance, are influenced by tidal water, and which lie shoreward within the territorial sea of the three fathom depth line as shown on National Oceans Survey Marine Charts. It is further provided that the Secretary of the Interior, after consultation with the Secretary of Commerce, will provide the Secretary of Transportation with a detailed description (in the form of maps) of lands which fall within this definition.

Section 205 also defines certified wetlands improvements which will be exempt from the provisions of the Act. Certification requires a finding by the Secretaries of the Interior and Commerce that the improvement does not conflict with regulations and does not require an environmentally undesirable degree of draining, dredging, or filling.

TITLE III HISTORIC PRESERVATION

Title III contains provisions intended to encourage preservation of historic buildings and structures certified by the Secretary of the Interior as registered or qualified for registration on the National Registry. In addition to the provisions of Title III, Section 201 of the Bill limits depreciation to the straight line method in the case of buildings constructed on sites which were formerly occupied by demolished historic structures.

Section 301

Section 301 adds a new section 189 to the Code,

permitting a 5-year write-off of rehabilitation expenditures incurred with respect to historic structures which are used in the taxpayer's trade or business or held for the production of income provided that property acquired in connection with such expenditure is otherwise eligible for the depreciation allowance.

On the disposition of a certified historic structure, gain would be treated as ordinary income to the extent that the special write-off provided under this section exceeded the depreciation deduction which would have otherwise been allowable (without regard to this provision). This section would apply with respect to all expenditures made after February 15, 1973.

Section 302

Section 302 would add a new section 281 to the Code (while re-designating the present section 281 as section 291). Under the new section 281, no deduction would be allowed for amounts expended in the demolition of a registered historic structure, or for the undepreciated cost of such a structure. Both items would have to be allocated to the basis of the land. The section would apply to all demolitions occurring after the date of enactment.

TITLE IV. REHABILITATION

Section 401

Section 401 would add a new subsection (o) to the general depreciation rules of section 167. Under this new provision, if a taxpayer substantially rehabilitated depreciable property, he would be permitted to elect to compute depreciation with respect to his pre-existing basis in the building as though the entire structure was first placed in service by him. This will permit a taxpayer who purchases a used building and rehabilitates it to utilize so-called accelerated methods of depreciation, a privilege which is not now accorded taxpayers under the law.

In order to qualify for this special treatment, the amounts added to capital account during a 24-month period must be at least $5,000 in amount and must be greater than the undepreciated cost of the property, determined at the beginning of the 24-month period. The provision is effective with respect to such expenditures incurred

after June 30, 1974

TITLE V. CHARITABLE TRANSFERS FOR CONSERVATION PURPOSES

Title V provides several amendments to the charitable contribution provisions in section 170 of the Code, the effect of which is to permit a charitable contribution deduction for certain types of transfers which are not presently allowed under the law. Specifically, section 501(a) provides that a charitable deduction will not be denied on the transfer of a partial interest in property, where the interest is either an easement of 30 or more years duration granted exclusively for conservation purposes, or is a remainder interest in real property which is granted exclusively for conservation purposes. "Conservation purposes" mean the preservation of open land areas for public outdoor recreation or education, or scenic enjoyment; the preservation of historically important land areas or structures; or the protection of natural environmental systems.

These amendments would apply with respect to contributions made after February 15, 1973.

Managing the Land

Management of Public Lands

THE SECRETARY OF THE INTERIOR

WASHINGTON

February 27, 1973

Dear Mr. [President/Speaker]:

Enclosed is a bill "To provide for the management, protection, development and sale of the national resource lands, and for other purposes."

We recommend that this bill, a part of the environmental program announced February 15, 1973, by the President in his Environment and Natural Resources State of the Union Message, be referred to the appropriate committee and that it be enacted.

With this bill, this Department is proposing legislation which, for the first time, would state the national policies and guidelines governing the use and management of 450 million acres of national resource lands administered by the Secretary of the Interior through the Bureau of Land Management.

The national resource lands are the largest system of Federal lands, but for many years they were neglected. From 1812 to 1946 they were under the custodial administration of the General Land Office in the Department of the Interior. Its primary responsibility was to survey the land and convey it to qualified applicants. In 1934, pursuant to the Taylor Grazing Act, the Grazing Service was created within the Department. Its responsibility was to administer a grazing district management program designed to protect and regulate the use of the public range lands. The Bureau of Land Management was created in 1946 primarily through the consolidation of the functions of these two agencies.

The variety of responsibilities of the Bureau of Land Management is extraordinary among the Federal resource management agencies. Briefly, it has responsibility for the management of 450 million acres of national resource lands as well as limited management responsibilities on

millions of acres of withdrawn lands. It has joint responsibility with the Geological Survey for the administration of the mineral laws on the Outer Continental Shelf and on the over 800 million acres of public domain, acquired lands and lands in which there are mineral reservations. In all, it has at least a part in administering about 60% of the Federal lands. The Bureau also keeps the basic public land records and does land boundary surveys for most Federal lands. Despite these extensive responsibilities, Congress has never clearly defined the Bureau's mission or the Bureau's authority to accomplish its mission. Unlike the National Park Service and the National Forest Service, the mission and authority of the Bureau of Land Management must be gleaned from some 3,000 land laws which have accumulated over some 170 years.

This piecemeal collection of laws is sometimes conflicting and is grossly inadequate. The Bureau does not have essential administrative authority enjoyed by other Federal agencies such as a working capital fund, authority to enforce its rules and regulations and authority to contract with State and local law enforcement agencies for protection of lands under its jurisdiction.

The bill submitted with this letter would provide the basic mission statement and authority for management, sale, and the administration of the national resource lands. The format of the bill is designed in view of the long-range needs for a legislative base for the management of the national resource lands, as pointed out in various analyses, including that of the Public Land Law Review Commission. Each title of the proposal is designed to permit separate consideration of its provisions and to permit modifications without review of other titles. It also contemplates addition of new titles to cover other subject matter. And, it provides for a separate repealer title which will permit the accumulation of references to repealed legislation. This would be significant to preservation of existing valid rights.

Title I of the proposal, the "National Resource Lands

Management Act", directs the Secretary to manage the national resource lands under principles of multiple use and sustained yield and in accordance with comprehensive land use plans which he must prepare. It provides the Secretary with guidelines for developing the land use plans including a requirement that he give priority to the protection of areas of critical environmental concern such as flood plains, coastal zones and scenic or historic areas. The Secretary is also directed to inventory the national resource lands and use the inventory in developing the land use plans. The inventory will provide a thorough knowledge of the national resource lands and purposeful plans for their use will greatly help us to arrest the destruction too long and too carelessly inflicted on those lands.

Title II, the "National Resource Lands Sale Act", would provide modern disposal authority. It would authorize the Secretary to sell tracts of national resource lands for fair market value if they are isolated and not suitable for management by the Bureau of Land Management or any other Federal agency, if they were purchased for a specific purpose and are no longer suitable for that or any other Federal purpose or if transfer would serve an overriding public benefit. It would also authorize the Secretary in certain instances to sell reserved mineral interests in lands to the surface owners.

Title III, the "National Resource Land Administration Act," would provide modern land management tools and procedures designed to facilitate achievement of the goals and objectives established for the national resource lands.

Specifically, it would provide the authority to acquire, by purchase or exchange, lands necessary for authorized programs or for blocking up existing land holdings. It would provide authority to issue a document of disclaimer of interest in land to which the United States no longer claims an interest.

It would establish a working capital fund for the Bureau of Land Management and it would afford a more efficient method of accounting for various programs and service

operations of the Bureau of Land Management. But, it would not affect the present funding of operations on or the distribution of receipts from the national resource lands.

It would significantly enhance the management of the national resource lands by making violation of laws or regulations pertaining to them a crime and by vesting enforcement authority in certain designated Departmental employees. The Secretary would be authorized to cooperate with State and local law enforcement agencies and to reimburse the agencies for services on national resource lands.

Title IV would authorize the Secretary to grant rights-of-way for such purposes as pipelines, powerlines and roads. It specifies conditions for granting such rights-of-way including provisions for protection of the environment.

Title V of the proposal would repeal a number of obsolete or superseded laws. These include a hodgepodge of land disposal laws and a number of laws relating to fees, charges, and other administrative matters.

The National Resource Lands are a priceless and irreplaceable national asset. It is time to provide the Department of the Interior with the tools to manage and preserve them in accordance with their value to the American people.

Enclosed is a detailed summary of the bill, including a discussion of the laws that would be repealed, and a draft environmental statement prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

The Office of Management and Budget has advised that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

/s/ John C. Whitaker
Acting Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Honorable Carl Albert
Speaker of the
House of Representatives
Washington, D.C. 20515

Enclosures

S. 1041
H.R. 5441

A BILL

To provide for the management, protection, development and sale of the national resource lands, 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 National Resource Lands Management Act of 1973.

SEC. 2. Declaration of Congress. Congress hereby declares: (a) that the national resource lands are a vital national asset containing a wide variety of resource values, (b) that the uses of such lands shall be balanced in a manner which will, using all practical means and measures, protect the environmental quality of such lands for future generations, and (c) that the national interest will best be served by retaining the national resource lands in Federal ownership except where disposal would be consistent with the purposes and conditions of this Act.

SEC. 3 Definitions. As used in this Act:

(a) "Secretary" means the Secretary of the Interior.

(b) "National Resource Lands" means all lands and interests in lands (including the renewable and nonrenewable resources thereof) now and hereafter administered by the Secretary through the Bureau of Land Management, except the Outer Continental Shelf.

(c) "Multiple use" means: the management of the national resource lands and their various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the American people; the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of resource uses that takes into account the long term needs of future generations for nonrenewable resources and the achievement of diversity and balance for renewable resources; and harmonious and coordinated management of the various resources, each with the other, without permanent impairment of the productivity of the land or undue damage to irreplaceable values, with

consideration being given to the relative values of the resources, and not necessarily the combination of uses that will give the greatest economic return or the greatest unit output.

(d) "Sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of land without permanent impairment of the productivity of the land and its environmental values.

(e) "Areas of critical environmental concern" means those national resource lands as designated by the Secretary where uncontrolled development could result in irreversible damage to important historic, cultural, or esthetic values, or natural systems or processes, or could unreasonably endanger life and property as a result of natural hazards. Such areas shall include--

(1) coastal wetlands, marshes, and other lands inundated by the tides;

(2) beaches and dunes;

(3) significant estuaries, shorelands, and flood plains of rivers, lakes, and streams;

(4) areas of unstable soils and high seismic activity;

(5) rare or valuable ecosystems;

(6) significant agricultural, grazing, and watershed lands;

(7) forests and related land which require long stability for continuing renewal;

(8) scenic or historic areas; and

(9) such additional areas as the Secretary determines to be of critical environmental concern, including lands having the characteristics described in section 2(c) of the Act of September 3, 1964, 78 Stat. 890.

SEC. 4. Rules and Regulations. The Secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this Act.

SEC. 5. Appropriations. There is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

TITLE I

GENERAL MANAGEMENT AUTHORITY

SEC. 101. Management. The Secretary shall manage the national resource lands in accordance with section 2

of this Act and with principles of multiple use and sustained yield in a manner which will assure payment of fair market value by users of such lands, unless otherwise provided for by law, and which will provide maximum opportunities for the public to participate in decisionmaking concerning such lands. The Secretary shall manage the national resource lands also in accordance with any applicable land use plans which he has prepared pursuant to section 103, except to the extent that other Federal laws require the Secretary to take specific actions. Management of the national resource lands shall include the authority to:

(a) Regulate, through permits, licenses, leases or such other instruments as the Secretary deems appropriate, the use, occupancy or development of the national resource lands not provided for by other laws;

(b) Require land reclamation as a condition of use, and require performance bonds guaranteeing such reclamation in a timely manner from any person permitted to engage in extractive or other activity likely to cause significant disturbance to or alteration of the national resource lands;

(c) Insert in permits, licenses, leases or other instruments to use, occupy or develop the national resource lands, provisions authorizing revocation or suspension upon violation of any regulations issued by the Secretary under any Act applicable to the national resource lands or upon violation of any applicable State or Federal air or water quality standard and implementation plans; and

(d) Develop regulations for the protection of areas of critical environmental concern.

SEC. 102. Inventory. The Secretary shall prepare and maintain on a continuing basis an inventory of all national resource lands and their resources giving priority to areas of critical environmental concern. This inventory shall reflect changes in conditions and in identifications of resource values. The Secretary, where he determines it to be appropriate, (a) may provide means of public identification of national resource lands, including signs and maps, and (b) may provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity of the national

resource lands.

SEC. 103. Land Use Plans.

(a) The Secretary shall develop, maintain, and, when appropriate, revise land use plans for the national resource lands, coordinated so far as he finds feasible and proper, or as may be required by law, with the land use plans of State and local governments and other Federal agencies.

(b) In the development and maintenance of land use plans, the Secretary shall:

(1) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic and social sciences;

(2) give priority to the designation and protection of areas of critical environmental concern;

(3) rely, to the extent it is available, on the inventory of the national resource lands and their resource ;

(4) consider present and potential uses of the lands;

(5) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(6) weigh long-term public benefits against short-term local and individual benefits; and

(7) consider the requirements of applicable pollution control laws including State or Federal air and water quality standards, noise standards and implementation plans.

SEC. 104. Disposal Criteria

(a) A tract of national resource lands may be transferred out of Federal ownership under this Act only where as a result of land use planning required under section 103, the Secretary determines that:

(1) such tract of national resource lands is isolated land which is difficult to manage as part of the national resource lands and is not suitable for management by another Federal agency; or

(2) such tract of national resource lands was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract of national resource

lands will serve important public objectives which cannot be achieved prudently or feasibly on land other than national resource lands and which outweigh other public objectives and values, including recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

SEC. 105. Public Hearings. The Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give Federal, State and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria in the preparation and execution of plans and programs and in the management of the national resource lands.

SEC. 106. Advisory Boards and Committees. In providing for public participation in planning and programming for the national resource lands, the Secretary may establish under applicable law and consult such advisory boards and committees as he deems necessary to secure full information and advice on the execution of his responsibilities. The membership of such boards and committees shall be representative of a cross section of groups interested in management of the national resource lands and the various types of use and enjoyment of such lands.

TITLE II

SALE AUTHORITY

SEC. 201. Authority to Sell. The Secretary is authorized to sell national resource lands under the terms of this Title and section 104 of this Act.

SEC. 202. Size of Tracts. The Secretary shall determine and establish the size of tracts to be sold on the basis of the land use capabilities and development requirements of the lands.

SEC. 203. Competitive Bidding Procedures. Except as to sales under section 206 hereof, sales of national resource lands under this Act shall be conducted under competitive bidding procedures to be established by the Secretary. However, where the Secretary determines it necessary and proper (a) to assure fair distribution among purchasers of national resource lands, or (b) to recognize equitable considerations or public policies, including but not limited to a preference right to users, he is authorized to sell national resource lands without

competitive bidding, or with modified competitive bidding. In no event shall national resource lands be sold under this Title for less than the appraised fair market value as determined by the Secretary.

SEC. 204. Right to Refuse or Reject Offer of Purchase. Until the Secretary has accepted an offer to purchase, he may refuse to accept any offer or may withdraw any land or interest in land from sale under this Act when he determines that consummation of the sale would not be consistent with this Act or other applicable law.

SEC. 205. Reservation of Mineral Interests. Except where the Secretary finds that (a) there are no mineral values in the land or (b) reservation of the mineral rights in the United States would interfere with or preclude the appropriate development of the land and that such development is more beneficial use of the land than mineral development, all conveyances of title issued by the Secretary under this Title shall reserve to the United States all mineral deposits in the lands, together with the right to prospect for, explore for and remove the mineral deposits under applicable Federal law and such regulations as the Secretary may prescribe.

SEC. 206. Conveyance of Reserved Mineral Interests.

(a) The Secretary may convey mineral interests owned by the United States where the surface is in non-Federal ownership, regardless of which Federal agency may have administered the surface, if he finds that (1) there are no mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate development of the land and that such development is a more beneficial use of the land than mineral development.

(b) Sales of mineral interests owned by the United States where the surface is in non-Federal ownership shall be made only to the record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.

(c) Before considering an application for conveyance of mineral interests pursuant to this section the Secretary shall require the deposit of a sum of money which he deems sufficient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the character of the

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mineral deposits in the land, evaluating the data obtained under the exploratory program to determine the fair market value of the mineral rights to be conveyed, and preparing and issuing the documents of conveyance. If the administrative costs exceed the deposit, the applicant shall pay the outstanding amount; and if the deposit exceeds the administrative costs, the applicant shall be given a credit for or refund of the excess.

(d) Moneys paid to the Secretary for administrative costs shall be paid to the agency which rendered the service and deposited to the appropriation then current.

SEC. 207. Terms of Patent. The Secretary shall insert in any patent or other documents of conveyance he issues under this Title, such terms, convenants, conditions and reservations as he deems necessary to insure proper land use, environmental integrity and protection of the public interest. In the event any area which the Secretary has identified as an area of critical environmental concern is conveyed out of Federal ownership pursuant to this Title, the patent or other document of conveyance shall provide for the continued protection of such area and the features which prompted the identification.

TITLE III

MANAGEMENT IMPLEMENTING AUTHORITY

SEC. 301. Studies, Cooperative Agreements, and Contributions.

(a) The Secretary may conduct investigations, studies, and experiments, on his own initiative or in cooperation with others, involving the management, protection, development and sale of the national resource lands.

(b) The Secretary may enter into contracts or cooperative agreements, involving the management, protection, development and sale of the national resource lands.

(c) The Secretary may accept contributions or donations of money, services, and property, real, personal, or mixed, for the management, protection, development and sale of the national resource lands, including the acquisition of rights-of-way for such purposes. He may accept contributions for cadastral surveying performed on federally controlled or inter-

mingled lands. Moneys received hereunder shall be credited to a separate account in the Treasury and are hereby appropriated and made available until expended, as the Secretary may direct, for payment of expenses incident to the function toward the administration of which the contributions were made and for refunds to depositors of amounts contributed by them in specific instances where contributions are in excess of their share of the cost.

SEC. 302. Service Charges and Excess Payments.

(a) Notwithstanding any other provision of law, the Secretary may establish reasonable filing fees, service fees and charges, and commissions with respect to applications and other documents relating to national resource lands, and may change and abolish such fees, charges, and commissions.

(b) In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of the national resource lands which is not required or is in excess of the amount required, by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

SEC. 303. Working Capital Fund.

(a) There is hereby established a national resource lands management working capital fund. This fund shall be available without fiscal year limitation for expenses necessary for furnishing in accordance with the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, and regulations promulgated thereunder, supplies and equipment services in support of Bureau of Land Management programs, including but not limited to, the purchase or construction of storage facilities, equipment yards and related improvements and the purchase, lease or rent of motor vehicles, aircraft, heavy equipment, and fire control equipment within the limitations set forth in appropriations made to the Bureau of Land Management.

(b) The initial capital of the fund shall consist of appropriations made for that purpose together with the fair and reasonable value at the fund's inception of the inventories, equipment, receivables and other assets,

less the liabilities, transferred to the fund. The Secretary is authorized to make such subsequent transfers to the fund as he deems appropriate in connection with the functions to be carried on through the fund.

(c) The fund shall be credited with payments from appropriations and funds of the Bureau of Land Management, other agencies of the Department of the Interior, other Federal agencies, and other sources as authorized by law, at rates approximately equal to the cost of furnishing the facilities, supplies, equipment, and services (including depreciation and accrued annual leave). Such payments may be made in advance in connection with firm orders, or by way of reimbursement.

(d) There is hereby authorized to be appropriated not to exceed $3 million as initial capital of the working capital fund.

SEC. 304. Deposits and Forfeitures.

(a) Any moneys received by the United States as a result of the forfeiture of a bond or deposit by a timber purchaser or permittee who does not fulfill the requirements of his contract or permit or does not comply with the regulations of the Department, or as a result of a compromise or settlement of any claim whether sounding in tort or in contract involving present or potential damage to timberlands, shall be credited to a separate account in the Treasury and are hereby appropriated and made available, until expended as the Secretary may direct, to cover the cost to the United States of any forest improvement, protection, or rehabilitation work, which has been rendered necessary by the action which has led to the forfeiture, compromise, or settlement.

(b) The Secretary may require a user or users of roads or trails under the jurisdiction of the Bureau of Land Management to maintain such roads or trails in a satisfactory condition commensurate with the particular use requirements and the use made by each, the extent of such maintenance to be shared by the users in proportion to such use or, if such maintenance cannot be so provided, to deposit sufficient money to enable the Secretary to provide such maintenance. Such deposits shall be credited to a separate account in the Treasury and are hereby appropriated and made available until expended, as the Secretary may direct, to cover the

cost to the United States of the maintenance of any road or trail under the jurisdiction of the Bureau of Land Management.

(c) Any moneys collected under this Act in connection with lands administered under the Act of August 28, 1937, 50 Stat. 874, as amended, shall be expended for the benefit of such land only.

(d) If any portion of a deposit or amount forfeited under this Act is found by the Secretary to be in excess of the cost of doing the work authorized under this Act, the amount in excess shall be transferred to miscellaneous receipts.

SEC. 305. Contracts for Cadastral Survey Operations and Fire Protection.

(a) The Secretary is authorized to enter into contracts for the use of aircraft, and for supplies and services, prior to the passage of an appropriation therefor for airborne cadastral survey and fire protection operations of the Bureau of Land Management. He may renew such contracts annually, not more than twice, without additional competition. Such contracts shall obligate funds for the fiscal years in which the costs are incurred.

(b) Each such contract shall provide that the obligation of the United States for the ensuing fiscal years is contingent upon the passage of an applicable appropriation, and that no payment shall be made under the contract for the ensuing fiscal years until such appropriation becomes available for expenditure.

SEC. 306. Acquisition of Land.

(a) When public interests will be benefited thereby, the Secretary is authorized to acquire by purchase, exchange, donation or otherwise, lands or interests therein including, but not limited to, the right of access by the general public to national resource lands. Such acquisitions shall be consistent with applicable land use plans prepared by the Secretary under section 103 of this Act.

(b) In exercising the exchange authority granted by subsection (a) of this section, the Secretary may accept title to any non-Federal land or interests therein and in exchange therefor he may convey to the grantor of such land or interests any national resource lands or interests therein which, under section 104 of this Act, he finds proper for transfer out of Federal ownership

and which are located in the same State as the non-Federal land to be acquired. The values of the lands so exchanged either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require.

(c) Lands acquired by exchange under this section or section 301(c) which are within the boundaries of the National Forest System may be transferred to the Secretary of Agriculture for administration as part of, and in accordance with laws, rules and regulations applicable to the National Forest System.

(d) Lands and interests in lands acquired pursuant to this section or section 301(c) shall, upon acceptance of title, become national resource lands, and for the administration of public land laws not repealed by this Act, shall become public lands. If such acquired lands or interests in lands are located within the exterior boundaries of a grazing district established pursuant to section 1 of the Taylor Grazing Act, 48 Stat. 1269, as amended, they shall become a part of that district.

SEC. 307. Authority to Issue and Correct Documents of Conveyance.

Consistent with his authority to dispose of national resource lands, the Secretary is authorized to issue deeds, patents, and other indicia of title, and to correct such documents where necessary. In addition, the Secretary is authorized to make corrections on any documents of conveyance which have heretofore been issued on lands which would, at the time of their conveyance, have met the description of national resource lands.

SEC. 308. Recordable Disclaimers of Interest in Land.

(a) After consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where: (1) a record interest of the United States in lands has terminated by operation of law; or (2) the lands lying between the meander line shown on a plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States; or

(3) accreted, relicted, or avulsed lands are not lands of the United States.

(b) No document of disclaimer shall be issued pursuant to this title until the applicant therefor has paid to the Secretary the administrative costs of issuing the disclaimer as determined by the Secretary. All receipts shall be credited to the appropriation from which expended.

(c) Issuance of a document of disclaimer by the Secretary pursuant to the provisions of this Title and regulations promulgated thereunder, shall have the same effect as a quitclaim deed from the United States.

SEC. 309. Unauthorized Use. The use, occupany or development of any portion of the national resource lands, contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation is unlawful and prohibited.

SEC. 310. Enforcement Authority.

(a) Any violation of regulations which the Secretary issues with respect to the management, protection, development and sale of the national resource lands and property located thereon and which the Secretary identifies as being subject to this section shall be punishable by a fine of not more than $500 or imprisonment for not more than six months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of Title 18 of the United States Code.

(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing the national resource lands in violation of regulations issued under this Act.

(c) The Secretary may designate and authorize any employee to make arrests on national resource lands without warrant for any misdemeanor or violation of any law or regulation committed in his presence or view, or for any felony if the arresting officer has probable cause to believe that the person arrested has committed

or is committing such felony and a delay in obtaining a warrant would jeopardize the possibility of his apprehension. Such authorized employee may execute on the national resource lands any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any Federal law or regulation. Such authorized employee, while engaged in carrying out his official duties, may carry such firearms as are authorized by the Secretary. Such employee may also pursue and arrest outside national resource lands a person fleeing from national resource lands to avoid an arrest or service of process which the employee is authorized to make on national resource lands.

SEC. 311. Cooperation with State and Local Law Enforcement Agencies.

In connection with administration and regulation of the use and occupancy of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of national resource lands.

TITLE IV

AUTHORITY TO GRANT RIGHTS-OF-WAY

SEC. 401. Definitions. As used in this Title:

(a) "Right-of-way" means an easement, lease, permit, or license to occupy, use or traverse lands.

(b) "Federal lands" means all lands owned by the United States except (1) lands in the National Park System, (2) lands in the National Wildlife Refuge System, (3) lands on the Outer Continental Shelf, (4) lands in national wilderness preservation system after December 31, 1983, and (5) lands held by the United States in trust for any Indian or Indian tribe, and lands held or owned by any Indian or Indian tribe under a limitation or restriction on alienation requiring the consent of the United States.

(c) "Holder" means any State or local governmental entity or agency, individual, partnership, corporation, association, or other business entity receiving a right-of-way hereunder.

SEC. 402. Authorization to Grant Rights-of-way for Oil and Gas Pipelines.

(a) The Secretary may grant, or issue, or renew rights-of-way over, upon or through all Federal lands for pipeline purposes for the transportation of oil or natural gas and storage and terminal facilities in connection therewith. Such rights-of-way shall extend to (1) the lands occupied by the pipeline and its appurtenances, including but not limited to the line of pipe, valves, pump stations, supporting structures (including berms), monitoring devices, surge and storage tanks, and terminals; (2) the lands occupied by facilities necessary for the operation or maintenance of the pipeline and its appurtenances; and (3) such adjacent lands as are necessary to provide for access, operation, maintenance or public safety.

(b) Where the surface of the Federal lands is administered by another Federal agency, the consent of the head of that agency shall first be obtained.

(c) Pipelines and terminals on such rights-of-way shall be constructed, operated and maintained as common carriers, and the owners or operators thereof shall accept, convey, transport, or purchase, without discrimination, oil or natural gas produced from Federal lands in the vicinity of the pipeline in such proportionate amounts as the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine to be reasonable; however, the common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(d) Hereafter, no right-of-way shall be granted, issued or renewed over, upon or through Federal lands, as defined herein, for the transportation of oil or natural gas except under and subject to the provisions, limitations, and conditions of this section and sections 404-409 of this Act.

(e) Nothing in this section shall be deemed to limit in any way the authority of the Secretary to make

grants, issue leases, licenses or permits, or enter into contracts under other provisions of law, for purposes ancillary or complementary to the construction, operation, maintenance or termination of such a pipeline.

SEC. 403. Authorization to Grant Rights-of-Way for Other Purposes.

The Secretary may grant, issue, or renew rights-of-way over, upon, or through the national resource lands for:

(a) Reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(b) Pipelines and other systems for the transportation or distribution of liquids and gases, other than oil, water and natural gas, and for storage and terminal facilities in connection therewith;

(c) Pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(d) Systems for generation, manufacture, transmission and distribution of electric power and energy, except insofar as the Federal Power Commission has jurisdiction under the Act of June 10, 1920, as amended, 16 U.S.C. 796,797;

(e) Systems for transmission or reception of radio, television, telegraph, and other electronic signals, and other means of communication; and

(f) Roads, trails, highways, railroads, canals, tramways, airways, livestock driveways, or other means of transportation.

SEC. 404. General Provisions.

(a) The Secretary shall specify the boundaries of each right-of-way as precisely as is practical. Each right-of-way granted, issued or renewed pursuant to this Title shall extend to the ground occupied by the facilities which the Secretary determines to constitute the project or portions of the project for which the right-of-way is given. The Secretary by lease, license, or permit may authorize the use of such additional lands as he determines to be necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.

(b) The Secretary shall determine the duration of each right-of-way or other authorization to be granted, issued, or renewed pursuant to this Title, and shall also determine whether the right-of-way shall confer exclusive or non-exclusive use.

(c) Rights-of-way granted, issued, or renewed pursuant to this Title shall be given under such regulations and subject to such terms and conditions as the Secretary may prescribe regarding extent, duration, application, charge, survey, location, construction, operation, maintenance and termination.

(d) The Secretary, prior to granting, issuing, or renewing a right-of-way pursuant to this Title which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation and rehabilitation which shall comply with regulations issued by the Secretary designed to insure that the use of the right-of-way will have the minimum adverse impact on the environment. The Secretary shall issue regulations which shall include, but shall not be limited to: requirements to insure that activities in connection with the right-of-way will not violate applicable air and water quality standards; and requirements to control or prevent (1) damage to the environment (including damage to fish and wildlife habitat), (2) damage to public or private property, and (3) hazards to public health and safety. Such regulations shall be regularly revised. The issuance or revision of such regulations shall be applicable to every right-of-way granted, issued or renewed pursuant to this title, irrespective of whether that right-of-way was granted, issued, or renewed prior to the issuance or revision of such regulations.

(e) Mineral and vegetative materials, including timber, within or without a right-of-way, may be used or disposed of in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws.

(f) No right-of-way shall be issued for less than the fair market value thereof, except that rights-of-way may be granted, issued or renewed to State or local governments or agencies or instrumentalities thereof, or to nonprofit associations or nonprofit corporations,

for such lesser charge as the Secretary finds equitable and in the public interest.

(g) The Secretary shall promulgate regulations specifying the extent to which holders of rights-of-way under this Title shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way. The regulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States, for liabilities, damages or claims arising in connection with the right-of-way.

(h) Where he deems it appropriate, the Secretary may require a holder of right-of-way to furnish a bond, or other security, satisfactory to the Secretary, to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or by any rule or regulation of the Secretary.

(i) The Secretary shall grant, issue, or renew a right-of-way under this Title only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested.

SEC. 405. Terms and conditions. Each right-of-way shall contain such terms and conditions as the Secretary deems necessary to: carry out the purposes of this Title and rules and regulations hereunder; implement other Federal statutes and regulations, particularly any which in any way affect the right-of-way itself or the project for which the right-of-way is required; protect the environment; protect Federal property and monetary interests; manage efficiently Federal lands or national resource lands which are subject to the right-of-way or adjacent thereto; protect lives and property; implement Federal programs and policies; and protect the public interest.

SEC. 406. Suspension or Termination of Right-of-Way.

(a) The Secretary may suspend or terminate any right-of-way granted, issued or renewed pursuant to this Title if, after due notice to the holder of the right-of-way and an appropriate administrative proceeding, he determines that such action is appropriate; however, no administrative proceeding shall be required where the right-of-way by its terms provides that it exists at the will of the Secretary.

(b) Abandonment of the right-of-way or noncompliance with any provision of this Title, condition of the right-of-way, or applicable rule or regulation of the Secretary, may be grounds for termination of the right-of-way. Failure of the holder of the right-of-way to use the right-of-way for the purpose for which it was granted, issued, or renewed, for any two-year period, shall be presumed to constitute abandonment of the right-of-way.

SEC. 407. Rights-of-Way for Federal Agencies.

(a) The Secretary may set aside for the use of any department or agency of the United States a right-of-way over, upon or through the national resource lands, subject to such terms and conditions as he may impose. The provisions of Sections 404-409 of this Title shall be applicable to such rights-of-way to the extent the Secretary deems necessary.

(b) Where a right-of-way has been set aside for the use of any department or agency of the United States, other than the Department of the Interior, the Secretary shall take no action to terminate, or otherwise limit, that use without the conset of the head of that other department or agency.

SEC. 408. Conveyance of Lands.

(a) If the Secretary decides to transfer out of Federal ownership by patent, deed, or otherwise, any national resource lands covered in whole or in part by a right-of-way, the lands may be conveyed subject to the right-of-way; however, if the Secretary determines that the right-of-way is of such a nature that continued Federal control is necessary in the public interest, he may (1) reserve to the United States that portion of the lands which lies within the boundaries of the right-of-way, or (2) convey the lands, including that portion with the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents.

(b) Where the Secretary determines to transfer out of Federal ownership national resource lands covered in whole or in part by a right-of-way, he may offer the holder of the right-of-way a preference right to purchase that portion of the lands which are within the

boundaries of the right-of-way, if in the judgment of the Secretary such action is (1) necessary to protect the holder's rights in the right-of-way and (2) not contrary to the public interest.

SEC. 409. Existing Rights-of-Way. Nothing in this Act shall have the effect of terminating any existing right-of-way authorized pursuant to any statute hereby repealed. However, with the consent of the holder thereof, the Secretary may cancel such a right-of-way and in its stead issue a right-of-way pursuant to this Act.

TITLE V

PRESERVATION OF VALID EXISTING RIGHTS AND REPEAL OF OBSOLETE AND SUPERSEDED LAWS

SEC. 501. Preservation of Rights.

(a) Federal rights not curtailed. Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States, or as affecting in any way any law governing appropriation or use of, or Federal right to, water on national resource lands.

(b) State's rights not curtailed. Nothing in this Act shall be construed as a limitation upon any State criminal statute, nor on the police power of the respective States, nor to derogate the authority of a local police officer in the performance of his duties, nor to deprive any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands.

(c) Valid existing rights. All actions by the Secretary under this Act shall be subject to valid existing rights.

SEC. 502. Construction of Law. The authority conferred upon the Secretary by this Act is in addition to all other authority vested in him by law, and nothing in this Act shall be deemed to repeal any such other authority by implication. However, the Secretary may exercise the authority granted herein, notwithstanding any other provision of law.

SEC. 503. Laws Relating to Disposal of National Resource Lands.

(a) Subject to valid existing rights on the date of approval of this Act, the following statutes or parts of statutes are repealed:

Act of	Section	Statute	43 U.S. Code
Revised statutes 2289, 2290, 2295, 2291			161-164
May 14, 1880	3	21:140	166
April 6, 1914 March 1, 1921		38:312 41:1193	167
Oct. 17, 1914		38:740	168
Revised Statutes 2297			169
Oct. 22, 1914		38:766, ch 335	170
Revised Statues 2289, 2292			171
June 8, 1880		21:166	172
Revised Statutes 2301			173
Revised Statutes 2288			174
Revised Statutes 2296			175
May 17, 1900		31:179	179
Jan. 26, 1901		31:740	180
Sept. 5, 1914		38:712	182
Revised Statutes 2300			183
Revised Statutes 2302			184
May 14, 1880	2	21:141	185
Feb. 14, 1920		41:434	186
Feb. 25, 1925		43:981, ch.326	187

Act of	Section	Statute	43 U.S. Code
June 21, 1934		48:1185, ch 690	187a
May 22, 1902	2	32:203, ch 821	187b
June 5, 1900	3	31:270	188
March 3, 1875	15	18:420, ch 131	189
July 4, 1884	last par. of sec. 1 only	23:96	190
March 1, 1933		47:1418, ch 160	190a

The following words of section 1 only "Provided, that no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homestead be made in said county under the Act of July 4, 1884 (23 Stat. 96: U.S.C., title 43, Sec. 190)."

Revised Statues 2310, 2311			191
Revised Statues 2302			201
May 14, 1880	1	21:140	202
June 13, 1902		32:384, ch 1080	203
March 3, 1879		20:472, ch 191	204
July 1, 1879		21:46	205
May 6, 1886		24:22	206

Act of	Section	Statute	43 U.S. Code
August 21, 1916		39:518, ch 361	207
June 3, 1924		43:357, ch 240	208
June 24, 1948		62:576	209, 210
Revised Statutes 2298			211
August 30, 1890		26:391	212

The following words of section 1 only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the rights of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement is validated by this Act."

April 28, 1904		33:527, ch 1776	213
March 2, 1889	6	25:854	214
Feb. 20, 1917		39:925	215
March 4, 1921		41:1433, ch 122	216
June 5, 1900	2	31:269	217
Feb. 19, 1909		35:639	218
June 17, 1910		36:351, ch 298	219

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Act of	Section	Statute	43 U.S. Code
March 4, 1915	1	38:1162	220
March 4, 1923	1	42:1445, ch 245	222
May 14, 1880	3	21:141	223
April 28, 1904		33:547	224
August 22, 1914		38:704, ch 270	231
July 3, 1916		39:341, ch 214	232
Sept. 29, 1919		41:228, ch 64	233
April 6, 1922	2	42:491, ch 122	
March 2, 1889	3	25:854	234
July 1, 1879	1	21:48	235
December 20, 1917		40:430, ch 6	236
July 24, 1919 next to last par. only		41:271	237
March 2, 1932		47:59	237a
May 21, 1934		48:787, ch 320	237b
May 22, 1935		49:286	237c
August 19, 1935		49:659, ch 560	237d
April 20, 1936		49:1235, ch 239	237e
July 30, 1956	1,2,4	70:715, 716 ch 778	237f,g,h
March 1, 1921		41:1202, ch 102	238

Act of	Section	Statute	43 U.S. Code
Revised Statutes 2308			239
June 16, 1898		30:473, ch 458	240
April 7, 1930		46:144, ch 108	243
March 3, 1933		47:1424	243a
March 3, 1879		20:472, ch 192	251
March 2, 1889	7	25:855	252
June 3, 1878		20:91	253
Revised Statutes 2294			254
Revised Statues 2293			255
March 4, 1913		37:925	256
Last paragraph of section 1 headed "Public Land Service" only			
May 13, 1932		47:153, ch 178	256a
Aug. 27, 1935		49:909, ch 770	256b
Sept. 30, 1890		26:684	261
June 16, 1880		21:287	263
Revised Statues 2304			271
Revised Statues 2305			272
Feb. 25, 1919		40:1161, ch 37	272a

Act of	Section	Statute	43 U.S. Code
April 6, 1922		42:491, ch 122	273
Revised Statutes 2306			274
March 3, 1893		27:593	275

The following words only: "And provided further; That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the rights to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land; but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate."

August 18, 1894		28:397	276

Last paragraph of section headed "Surveying the Public Lands" only

Revised Statutes 2309			277
Revised Statues 2307			278
Sept. 27, 1944		58:747, ch 421	279-284
Dec. 29, 1916	1-8	39:862	291-298
March 4, 1922	2	42:1445, ch 245	302
August 21, 1916		39:518, ch 361	1075
August 28, 1937	3	50:875	1181c

Act of	Section	Statute	43 U.S. Code
Desert Land Entries			
Mar. 28, 1908	2	35:52, ch 112	324
Mar. 28, 1908	1	35:52, ch 112	326
Feb. 27, 1917		39:946, ch 134	330
Dec. 15, 1921		42:348, ch 3	331
Aug. 7, 1917		40:250	332
Mar. 28, 1908		35:52, ch 112	333
April 30, 1912		37:106, ch 101	334
March 4, 1915	5	38:1161, ch 147	335
Feb. 25, 1925		43:982, ch 329	336
July 30, 1956		70:716, ch 778	336a-d
Mar. 4, 1915	5	38:116, ch 147	337,338
Mar. 4, 1929		45:1548, ch 687	339
Sale and Disposal Laws			
Mar. 3, 1891	9	26:1099	671
Revised Statutes 2354			673

Act of	Section	Statute	43 U.S. Code
Revised Statutes 2355			674
May 18, 1898		30:418, ch 344	675
Revised Statutes 2365			676
Revised Statutes 2357			678
June 15, 1880	3,4	21:238	679,680
Mar. 2, 1889	4	25:854	681
Mar. 1, 1907		34:1052, ch 2286	682
June 1, 1938		52:609, ch 317	682a-e
Revised Statutes 2361-2363			688-690
Revised Statutes 2368			691
Revised Statutes 2336			692
Revised Statutes 2369			693
Revised Statutes 2371			695
Revised Statutes 2374			696
Revised Statutes 2372			697
Revised Statutes 2375, 2376			698,699
Mar. 2, 1889	1	25:854	700
Townsite Reservation and Sale			
Revised Statutes 2380-2384			711-715

Act of	Section	Statute	43 U.S. Code
Revised Statutes 2386-2389			717-720
Revised Statute 2391-2394			721-724
Mar. 3, 1877	1,3,4	19:392	725-727
Mar. 3, 1891	16	26:1101	728
July 9, 1914		38:454	730
Feb. 9, 1903		38:820, ch 531	731
Drainage Under State Law			
May 20, 1908	1-7	35:169, ch 181	1027
Mar. 3, 1919		40:1321, ch 113	1028
May 1, 1958		72:99	1029-1034
Jan. 17, 1920		41:1392, ch 47	1041-1048
Abandoned Military Reservations			
July 5, 1884	5	23:104, ch 214	1074
Mar. 3, 1893		27:593, ch 208	1076
Aug. 23, 1894		28:491, ch 314	1077-1078
Feb. 11, 1903		32:822, ch 543	1079
Feb. 15, 1895		28:664	1080

Act of	Section	Statute	43 U.S. Code
Aug. 23, 1814		33:306	1081
Public Lands in Oklahoma			
May 2, 1890		26:89-93	1091-1094
Last paragraph of section 18 and sections 20-22			
May 2, 1890	24-27	26:92	1096-1097
Mar. 3, 1891	16	26:1026	1098
Aug. 7, 1946		60:872, ch 772	1100-1101
Aug. 3, 1955	1-4	69:445, ch 498	1102-1102c
Aug. 3, 1955	6	69:446, ch 498	1102e
May 14, 1890		26:109	1111-1117
Sept. 1, 1893		28:11	1118
May 11, 1896		29:116	1119
Jan. 18, 1897	1,2,3,4	29:490	1131-1134
Sales of Isolated Tracts			
Revised Statute 2455, as amended			1171
April 24, 1928		45:457, ch 428	1171a
May 23, 1930		46:377, ch 313	1171b
Feb. 4, 1919		40:1055	1172
May 10, 1920		41:595, ch 178	1173

Act of	Section	Statute	43 U.S. Code
Aug. 11. 1921		42:159, ch 62	1175
May 19, 1926		44:566, ch 337	1176
Feb. 14, 1931		46:1105, ch 170	1177
Lands in Alaska			
Mar. 3, 1891	11	26:1099	732
May 25, 1926		44:629	733-736
Feb. 26, 1948		62:35, ch 72	737
July 24, 1947		61:414, ch 305	738
May 14, 1898	1	30:409	270
May 14, 1898	10	30:413	270-4
April 29, 1950	2,3,4	64:95	270-5-270-7
July 8, 1916	1,2	39:352, ch 228	270-8-10
Mar. 8, 1922	2	42:415	270-11
Mar. 8, 1922	3	42:415	270-13
Aug. 17, 1961		75:384	
July 8, 1916		39:352	270-14
June 28, 1918		40:633	
April 13, 1926	1	44:243	270-15
Oct. 28, 1921	1	42:208	270-16
April 13, 1926		44:244	270-17

Act of	Section	Statute	43 U.S. Code
May 14, 1898	10	30:413	687a,687a-2, 687a-3, 687a-5
April 29, 1950	5	64:95	687a-1
Mar. 3, 1891	13	26:1100	687a-6
Aug. 30, 1949		63:679	687b-687b-4
July 19, 1963		77:80	687b-5
Pittman Act Grants			
Sept. 22, 1972		42:1012	356
Indian Allotments			
			25 U.S.C.
Feb. 8, 1887		24:389	334
Feb. 28, 1891		26:795	336
Exchanges			
June 28, 1934	8	48:1272	315g
July 9, 1962		76:140	315g-1

(b) Section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f) is revised to read as follows:

"The Secretary of the Interior is authorized, in his discretion, to examine and classify any lands withdrawn or reserved by Executive Order of November 26, 1934 (numbered 6910), and amendments thereto, and Executive order of February 5, 1935 (numbered 6964), or within a grazing district, which are more valuable or suitable for any other use than for the use provided for under this Act, or proper for acquisition in satisfaction of any outstanding lieu, exchange or land grant, and to open such lands to disposal in accordance with such classification under applicable public-

land laws. Such lands shall not be subject to disposition until after the same have been classified and opened to disposal."

(c) The Act of March 3, 1877, as amended (19 Stat. 377, 43 U.S.C 321, 322, 323, 325, 327-329) is further amended in its entirety to read as follows:

"All surplus water over and above water actually appropriated and used by persons on entries made under this Act, together with the water of all lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the mining, and manufacturing purposes subject to existing rights."

(d) Section 2 of the Act of March 8, 1922, as amended (43 U.S.C. 270-12) is further amended to read:

"The coal, oil or gas deposits reserved to the United States in accordance with the Act of March 8, 1922, 42 Stat. 416, as added, 75 Stat. 384, as amended, 76 Stat. 740, shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil or gas deposits or coal, oil or gas lands in Alaska in force at the time of such disposal. Any person qualified to acquire coal, oil, or gas deposits, or the right to mine or remove the coal or to drill for and remove the oil or gas under the laws of the United States shall have the right at all times to enter upon the lands patented, as provided by the provision hereof for the the purpose of prospecting for coal, oil or gas therein upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal, oil or gas deposits in any such land, or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove oil and gas upon payment of the damages caused thereby

to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages; Provided, that the owner under such limited patent shall have the right to mine the coal for use on the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits; Provided, further, that nothing in this Act shall be construed as authorizing the exploration upon or entry of any coal deposits withdrawn from such exploration and purchase.

(e) Section 3 of the Act of August 30, 1949 (43 U.S.C. 687b-2) is amended to read:

Notwithstanding the provisions of any Act of Congress to the contrary, any person who prospects for, mines or removes any minerals from any land disposed of under the Act of August 30, 1949 (63 Stat. 679) shall be liable for any damage that may be caused to the value of the land and tangible improvements thereon by such prospecting for, mining, or removal of minerals. Nothing in this section shall be construed to impair any vested right in existence on August 30, 1949.

SEC. 504. Laws Relating to Administration of National Resource Lands.

Subject to valid existing rights on the date of approval of this Act, the following statutes or parts of statutes are repealed:

Act of	Section	Statute	43 U.S.C.
1. March 2, 1895	1-3	28:744	176
2. June 28, 1934	8	48:1272	315g
June 26, 1936	3	49:1976, ch 842, Title I	
June 19, 1948	1	62:533, ch 548	
3. August 24, 1937		50:748	315p

4. Revised Statute 2370			694
5. March 3, 1969, as amended. The 2nd provision only		35:845, ch 271	772
6. June 21, 1934		48:1185	871a
7. Revised Statutes 2447, 2448			1151-1152
8. June 6, 1874		18:62	1153-1154
9. Jan. 28, 1879		20:274,275	1155
10. May 30, 1894		28:84	1156
11. Revised Statutes 2450, 2451, 2456,2457			1161-1164
12. March 3, 1891	7	26:1098, ch 561	1165
13. Revised Statutes 2471-2473			1191-1193
14. July 14, 1960	except to the extent that it repealed other statutes	74:506	1361,1362, 1363,1383
15. Sept. 26, 1970		84:885	1362a
16. July 31, 1939		53:1144, ch 401	

SEC.505. Repeal of Prior Laws Pertaining to Rights-of-Way

(a) Subject to valid rights existing on the date of approval of this Act, the following statutes or parts of statutes are repealed insofar as they apply to national resource lands:

Act of	Section	Statute	43 U.S. Code
Revised Statutes 2339			661
The following words only: "and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage."			
Revised Statutes 2340			661
The following words only: ",or rights to ditches and reservoirs used in connection with such water rights,".			
Feb. 26, 1897		29:599	664
Mar. 3, 1899	1	30:1233, ch 427	665,958 (16 U.S.C.525)
The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby."			
Mar. 3, 1875	1,2,4,5,6	18:482	934,935,937, 938,939
May 14, 1898	2-9	30:409, 412,413, ch 299 as amended	942-1-942-9
Feb. 27, 1901		31:815, ch 614	943

Act of	Section	Statute	43 U.S. Code
June 26, 1906		34:481, ch 3548	944
Mar. 3, 1891	18-21	26:1101, ch 561 as amended	946-949
Mar. 1, 1921		41:1194, ch 93	950
May 11, 1898	2	30:404, ch 292 as amended	951
Jan. 13, 1897		29:484, ch 11 as amended	952-955
Jan. 21, 1895		28:635, ch 37 as amended	956-957
Feb. 15, 1901		31:790, ch 372	959 (16 U.S.C. 79,522)
Mar. 4, 1911		36:1253, ch 238	961 (16 U.S.C. 5, 420, 523)
May 21, 1896		29:127, ch 212	962-965
April 12, 1910		36:296, ch 155	966-970
Oct. 23, 1962		76:1129	40U.S.C. 319-319c

(b) Nothwithstanding the provisions of subsection (a) of this section, the following statutes are repealed in their entirety:

Act of	Section	Statute	43U.S.Code
Feb. 25, 1920	28	41 Stat. 449 as amended	30 U.S.C. 185
Revised Statutes 2477			43 U.S.C. 932

Managing the Land

Legacy of Parks

Conversion of Federal Properties to Parks

Relocation of Federal Facilities

Land and Water Conservation Fund

497-578 O - 73 - 24

CONVERSION OF FEDERAL PROPERTIES TO PARKS

On February 15, 1973, the President announced the transfer of an additional 16 parcels of land to State and local governments for park and recreational use under the Legacy of Parks Program. The program was inaugurated March 1, 1971, with the first cost-free transfer of $1.1 million worth of Federal property to the County of Nassau, New York. Since then a total of 46,292 acres of Federal land in the fifty States, the District of Columbia and Puerto Rico have been turned over for park use. The total value of this land exceeds $136 million.

The 16 properties turned over in the latest transfer are located in 10 States, totalling 5,020 acres, and have an estimated market value of $2,716,250. Included are tracts in California (two properties), Colorado (one property), Indiana (one property), Kansas (one property), Michigan (one property), New York (two properties), Ohio (one property), Rhode Island (one property), Texas (four properties), and Washington (two properties).

The Property Review Board, established by the President to direct the property conversion program, is also working with the U.S. Army Corps of Engineers to make Corps properties available to the public as park and recreational facilities through leases to State and local governments. The military services are considering with the Property Review Board the feasibility of opening park and recreational areas on military installations for dual use of these facilities by military personnel and the public. For example, Fort DeRussy in Hawaii has made its beach frontage, located on Waikiki Beach, available for public use, and the Presidio in San Francisco has opened its ocean front area to civilian use for recreation.

LEGACY OF PARKS PROPERTIES

Name and Location	Approximate Acres	Estimated Value
Castle Communications Annex Atwater, California	25	$ 65,000
Nike Site 29 Brea, California	32	$325,000
Portion, Pueblo Army Depot Pueblo, Colorado	600	$ 14,000
Portion, Dana Housing Area Dana, Indiana	6	$ 24,000
Portion, Fort Filey Junction City, Kansas	11	$ 4,000
Grand Haven Rifle Range Ottawa County Ferrysburg, Michigan	80	$ 80,000
U.S. Marine Corps Training Center Mattydale, New York	45	$675,000
Portion, West Point Military Reservation Woodbury, New York	1	$ 24,000
Portion, U.S. Coast Guard Station Ashtabula, Ohio	1	$ 15,000
Portion, Naval Communication Station (Fort Burnside) Newport, Rhode Island	20	$100,000
Portion, Fort Bliss El Paso, Texas	23	$112,000
Portion, Former Perrin Air Force Base Grayson County, Texas	28	$ 23,000

Portion, Fort Hood Killeen, Texas	100	$ 80,000
Falcon Dam and Reservoir Project Starr and Zapata Counties, Texas	174	$ 50,000
Rattlesnake Slope Richland, Washington	3,662	$293,250
Portion, U.S. Coast Guard Radio and Light Station Westport, Washington	212	$832,000
TOTALS -- 16 Properties	5,020 Acres	$2,716,250 Estimated Value

CUMULATIVE TOTALS FOR LEGACY OF PARKS*

273	Properties in 50 States, District of Columbia, Commonwealth of Puerto Rico
46,292	Approximate Acreage
$136,717,176	Estimated Fair Market Value

* On April 9, 1973, the White House announced the addition of 17 properties, encompassing approximately 3,561 acres, with an estimated market value of $4,286,000.

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, D.C. 20405

February 15, 1973

Dear Mr. [President/Speaker]:

There is transmitted herewith, for referral to the appropriate Committee, a draft of legislation "To amend section 204 of the Federal Property and Administrative Services Act of 1949, as amended, to authorize the use of proceeds of dispositions of surplus real and related personal property for the relocation of Federal facilities; and for other purposes." This proposal will implement one of the recommendations in the President's Environmental and Natural Resources State of the Union Message of February 15, 1973.

The purpose of the bill is to provide additional means for obtaining the goal of optimum utilization of Federally-owned property, which is a mission of the General Services Administration (GSA) and the objective of Executive Order 11508 of February 10, 1970.

Section 204(b) of the Property Act now provides that proceeds from the disposition of surplus real and related personal property shall be set aside in a separate fund in the Treasury. Payments in amounts determined by the Director of the Office of Management and Budget (OMB) may be made from the fund by the Administrator of General Services for direct expenses incurred in the utilization and disposal of excess and surplus property.

The draft bill would permit the Administrator of General Services, and heads of other agencies through delegation from the Administrator, to obligate amounts from the above-mentioned fund to pay the cost of relocating activities from property which has been determined by the Administrator to be other than optimally utilized, and, where necessary, the cost of acquiring new facilities to house the relocated activities. No such obligations would be made until the fund exceeded $25,000,000. A determination by the Administrator that

a particular property was not being put to optimum use would be subject to concurrence by the head of the agency concerned. In the absence of such concurrence, the Administrator could transmit the case to the President for decision.

Federal property of an executive agency would not be optimally utilized if (1) it is of such a nature or value, or is in such a location, that it could be utilized for a different and significantly higher and better purpose; or (2) the costs of occupying are substantially higher than would be applicable for other suitable properties with total net savings to the Government after consideration of property values as well as costs of moving, occupancy, and efficiency of operations.

For example, there are instances which involve Federal activities now located in or adjacent to metropolitan areas whose missions, because of security or operational factors, could be better accomplished if the activities were relocated in more remote areas. New Federal land could be acquired in or near a rural community and developed to accommodate the Federal mission.

If relocation were effected, the property at the original location would be reported to GSA for disposition as excess or surplus property. The Government would have a better, more efficient facility for its purposes and the original property, because of its location in a metropolitan area, would be disposed of at a comparatively high price to accommodate a higher and better use. The Government would gain both a monetary benefit and a better, more efficient operation.

Since there is now no general authority under which relocation can be funded, Federal agencies may retain outmoded, poorly suited facilities rather than seek advance funding on a case-by-case basis to permit relocation, the acquisition of new facilities, and the subsequent evacuation and disposal of the old. This is because their operational requirements must receive first consideration; and a relocation because present facilities are not being put to optimum use can be given only a low priority among the demands on their budget

resources. The draft bill would provide an opportunity to fund a desirable relocation from a different source.

Of course, relocation would not necessarily mean the closure of an installation. An anticipated frequent use of the relocation fund would be to permit minor consolidations of a Federal activity at a particular installation which then would free specific parcels for better use, be it other Federal use, a public benefit use such as public health, education, or parkland, or sale.

The draft bill provides that no less than 50 percent of all proceeds from the sale of surplus real and related personal property shall be available for at least three years for obligation for the replacement and relocation requirements of the agencies making property available for sale. This provision will provide the incentive for Federal agencies to report as excess to their needs properties which are still being used but come within the outmoded or marginal categories discussed above.

Under current law, before surplus real property is offered for public sale, it is made available for donation to State and local governments and institutions for use for park, health, education, and other specified public purposes. The draft bill contemplates no change in this procedure. Thus, although the Government might spend considerable money in relocating and acquiring replacement facilities, the original property would become available for donation. For such cases, the draft bill preserves the principle of public benefit discount conveyances but provides that, whenever property is reported excess incident to a relocation, the public benefit discount conveyances will be made at a charge of at least the lesser of the amount expended from the fund for relocation and replacement or one-third of the fair market value of the property.

A number of congressional oversight provisions and administrative safeguards have been included in the draft bill to preclude any abuse of the funding authority. The bill permits the use of funds to cover the cost

of acquiring replacement facilities only to the extent that acquisition of such facilities may be authorized by law. Unless there is authorizing legislation for acquisition of the new facilities, the funding of such an acquisition under this legislation is not possible. Thus, the Committees of Congress responsible for the particular Federal program involved, and the Congress as a whole, must by general or specific legislation have authorized acquisition of the replacement facilities before payment of replacement costs may be authorized.

The bill also provides that an explanatory statement relative to any relocation which is to be financed from the fund shall be transmitted to the Committees on Appropriations of the Congress 30 days before those monies may be obligated for that purpose. This provision assures that the time-honored function of reviewing expenditures is retained in the Appropriations Committees.

The bill requires that a reporting of the financial actions accomplished in connection with the fund be made to Congress as well as to OMB on an annual basis. Not less than once a year, any excess monies in the fund are required to be transferred to miscellaneous receipts or as may be otherwise provided by law. Appropriations are authorized and are to be repaid from proceeds available to the fund.

This bill will provide an essential and long-needed step towards proper and effective management of Federal real property. We urge its prompt introduction and enactment.

The Office of Management and Budget has advised that there is no objection to the submission of this legislative proposal to the Congress, and that its enactment would be in accord with the program of the President.

Sincerely,

/s/Arthur F. Sampson
Acting Administrator

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Honorable Carl Albert
Speaker of the House of Representatives
Washington, D.C. 20515

A BILL

To amend section 204 of the Federal Property and Administrative Services Act of 1949, as amended, to authorize the use of proceeds of dispositions of surplus real and related personnel property for the relocation of Federal facilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 204(a) and (b) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485), are amended to read as follows:

"(a) All proceeds under this title from any transfer of excess property to a Federal agency for its use, or from any sale, lease, or other disposition of surplus property, shall be covered into the Treasury as miscellaneous receipts, except as provided in subsections (b), (c), (d) and (e) of this section, or as otherwise provided by law.

"(b) All the proceeds of such dispositions of surplus real and related personal property made by the Administrator of General Services shall be set aside in a separate fund in the Treasury, subject to the following procedures:

(1) Not more than an amount to be determined quarterly by the Director of the Office of Management and Budget may be obligated from such fund by the Administrator to pay the direct expenses incurred for the utilization of excess property and the disposal of surplus property under this Act for fees of appraisers, auctioneers, and realty brokers, and for advertising and surveying. Such payments from this fund may be used either to pay such expenses directly or to reimburse the fund or appropriation initially bearing such expenses. Fees paid to appraisers, auctioneers, and brokers shall be in accordance with the scale of fees customarily paid for such services in similar commercial transactions, and in no event shall more than 12 percent of the proceeds of all dispositions within each fiscal year of surplus real and

related personal property be paid out of such proceeds under this authorization to meet direct expenses incurred in connection with such dispositions.

(2) Not more than an amount to be determined quarterly by the Director of the Office of Management and Budget may be obligated from such fund by the Administrator, and by the heads of other agencies in accordance with the Administrator's delegation of authority to them, as he determines necessary to acquire such facilities (as may be authorized by law) to replace those which have been determined by the Administrator, with the concurrence of the head of the agency holding such facilities, to be other than optimally utilized, and to relocate personnel, equipment, and other property to the newly acquired facilities. If the Administrator is unable to obtain the concurrence of the head of the agency concerned, he may transmit the case to the President for decision. No such obligations may be made for relocation and replacement until the fund has attained an initial capitalization of $25,000 from the proceeds of dispositions of surplus real and related personal property.

(3) An explanatory statement of the circumstances surrounding each such obligation for relocation and replacement shall be transmitted to the Committees on Appropriations of the Congress thirty days in advance of such obligation. Upon occupancy of the replacement facilities or at a time agreed between the Administrator and the head of the agency making property available for sale, the head of the agency concerned shall, notwithstanding any other provision of law, immediately report the replaced facilities to the Administrator as excess property. Not less than fifty percent of the proceeds from the disposition of all categories of surplus real and related personal property shall be available for at least three years for obligation from the fund for the relocation and replacement requirements of the agency reporting such property as excess.

(4) Notwithstanding the provisions of any law

authorizing or requiring surplus real and related personal property to be made available at less than fair market value, when property from which facilities have been relocated or replaced is disposed of pursuant to such law, the Government shall receive as compensation therefor at least the lesser of the amount expended from the fund for relocation and replacement or one-third of the fair market value of the property.

(5) Appropriations are authorized to be made to the fund from any monies in the Treasury not otherwise appropriated in such amounts as may be deemed necessary. Such appropriations shall be repaid without interest. The monies not required for repayment purposes shall continue to be available as otherwise provided by law. Periodically, but not less often than once each year, any excess funds beyond current operating needs and beyond those authorized to be obligated for replacement facilities, and such reserves for pending or prospective obligations as the Director of the Office of Management and Budget may establish, shall be transferred from the fund to miscellaneous receipts or as may be otherwise provided by law.

(6) The Administrator shall make an annual report of receipts, disbursements, and transfers under this subsection to the Director of the Office of Management and Budget and to the Congress."

THE SECRETARY OF THE INTERIOR

WASHINGTON

Dear Mr. [President/Speaker]:

Enclosed is a draft of a proposed bill "To amend the Land and Water Conservation Fund Act of 1965, as amended," to which the President refers in his Environment and Natural Resources State of the Union Message, transmitted to you today.

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

The proposed legislation will accomplish several reforms in the administration of the Land and Water Conservation Fund, designed to increase the effectiveness of the expenditures in providing public recreation opportunities and open spaces where the unmet demands are greatest. The formula for apportionment of assistance among the States would be altered to give increased emphasis to the demands for additional recreation opportunities and open spaces in and near heavily populated urban areas. The Secretary of the Interior will be given added authority to review State implementation plans in order to assure compliance with this goal.

The bill will also authorize a State to use up to 25 percent of its total annual allocation to develop indoor recreation facilities within areas where the unavailability of land or climatic conditions provide no other feasible or prudent alternative to serve identified unmet demands for recreation resources.

The Office of Management and Budget has advised that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

/s/ Rogers C.B. Morton
Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Honorable Carl Albert
Speaker of the House
of Representatives
Washington, D.C. 20515

Enclosure

S. 922
H.R. 4865

A BILL

To amend the Land and Water Conservation Fund Act of 1965, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), as amended (16 U.S.C. 460l-4 et. seq.), is further amended as follows:

(a) In the title of the Land and Water Conservation Fund Act of 1965 and in subsections 1(b), 5(a), 5(d), and 5(f), after the word "outdoor" wherever it appears insert "and other".

(b) In the first sentence of subsection 5(b), delete paragraphs numbered (1) and (2) and substitute the following:

"(1) 20 per centum shall be apportioned equally among the several States;

"(2) 75 per centum shall be apportioned on the basis of need to individual States by the Secretary in such amounts as in his judgment will best accomplish the purposes of this Act. The determination of need shall include, among other things, consideration of population density and urban concentration within individual States as well as a consideration of the Federal resources and programs in the particular State; and

"(3) 5 per centum shall be made available to individual States to meet special or emergency needs, as determined by the Secretary."

(c) In the third sentence of subsection 5(b), delete "7" and substitute "10"; at the end of the fifth sentence of said subsection, change the period to a comma and add "without regard to the 10 per centum limitation to an individual State specified in this subsection." and delete the last sentence of said subsection.

(d) In subsection 5(d), delete paragraph numbered (2) and substitute the following:

"(2) an evaluation of the present and future demand for and supply of outdoor recreation resources and facilities in the State;"

(e) In subsection 5(e) delete the paragraph numbered (2) and substitute the following paragraph:

"(2) DEVELOPMENT -- For development of basic outdoor recreation facilities to serve the general public, including the development of Federal lands under lease to States for terms of twenty-five years or more. Not more than 25 per centum of the total amount allocated to a State in any one year may be approved by the Secretary for the development of indoor recreation facilities within areas where the unavailability of land or climatic conditions provide no other feasible or prudent alternative to serve identified unmet demands for recreation resources."

(f) After the third paragraph of subsection 5(f) of the existing law, insert the following new paragraph:

"The Secretary shall annually review each State's program to implement the statewide outdoor recreation plan and shall withhold payments to any State until he is satisfied that the State has taken appropriate action (1) toward ensuring that new recreation areas and facilities are being located to satisfy the highest priority unmet demands for recreation, especially in and near cities, particularly with respect to the resources that have been acquired or developed with funds apportioned to the State under section 5(b)(2) of this Act; (2) to consider preservation of small natural areas, especially near cities; (3) to consider preservation of scenic areas through the acquisition of development rights, scenic easements, and other less-than-fee interests in lands of waters; and (4) to provide for appropriate multiple use of existing public lands, waters, and facilities, to help satisfy unmet demands for recreation resources."

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ANALYSIS OF DRAFT BILL

Subsection (a) would remove the requirement in the Land and Water Conservation Fund Act that financial assistance to the States for recreation planning, acquisition, or development be for outdoor facilities only.

Subsection (b) would change the existing formula for apportioning Land and Water Conservation Fund Monies to the States. At present 60 percent of such monies is apportioned on the basis of need, as determined by the Secretary of the Interior in accordance with certain prescribed considerations. One such consideration is the proportion which the population of each State bears to the total population of the United States.

The proposed apportionment in subsection (b) is based upon the following formula:

1. 20 percent on an equal basis;

2. 75 percent on the basis of need as determined by the Secretary; and

3. 5 percent on the basis of special or emergency needs as determined by the Secretary.

Subsection (c) would change the present annual limitation on the total apportionment of Fund monies to an individual State from 7 to 10 per centum of the total amount allocated under paragraphs (1) and (2) to the several States, and would provide that if such apportionment has not been paid or obligated within a prescribed period it will be reapportioned on the basis of need as determined by the Secretary without regard to the 10 per centum limitation. In addition, the subsection would delete the provision under which the populations of the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa are included in the population

computation of the United States since under subsection (b) such a computation would no longer be made.

Subsection (d) modified one of the existing requirements of State comprehensive recreation plans which must be approved by the Secretary before financial assistance may be given to the States for acquisition or development projects. The subsection requires such plans to contain an evaluation of present and future demands for and supply of outdoor recreation resources and facilities in the States.

Subsection (e) would permit a State to use up to 25 percent of its total annual allocation to develop indoor recreation facilities in those areas where the unavailability of land or climatic conditions provide no feasible or prudent alternative to serve identified unmet demands for recreation resources.

Subsection (f) would require that the Secretary withhold payments to States until he is satisfied that they have taken appropriate action to ensure, consider, or provide for certain items listed in said subsection.

Managing the Land

Mining on Public Lands

THE SECRETARY OF THE INTERIOR

WASHINGTON

February 27, 1973

Dear Mr. [President/Speaker]:

Enclosed is a draft bill "To reform the mineral leasing laws, and for other purposes."

We recommend that this bill, a part of the environmental program announced February 15, 1973, by the President in his Environment and Natural Resources State of the Union Message, be referred to the appropriate committee for consideration and that it be enacted.

The Mining Law of 1872, as amended, and certain other related and supplemental laws govern the disposition of much of the mineral wealth on hundreds of millions of acres of federally owned land. During the almost one hundred years of its operation, the Mining Law of 1872 has played an important role in the development of this country. It has contributed to the settlement of large areas of the West and has provided much of the mineral base for our industry and technology.

Since 1872, however, the country's needs have changed a great deal, and as a result changes have been necessary in the Mining Law of 1872. In 1920 certain minerals, principally oil and gas, and coal, were taken out from under the Mining Law of 1872 and placed under a mineral leasing system. In 1955 Congress decided that certain other so called "common variety" minerals, principally sand, gravel and building stone, were more appropriately disposed of in fixed quantities at fair market value rather than letting the first person to discover it have the entire deposit.

A basic objective of the original Mining Law of 1872 was to encourage the prospecting for and development of minerals by offering as an incentive the right to a patent for the minerals discovered and the land they were discovered in. Where mining conflicted with other uses of public land the Secretary of the Interior had two choices; to withdraw the land from mining altogether or to permit mining locations to continue irrespective of its effect on other uses or the environment.

The two major revisions mentioned above, the Mineral Leasing Law of 1920 and the 1955 amendment to the Materials Act, incorporated two additional objectives with respect to those minerals to which they applied; discretionary authority to harmonize mining activity with the needs of other users and of the environment, and payment to the Federal Government for the minerals taken off the public domain.

The proposed Mineral Leasing Act of 1973 would place all minerals under a leasing system thereby continuing the historical trend towards discretionary disposal and a fair return to the public. At the same time it would to a large extent eliminate the artificial distinctions which resulted from piece-meal legislation. Hard rock minerals on public domain would be treated no differently from the same minerals on acquired lands.

The leasable lands would include all public lands except the Outer Continental Shelf, Indian lands, the national parks, wildlife refuges and wildernesses.

All commercial prospecting on Federal lands would be under a Federal prospecting license which would permit full environmental protection, which would be continued under the leasing system.

Leases would be issued by competitive bidding for all minerals with the exception of those minerals now covered by the 1872 mining law. For those minerals, competitive bidding would be required for lands which the Secretary has reason to believe contain valuable deposits. Otherwise, the leases would be non-competitive.

Pressure to reform the Mining Law of 1872 has been growing for many years, both within the mining industry as well as the public at large. Increasing conflicts between mineral activity and other uses of the land, concern for abuses of the mining law to obtain vacation homesites, concern for environmental protection and the frustration and uncertainty to mineral developers of a complex system of overlapping and archaic location requirements, have contributed to this pressure.

We feel that the proposed bill represents a balanced approach to promoting the exploration and production of the minerals on which our society depends, coordinating competing uses of the land, providing a fair return to the public, and providing the maximum feasible protection of the environment.

Reform of the mining and mineral leasing laws is long overdue. We urge that Congress act on this proposal without delay.

The Office of Management and Budget has advised that enactment of this proposed bill would be in accord with the program of the President.

Sincerely yours,

/s/ John C. Whitaker
Acting Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

Honorable Carl Albert
Speaker of the House
pf Representatives
Washington, D. C. 20515

S. 1040
H.R. 5442

A BILL

To reform the mineral leasing laws, 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 Mineral Leasing Act of 1973."

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of Congress --

(a) to foster, promote, and encourage the exploration for and the production of the mineral deposits in the leasable lands;

(b) to promote competition and discourage monopolies;

(c) to encourage the active development of the mineral deposits in the leasable lands in a manner compatible with the use of the same lands for other purposes;

(d) to prevent waste and promote the conservation of the mineral resources;

(e) to encourage the maximum ultimate recovery of the mineral deposits;

(f) to assure mineral developers adequate acreage to justify necessary plant investment, development, and production;

(g) to require that mineral exploration and production be conducted in a manner which will prevent or substantially reduce their adverse environmental effects; and

(h) to insure the public a fair return on the disposition of its mineral resources.

DEFINITIONS

SEC. 3. As used in this Act the term --

(a) "Secretary" means the Secretary of the Interior;

(b) "person" means (1) a citizen of the United States, or (2) a corporation organized under the laws of the United States or of one of the States, or the District of Columbia, or (3) an association of such citizens or corporations or of both, but no corporation shall be a person if ten per centum or more of the stock in that corporation is held by citizens of, or corporations incorporated in, countries the laws, customs, or regulations of which deny to United States citizens or corporations equivalent rights and privileges, and no association shall be a person if ten per centum or more of the indicia of control in that association is

held by citizens of, or corporations incorporated in, countries the laws, customs, or regulations of which deny to United States citizens or corporations equivalent rights and privileges;

(c) "leasable lands" means all lands owned by the United States, including mineral deposits owned by the United States in lands the surface of which is in other ownership, except (1) lands in the national park system and the national wildlife refuge system except those which on the date of enactment of this Act are open to mineral leasing, (2) lands held by the United States for the use of Indians or Indian tribes, (3) lands in naval petroleum and oil shale reserves, (4) lands on the Outer Continental Shelf, and (5) lands in the national wilderness preservation system except as otherwise provided in the Wilderness Act;

(d) "hardrock minerals" means any mineral of a kind which on January 1, 1973, was subject to location under the Mining Law of 1872 (Revised Statutes 2318-2352), as amended, and which is not subject to disposition under title II, III, or IV of this Act;

(e) "licensee" means a person who holds a prospecting license issued by the Secretary under this Act;

(f) "oil and gas" means all hydrocarbon substances except coal or oil shale;

(g) "other bedded minerals" means deposits of potentially valuable minerals occurring in beds and not in lodes, manto deposits, veins, or porphyry stocks which the Secretary determines to be more appropriately subject to disposal under Title III than under any other title of this Act;

(h) "construction minerals" means (1) all varieties of sand, stone, gravel, pumice, pumicite, cinders, and common clay, for whatever purpose they may be used, and (2) any similar minerals which are used in an unrefined condition for building, highway, or other construction and which the Secretary may designate a "construction mineral" for the purposes of this Act;

(i) "associated or related minerals" means any minerals, other than the mineral covered by the lease, which are (1) so intermingled with the deposits of the mineral for which the lease is issued that separate development is, in the opinion of the Secretary, not warranted for mining or for economic reasons, or (2)

of such poor quality and in such small quantity that separate development is, in the opinion of the Secretary, undesirable for mining or for economic reasons;

(j) "paying quantities" means that quantity of a mineral which would pay a profit to the lessee, if he operated the well or mine and marketed the product;

(k) "producing or producible lease" means a lease covering leasable land on which there are (i) one or more producing wells or mines, or (ii) a valuable leasable mineral deposit to which there is an outcrop, shaft, adit, or slope providing immediate access, or (iii) shut in wells or operational mines capable of producing the leased mineral;

(l) "maximum ultimate recovery" means the greatest quantity of the mineral deposit which can be economically recovered in accordance with the best mineral conservation and sound environmental practices;

(m) "diligent mining operations" means drilling, mining development, and mineral processing which can be expected of a lessee seriously seeking to develop a mineral deposit or, except as used in Title V, attempting to prove existence of minerals in paying quantities in the leased lands;

(n) "diligent drilling operations" means actual drilling operations which are conducted in such a way as to be an effort which one seriously looking for oil and gas could be expected to make in the particular area given existing knowledge of geologic and other pertinent factors.

(o) "underground mining operations" means those mining operations carried out beneath the surface by means of shafts, tunnels, or other underground mine openings and such use of the adjacent surface as is incidental thereto;

(p) "surface mining operations" means those mining operations carried out on the surface, including strip, area strip, contour strip or auger mining, dredging, and leaching, or any combination thereof, and activities related thereto;

(q) "open pit mining" means that surface mining method in which the overburden is removed from atop the mineral and in which, by virtue of the thickness of the deposits, mining continues in the same area proceeding predominantly downward with lateral expansion of the pit

necessary to maintain slope stability and necessary to accommodate the orderly expansion of the total mining operation. For the purposes of this Act, this definition shall include caving methods and leaching activities associated with open pit mining. For the purposes of this Act, the mining of surface coal deposits, except those relating to open pit anthracite coal operations, is excluded from this definition;

(r) "reclamation" means the process of restoring a mined area affected by a mining operation to its original or other similarly appropriate condition, considering past and possible future uses of the area and the surrounding topography and taking into account environmental, economic and social conditions; and

(s) "mined area" means the surface and subsurface of leasable lands in which mining operations are being or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, refuse banks, tailing, spoil banks, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from or are used in, mining operations are situated.

TITLE I-- General Provisions Applicable to All Titles

ISSUANCE OF PROSPECTING LICENSES

SEC. 101. (a)(1) The Secretary shall, under such regulations as he may prescribe, issue to any person a prospecting license. No person may conduct mineral prospecting for commercial purposes for any mineral on leasable lands without such a prospecting license. Each prospecting license shall be for a term of two years and shall be subject to a reasonable fee. A separate prospecting license will be required for prospecting in each State. Each prospecting license shall contain such reasonable conditions as the Secretary may require, including conditions for the protection of the environment, and shall be subject to all applicable Federal, State, and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the prospecting license. A prospecting license shall confer no right to a lease under this Act.

(2) A licensee may not cause any significant surface disturbance. He may not remove any mineral for sale but may remove a reasonable amount of minerals from the

leasable lands subject to his license for analysis and study. A licensee must comply with any rules and regulations of the Federal agency having jurisdiction over the surface of the leasable lands.

(3) Any person who conducts mineral prospecting for commercial purposes on leasable lands without a prospecting license issued hereunder shall be subject to a fine of not more than $1,000 for each day of violation.

(b)(1) Where the Secretary determines that leasable lands under his jurisdiction should be excluded from the application of this Act for purposes of providing for a higher use or for protecting or enhancing the environmental quality, the Secretary is authorized to remove such leasable lands from the application of this Act, if they are not subject to a lease issued hereunder.

(2) Where the head of any other Federal agency determines that leasable lands the surface of which is under his jurisdiction should be excluded from the application of this Act for purposes of providing for a higher use or for protecting or enhancing the environmental quality, he shall so notify the Secretary, who shall thereupon remove those leasable lands from the application of this Act, if they are not subject to a lease issued under this Act.

ISSUANCE OF LEASES

SEC. 102. (a) Except as provided in section 106, the Secretary is authorized, under such regulations as he may prescribe, to issue to any person (1) a lease for the exploration, development, and extraction from leasable lands of (i) oil and gas under the provisions of title II of this Act, or (ii) coal (including leonardite and peat), oil shale, borates, carbonates, halides, nitrates, phosphates, silicates, and sulfates of calicium, magnesium, sodium, and potassium, elemental sulfur, or other bedded minerals under the provisions of title III of this Act; or (2) an exploration lease on leasable lands for hardrock minerals under the provisions of title V of this Act.

(b) The head of any Federal agency is authorized, under such regulations as he may prescribe, to sell, or to issue leases for the exploration, development, and extraction of, construction minerals on leasable

lands the surface of which is under his jurisdiction to any person under the provisions of title IV of this Act.

(c) The United States reserves ownership of and the right to extract helium from all gas produced from leasable lands leased for oil and gas purposes.

LEASE RENTALS

SEC. 103. All leases shall be conditioned upon payment each year of an annual rental in advance. Rentals paid for any one year shall be credited against royalties accruing for that year.

INCORPORATED AREAS

SEC. 104. The provisions of this Act shall not apply to leasable lands within incorporated cities, towns, and villages, except where (1) with respect to licenses under title I and leases under title II, there has been consultation with the local government, and (2) with respect to leases and sales under titles III, IV, and V, there has been consent by the local government.

COMPETITIVE BIDDING

SEC. 105. (a) If the Secretary or any other head of a Federal agency shall determine to issue a lease or contract under section 102, he shall, except as provided in sections 105(b), 402, and 403, issue that lease or contract through competitive bidding after formal advertising and such other public notice as the Secretary or other head of a Federal agency may prescribe. The Secretary shall reserve the right to reject all bids whenever in his judgment the best interest of the United States will be served by so doing.

(b) If the Secretary shall determine to issue an exploration lease for minerals subject to title V, he shall issue that lease without competitive bidding only to the first qualified applicant under such rules and regulations as the Secretary may prescribe, except that the Secretary shall issue, only by competitive bidding under section 105(a), an exploration lease for any lands as to which he determines there is geological, geophysical or geochemical evidence of the existence of such minerals in paying quantities. Where two or more persons file applications for lease on the same day covering the same lands under title V, they shall be deemed to have filed their applications simultaneously. In such case the Secretary shall require that the lease be issued to the highest qualified bidder among those

persons as determined by competitive bidding.

(c) Leases and contracts may be offered for competitive bidding on the initiative of the Secretary or on his approval of an application therefor.

CONSENT OF OTHER FEDERAL AGENCIES

SEC. 106. Leases covering leasable lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of that other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interest in those leasable lands.

MULTIPLE LEASES

SEC. 107. The issuance of a lease for a particular mineral shall not preclude the issuance of leases covering other minerals in the same leasable lands, where the Secretary considers that they are separately mineable or extractable and that operations with respect to such minerals will not unreasonably interfere with the lessee who has prior rights.

ASSOCIATED OR RELATED MINERAL DEPOSITS

SEC. 108. Where leasable lands contain, in addition to a deposit of a mineral for which a lease has been issued, associated or related minerals, the Secretary may allow or, where economically feasible in his judgment, require the lessee to extract and dispose of such associated or related minerals if they are not subject to a lease issued to a different lessee upon payment of such royalty as the Secretary may prescribe for each type of associated or related mineral.

ENVIRONMENTAL PROTECTION AND CONSERVATION

SEC. 109. (a) Prior to taking any action on leasable lands pursuant to this Act which might cause a significant disturbance of the environment, the lessee shall have obtained the Secretary's approval of an operation and reclamation plan describing the manner in which his activity will be conducted and showing that such activity will be conducted in a manner consistent with environmental regulations issued by the Secretary. As promptly as possible after the lessee submits a plan, the Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the

terms of such approval: Provided, That the Secretary shall delegate authority to the Secretary of Agriculture to approve or disapprove operation and reclamation plans involving lands in the national forest system, and the Secretary of Agriculture shall consult with the Secretary of the Interior with respect to significant technical and geological questions and special exploration and development systems.

(b) Pursuant to section 124, the Secretary shall issue environmental regulations which shall--

(1) contain requirements designed to insure that the operation of the lease (i) will not result in a violation of applicable water or air quality standards, (ii) will control or prevent erosion or flooding, release of toxic substances, accidental subsidence of land or rock slides, underground, outcrop or refuse bank fires, damage to fish or wildlife or their habitat or to public or private property, waste of mineral resources, and hazards to public health and safety, and (iii) if the surface has been disposed of with a reservation of all or any minerals to the United States, will be in conformance with any State land use plans;

(2) require that the area be reclaimed, that a reclamation plan be prepared and approved in advance of initiation, significant change or continuance of operations, and that reclamation work be made an integral part of the operation and be completed in accordance with any applicable performance standards within reasonably prescribed time limits;

(3) provide for filing, updating, and permanent retention of engineering maps of all active surface and underground operations for which engineering or other maps are available;

(4) be developed with full participation of all interested Federal departments and agencies, State agencies, local governments, and other interested bodies and groups;

(5) be compatible with, and assure at least the same degree of environmental protection and reclamation as is required by, any State law or regulatory program of the State in which the lands are located; and

(6) be regularly reviewed and updated with public notice and an opportunity for public participation.

(c) The regulations issued or revised under this

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section shall be applicable to all leases issued pursuant to this Act, irrespective of whether a lease was issued prior to the issuance or revision of such regulations.

(d) The Secretary shall by regulation adopt performance standards for the reclamation of mined areas affected by surface mining operations. Those performance standards shall include specifications that will ensure (i) that mined areas will be returned, as soon as feasible, to their original contour or to a contour similarly appropriate considering the surrounding topography and possible future uses of the area, (ii) that there will be no deposition of spoil material, except as necessary to the original excavation of earth in a new mining operation, on the undisturbed or natural surface within or adjacent to the mined area, and that reclamation will be conducted concurrently with the mining operation, except that the Secretary may allow departures from these specifications where the operator demonstrates that such departures will provide equal or better protection of life, property, and environmental quality or where the Secretary determines in individual cases, in order to encourage the reclamation of previously mined areas, that the cost of reclamation on a previously mined area in strict compliance with these specifications is impracticable, and that the environmental quality of the entire mined area would on balance be clearly enhanced, (iii) that throughout the mined area, soil conditions will be stabilized and water management will be conducted such that landslides are prevented, erosion is minimized, and water pollution by siltation and by acid, highly mineralized or toxic material drainage is minimized, and (iv) that the original type or similarly appropriate type of vegetation will be reestablished on the area disturbed by the mining operations as soon after the soil handling is completed as feasible. He shall revise all such performance standards periodically as necessary.

(e) The Secretary shall by regulation adopt performance standards for the reclamation of areas affected by open pit mining, taking into consideration the unique nature of such operations. Those performance standards shall ensure (i) that new mined areas shall be returned, to the extent feasible, to approximately their original

contour or to a contour similarly appropriate considering the surrounding topography and possible future uses of the area, (ii) that, to the extent feasible, there is no permanent deposition of spoil material on undisturbed or natural surfaces within or adjacent to the mined area, (iii) that, throughout the permit area, soil conditions will be stabilized and water management conducted, such that landslides are prevented, erosion is minimized, and pollution of water, including that in water impoundments created by the mining operation, by siltation and by acid, highly mineralized and toxic material drainage is minimized, and (iv) that to the extent feasible, original type or similarly appropriate type vegetation will be re-established on the disturbed land areas. He shall revise all such performance standards periodically as necessary.

(f) The Secretary shall by regulation adopt performance standards for reclamation of areas affected by underground mining operations in order to prevent, minimize or correct environmental harm, including standards for minimizing subsidence and the continuing discharge of acid, mineralized and toxic material drainage. He shall revise all such performance standards periodically as necessary.

(g) To advise the Secretary in developing regulations under this section, there is established an advisory committee composed of representatives of the Departments of Agriculture and Commerce, and the Environmental Protection Agency, and such other representatives as the Secretary may designate.

(h) The Secretary may delegate to the land administering agency, the authority to enforce the regulations issued under this section: Provided, That the Secretary shall delegate such authority to the Secretary of Agriculture with respect to lands in the national forest system.

BONDS

SEC. 110. (a) The Secretary, or the Secretary of Agriculture in the case of operations in the national forest system, may require a bond to enforce any of the requirements of this Act or regulations issued hereunder.

(b) The Secretary shall require posting of performance bonds in amounts at all times sufficient to insure reclamation in the event that the regulations are

not complied with or that reclamation is not completed in accordance with the reclamation plan.

PENALTIES

SEC. 111. (a)(1) If any person fails to comply with any regulations issued under this Act for a period of fifteen days after receiving notice to correct such failure, the Secretary may order cessation of such person's operations and such person shall be liable for a civil penalty of not more than $1,000 for each day of continuance of such failure after said fifteen days.

(2) If any person knowingly violates any regulation issued pursuant to this Act, he shall, upon conviction, be punished by a fine not exceeding $10,000 or by imprisonment not exceeding one year, or both. The penalties prescribed in this section shall be in addition to any other remedies afforded by this Act or by any other law or regulation.

(b) At the request of the Secretary, the Attorney General may institute a civil action in a district court of the United States or the highest court in a United States territory for an injunction or other appropriate order (1) to prevent any lessee from engaging in operations in violation of regulations issued under this Act; (2) to prevent any lessee from placing in commerce the minerals produced in violation of such regulations; (3) to enforce a warrant issued under section 124, or (4) to collect a penalty under this section. The district court of the United States for the district in which such person resides or is doing business shall have jurisdiction to issue such injunction or order.

SURFACE LEASES

SEC. 112. (a) The lessee shall have, under his lease, the right to use, free of charge, so much of the surface of the leased area as may be reasonably required for the actual extraction and removal of the mineral subject to his lease. The lessee shall also, upon payment of fair market rental and upon such terms and conditions as the Secretary may prescribe, have the right to a lease for the amount of the surface reasonably necessary for other operations under the lease and access thereto of (1) the leased area, and (2) where the leased area is inadequate, nearby leasable lands. Where the surface of the area to be covered by

the surface lease is under the jurisdiction of any Federal agency other than the Department of the Interior such lease may be issued only upon such terms and conditions as that other Federal agency may prescribe with respect to the use and protection of the nonmineral interests in such area.

(b) The Secretary may delegate to the land administering agency the authority to enforce the conditions of the surface lease issued under this section: Provided, That the Secretary shall delegate such authority to the Secretary of Agriculture with respect to lands in the national forest system.

LIMITATIONS ON LEASE AND OPTION ACREAGE

SEC. 113. (a) Subject to approval by the Secretary, a lessee who combines his interests with those of another lessee in order to construct mills and benefication plants or to carry on the business of a refinery for their joint use or to establish and construct as a common carrier a pipeline or railroad to transport oil and gas from their several wells or minerals from their several mines, or from those of other lessees, shall not, as a result of such action, be charged under section 201, 301, or 501 with any acreage embraced in that other lessee's lease.

(b) No person shall be charged with a pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than 10 per centum of the stock or other indicia of ownership or control of that association or corporation.

(c) Any leases or interests in leases acquired by descent, will, or judgment in excess of the prescribed limitations may be held for not more than two years after acquisition. Excess acreage acquired as the result of corporate mergers may be held for not more than six months.

ASSIGNMENTS OF LEASE AND EXTENSIONS OF LEASES

SEC. 114. (a) Any lease issued under this Act may be assigned, subject to final approval of the Secretary, as to all or part of the acreage included therein and as to either a divided or undivided interest therein, to any person qualified to hold a lease under this Act: Provided, That a nonproducing oil and gas lease may not be assigned in tracts of less than six hundred and forty acres except where such a lease contains less than six hundred and forty acres and, in that event, the lease

may be assigned only in its entirety. The Secretary will approve an assignment of separate zones or deposits under a lease, or of a part of a smallest legal subdivision, only when he considers such an assignment to be in the interest of conservation.

(b) Any lease assigned in whole shall be taken subject to any approved existing plan of operation or reclamation, and any lease assigned in part shall be taken subject to all applicable portions of such a plan.

(c) An assignment of part of the acreage subject to a lease or of separate zones shall segregate the assigned and retained portions into separate leases and such segregated leases shall continue for the term of the original lease.

(d) Upon segregation by assignment of a producing or producible lease, or of a lease held beyond its initial term by payment of compensatory royalty, the segregated lease of an undeveloped assigned or retained part shall continue for the primary term of the original lease, but for not less than two years and so long thereafter as the conditions established for extension of a lease beyond the primary term in the title under which the lease was issued are met.

SUSPENSION, WAIVER, OR REDUCTIONS OF RENTS OR ROYALTIES

SEC. 115. (a) The Secretary, for the purpose of encouraging the maximum ultimate recovery of leasable minerals or in the interest of conservation of natural resources or to protect the environment or upon recommendation of the Secretary of Agriculture with respect to national forest system lands, may suspend operations or production, or both on any lease. He may suspend, waive, or reduce the rental or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, wherever, in his judgment, it is necessary to do so in order to promote development or the leases cannot be successfully operated under the terms provided therein.

(b) In the event the Secretary shall direct the suspension of operations or production, or both, under any lease granted under this Act, any payment of rental or of minimum royalty prescribed by that lease shall be likewise suspended during such period of suspension of

operation or production, or both, and the term of such lease shall be extended by adding any such suspension period thereto.

RIGHT TO WATER ON LEASABLE LANDS

SEC. 116. Upon application by a lessee, the Secretary shall grant the lessee a right to drill for, produce and use so much water subject to Federal ownership, appropriation, or utilization on lands subject to his lease as may be needed in connection with activities under his lease, except where the Secretary determines that the lessee's production and use of such water would adversely affect the existing rights of other water users or have a significant adverse environmental impact.

SURRENDER, CANCELLATION, AND TERMINATION OF LEASES

SEC. 117. (a) Any lease issued under this Act may be surrendered at any time, but such a surrender will not relieve the lessee of any liability which has accrued under the lease prior to the surrender or entitle the lessee to the return of any rental or other moneys already paid.

(b) Except as provided in section 118, in the event of a breach of any of the terms and conditions of any lease or the regulations issued under this Act, that lease shall be subject to cancellation by the Secretary after thirty days notice to the lessee and failure of the lessee to correct the condition giving rise to the breach, in accordance with regulations promulgated by the Secretary.

(c) Any person involved in, or made a party to, such an administrative action shall have the right to a prompt dismissal upon showing that he holds and acquired, as a bona fide purchaser for value, the interest involving him as a party. No hearing as to such a showing shall be held unless the Secretary presents prima facie evidence of a violation of this Act on the part of the alleged bona fide purchaser.

TERMINATION OF LEASE FOR DEFAULT IN PAYMENT OF RENTAL: REINSTATEMENT

SEC. 118. (a) Upon failure of a lessee to pay the rental due on or before the anniversary date of a lease which is not a producing or producible lease, the lease shall terminate by operation of law.

(b) Where the rental is paid or is tendered within

twenty days after the due date, the lessee may, within that period, file with the Secretary a petition for reinstatement of the lease. If it is shown to the satisfaction of the Secretary that the default in payment of the rental was not due to a lack of reasonable diligence on the lessee's part, and if no valid lease covering the same land has been issued prior to the filing of the petition, the Secretary may reinstate the lease upon such terms and conditions as he may prescribe. Upon reinstatement of a lease, the Secretary may extend it for a period of time not in excess of that between the date of termination and the date of reinstatement, if he deems such an extension justifiable.

UNITIZATION

SEC. 120. (a) Leases issued under this Act may, in the interest of conservation or in the public interest, be made subject to unitized exploration, development, and production under regulations issued by the Secretary. These regulations may provide that (1) leases subject to a unit plan will be relieved from acreage limitations, (2) production or discovery on any lease in a unit will be construed as production or discovery on all leases in that unit, (3) leases included in a unit plan will be subject to extension for the life of the unit, (4) a lease, upon exclusion from a unit, may be extended for two years and so long thereafter as it is a producing or producible lease or until the termination date in the lease whichever is later, and (5) leases issued under other statutes may be included with the consent of all lessees, in such unit plans and, if so included, shall be subject to the provisions of this section.

(b) By regulation the Secretary may require a lessee under this Act to enter a unit plan under this section and may provide for the determination of participating acreage within a unit and require the payment of minimum royalty on only that portion of a lease within the participating acreage while all other portions of the lease are subject to rental.

(c) Any unit plan authorized by the Secretary shall contain a provision whereby authority is vested in the Secretary to set, alter, or modify from time to time the rate of prospecting and development and quantity

and rate of production under that unit plan.

UNLAWFUL TRUSTS; FORFEITURE

SEC. 121. Except as otherwise provided in this Act, if any lands or deposits subject to the provisions of this Act shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of or are in anywise controlled by any combination in the form of an unlawful trust, with the consent of the lessee or optionee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of any leasable mineral entered into by the lessee or optionee or any agreement or understanding, written, verbal, or otherwise, to which such lessee or optionee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this Act the lease, option, or permit shall be forfeited by appropriate court proceedings.

RIGHTS-OF-WAY FOR PIPELINES

SEC. 122. Rights-of-way over, upon or through all leasable lands and naval petroleum and oil shale reserves may be granted, issued or renewed by the Secretary (and, where the surface of the lands is administered by another Federal agency with the consent of the head of that agency) for pipeline purposes for the transportation of oil or natural gas and storage facilities in connection therewith to any person. Such rights-of-way shall extend to (a) the lands occupied by the pipeline and its appurtenances, including but not limited to the line of pipe, valves, pump stations, supporting structures (including berms), monitoring devices, surge and storage tanks, and terminals; (b) the lands occupied by facilities necessary for the operation or maintenance of the pipeline and its appurtenances; and (c) such adjacent lands as are necessary to provide for access, operation, maintenance or public safety. From time-to-time, the Secretary may issue such permits for temporary use of public lands in the vicinity of the pipeline and its appurtenances and facilities, as may be appropriate to enable the grantee to construct, operate, maintain, or

terminate the pipeline and its appurtenances and facilities, or to gain access thereto. Rights-of-way and permits shall be subject to such regulations and terms and conditions as the Secretary may prescribe regarding extent, duration, application, charges, survey, location, construction, operation, maintenance and use.

Such pipelines and terminals shall be constructed, operated, and maintained as common carriers, and shall accept, convey, transport, or purchase, without discrimination, oil or natural gas produced from leasable lands in the vicinity of the pipeline as determined by the Secretary in such proportionate amounts as the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine to be reasonable. However, the common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act, 52 Stat. 821, as amended, or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality. The Secretary shall provide in every lease subject to Title II of this Act that the lessee, if owner or operator of any pipeline which may be operated in an area accessible to lands under leases issued under Title II, shall at reasonable rates and without discrimination accept and convey the oil and gas produced under such leases in such accessible areas.

The Secretary, prior to granting, issuing, or renewing a right-of-way pursuant to this section which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation which shall comply with regulations issued by the Secretary designed to insure that the use of the right-of-way will have the minimum adverse impact on the environment. The Secretary shall issue regulations which shall include, but shall not be limited to: requirements to insure that activities in connection with the right-of-way will not violate applicable air and water quality standards; and requirements to control or prevent (1) damage to the environment (including damage to fish and wildlife habitat), (2) damage to public or private property, and (3) hazards

to public health and safety. Such regulations shall be regularly revised. The issuance or revision of such regulations shall be applicable to every right-of-way granted, issued or renewed pursuant to this section, irrespective of whether that right-of-way was granted, issued or renewed prior to the issuance or revision of such regulations. Failure to comply with the provisions of this section or the regulations and conditions prescribed by the Secretary shall be grounds for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is located in an appropriate proceeding.

REPEAL OF EXISTING LAWS

SEC. 123. (a) Except to the extent necessary to preserve leases, permits, claims, and other valid existing rights under the following statutes, and to authorize the Secretary to take such actions (including the issuance of new regulations) as may be needed in the continued Federal administration of those leases, permits, claims, and other valid existing rights, the following statutes are repealed:

(1) the Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181-263), except that nothing in this Act shall affect the authority of the Secretary of the Navy with respect to lands within the naval petroleum or oil shale reserves;

(2) the Potash Leasing Act of 1927 (30 U.S.C. 281-287);

(3) the Sulphur Leasing Act of April 17, 1926, as amended (30 U.S.C. 271-276);

(4) the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359);

(5) the Railroad and Other Rights-of-Way Leasing Act of May 31, 1930 (30 U.S.C. 301-306); and

(6) the Mining Law of 1872, as amended and supplemented and related Acts (30 U.S.C. chapters 2, 12A, and 16, and sections 161 and 162).

(b) Except to the extent necessary to preserve valid existing rights under the following statute, and to authorize the Secretary to take such actions (including the issuance of new regulations) as may be needed in the continued Federal administration of those valid existing rights, the Materials Act of July 31, 1947, as amended (30 U.S.C. 601-604), is further amended in

the following respects:

(1) by the deletion from the first sentence of section 1 (30 U.S.C. 601) of the words "mineral materials (including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders and clay) and", of the words "mineral or," and of the words "and the United States mining laws,"; and

(2) by the deletion from the first sentence of section 4 (30 U.S.C. 604) of the words "sand, stone, gravel and".

(c) Except to the extent necessary to preserve valid existing rights, any provision in any other statute which provides for the disposition of a mineral subject to this Act is hereby repealed or modified to the extent necessary to conform to this Act, except that nothing in this Act shall be deemed to modify or amend the Territorial Submerged Lands Act of 1963 (48 U.S.C. 1701-1704), and nothing in this Act shall prohibit the disposal by the General Services Administration of minerals as part of a full fee title to property covered by the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471-535).

(d) Any rights or claims derived from any of the laws or provisions hereby repealed or modified which existed on the date of enactment of this Act shall not be affected thereby, but shall remain subject to the provisions of the laws under which such rights were derived, except that any mining claims under the Mining Law of 1872, as amended (Revised Statutes 2318-2352), must be recorded with the Secretary within one year after the effective date of this Act. Any mining claim not so recorded shall be conclusively presumed to be abandoned and shall be void. Such recordation will not render valid any claim which was not valid on the effective date of this Act, or which becomes invalid thereafter.

(e) Any claim recorded pursuant to subsection (d), for which the claimant has not made application for a patent within three years from the date of recordation, shall be presumed to be invalid unless the claimant presents to the Secretary clear evidence of its validity.

REGULATIONS

SEC. 124. (a) The Secretary is authorized to issue and revise as appropriate such regulations as he finds

necessary or desirable to carry out the provisions and purposes of this Act.

(b) The Secretary is authorized to make such inspections and investigations as he considers necessary or appropriate to develop or enforce Federal regulations, or otherwise to carry out the purposes of this Act, and for such purposes authorized representatives of the Secretary shall have the right of entry to any area covered by any lease. In order to enforce the right of entry into a specific area the Secretary may obtain a warrant from the appropriate district court to authorize such entry.

TITLE II--Oil and Gas

ACREAGE LIMITATIONS; MAXIMUM LEASE AREAS

SEC. 201. (a) Not more than two hundred and forty-six thousand and eighty acres may be held or controlled under oil and gas leases and options by a person in any one State. The maximum area which may be included in any one oil and gas lease issued under this Act is two thousand five hundred and sixty acres.

(b) The acreage limitation prescribed in paragraph (a) shall not affect the right of any person to continue to hold or control in the State of Alaska oil and gas leases and options not exceeding in total six hundred thousand acres which are in effect at the time of enactment of this Act. However, any surrender, termination, or assignment of a lease covering land in Alaska in excess of two hundred and forty-six thousand and eighty acres shall not authorize the person which surrendered or assigned the lease or which held or controlled the lease at the time of termination, to hold or control other leased acreage in substitution for the acreage subject to the surrendered, terminated, or assigned lease.

ANNUAL RENTALS, ROYALTIES; LEASE TERMS

SEC. 202. (a) An oil and gas lease issued under this Act shall be for a term of five years and so long thereafter as it is a producing or producible lease. Any lease maintained in accordance with applicable statutory and regulatory requirements, covering land on which, or for which under an approved cooperative or unit plan of development or operations, diligent drilling operations are commenced prior to the end of its primary or an extended term and are being prosecuted

at that time shall be extended for two years and so long thereafter as it is a producing or producible lease. Unless the lease is a producing or producible lease at the end of the tenth year after its effective date, it shall terminate automatically by operation of law.

(b) The Secretary shall, by regulation, prescribe annual rentals on leases which shall not be less than $1 per acre or fraction thereof. The leases shall require payment of a royalty of not less than 12-1/2 per centum in amount or value of production, as determined by the Secretary. A minimum royalty, to be established by the Secretary at a rate of not less than $2 per acre, shall be payable in lieu of rental at the expiration of each lease year beginning after the lease becomes a producing or producible lease.

(c) Rental and royalty rates and other terms and conditions of a lease shall be subject to readjustment by the Secretary twenty years after the issuance of the lease and at the conclusion of each ten-year period thereafter.

COMMUNITIZATION AND DEVELOPMENT CONTRACTS

SEC. 203. (a) When separate tracts cannot be independently developed and operated in conformity with a well-spacing or development program for oil and gas, established by the Secretary or adopted by him, any lease for oil and gas (or a portion thereof), issued under this Act, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

(b) The Secretary is authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more lessees of oil and gas, with one or more persons whenever, in his discretion, the conservation of natural products or the public convenience or necessity may require it or the interests of the United States may be best served thereby. The Secretary may provide by regulation that all leases operated under such approved operating, drilling, or

development contracts, and interests thereunder, shall be excepted in determining holdings under the provisions of this Act.

STORAGE OF OIL AND GAS

SEC. 204. With the consent of the Federal agency with jurisdiction over the surface of leasable lands where applicable, the Secretary, to avoid waste or to promote conservation of natural resources, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under this Act. Such authorization may provide for the payment of a storage fee or rental on such stored oil or gas or, in lieu of such fee or rental, for royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

DRAINAGE AGREEMENTS; EXTENSION OF LEASE TERM

SEC. 205. (a) Whenever it appears to the Secretary that leasable lands not subject to an oil and gas lease are being drained of oil and gas by wells on adjacent lands he may negotiate agreements with the owners or operators of such wells to compensate the United States for such drainage: Provided, however, That such agreements may be negotiated only when it appears that the unleased lands cannot or should not be independently leased and developed.

(b) Whenever it appears to the Secretary that leasable lands under lease are being drained of oil or gas by wells on adjacent land, he shall require either that the lessee drill and produce all wells necessary to protect the leased lands from such drainage where economically feasible or that the lessee pay as compensatory royalty such amount as the Secretary in his discretion taking into account economic feasibility, may determine sufficient to compensate the United States for such loss.

(c) The term of any lease for which compensatory royalty is paid shall not expire during the period in which such royalty is paid, and for a period of one year from discontinuance of such payment and so long thereafter as oil or gas may be produced in paying quantities.

TITLE III--Coal (Including Leonardite and Peat); Oil Shale; Borates, Carbonates, Halides, Nitrates, Phosphates, Silicates, and Sulfates of Calcium, Magnesium, Sodium, and Potassium; Elemental Sulfur; and Other Bedded Minerals

ACREAGE LIMITATIONS; MAXIMUM LEASE AREAS

SEC. 301. (a) The maximum acreage that may be held or controlled directly or indirectly by a person in any one State under lease, and option, is forty-six thousand and eighty acres for coal, fifteen thousand three hundred and sixty acres for sodium, twenty-five thousand six hundred acres for potassium, five thousand one hundred and twenty acres for sulfur, ten thousand two hundred and forty acres for oil shale, and twenty thousand four hundred and eighty acres for all other leasable minerals subject to this title. Not more than twenty thousand four hundred and eighty acres may be held or controlled, directly or indirectly, under phosphate lease, and option, in the entire United States.

(b) The maximum area which may be included in a single lease is five thousand one hundred and twenty acres for coal and oil shale and two thousand five hundred and sixty acres for any other mineral subject to this title.

TERMS OF LEASES

SEC. 302. (a) A lease for a mineral subject to this title shall be for a term of twenty years and for so long thereafter as that mineral is produced annually in paying quantities from that lease or from one or more leases in an approved logical mining unit in which that lease is included. The Secretary shall, by regulation, prescribe annual rentals on leases of not less than $1 per acre or fraction thereof. A lease shall require payment of a royalty in such amount as the Secretary shall determine. The lease shall include such other terms and conditions as the Secretary shall determine. Such rents, royalties, and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended by production or if it is renewed as provided in section 303.

(b) The lessee shall be obligated to commence and to conduct diligent mining operations on one or more of his leases grouped in an approved logical mining unit within the time specified by the Secretary upon the

approval of the plan of operations.

(c) Where diligent mining operations are prevented by strikes or other circumstances neither caused by nor attributable to the lessee, the Secretary may, if in his judgment the public interest will be served thereby, provide in the lease for payment in advance of a minimum royalty in lieu of continuous operations under the lease.

RENEWAL OF LEASES

SEC. 303. (a) In the absence of extension by production of a lease issued pursuant to title III of this Act and, if compliance is made with all of the terms and conditions of the lease, and, unless otherwise prescribed by law, the lease may be renewed after its primary term on such terms and conditions as may be prescribed by the Secretary for additional ten year periods and so long as there is annual production in paying quantities from at least one lease in an approved mining unit grouping of leases, or diligent mining operations or other such productive mining work is performed thereon acceptable to the Secretary.

(b) As a condition precedent to renewal, the Secretary may, in his discretion readjust the terms and conditions, including rental and royalty rates, and impose such convenants and conditions in the renewal lease as he may deem reasonably necessary.

TITLE IV--Construction Minerals

DISPOSAL OF CONSTRUCTION MINERALS

SEC. 401. Except as to leasable lands within the definition of property in section 3(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472) the head of any Federal agency with surface jurisdiction of leasable lands is authorized, under such regulations as he may prescribe, to issue leases for the exploration, development, and production, or contracts for the sale, at fair market value, of construction minerals in the leasable lands under his jurisdiction if such leasing or sale is not expressly prohibited by other laws of the United States, and is not detrimental to the public interest. The rental on any lease shall not be less than $1 per acre or fraction thereof. All leases and, except as provided in section 403, all contracts for sales shall be granted to the highest responsible qualified bidder, under general regulations issued by the Secretary.

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FREE USE PERMITS

SEC. 402. The head of any Federal agency, in his discretion, may issue a permit to any other Federal agency or any State, or agency or subdivision of a State, or any other nonprofit association or corporation to develop and produce, without charge, construction minerals for other than industrial or commercial use or purposes of resale from leasable lands the surface of which is under his jurisdiction.

NEGOTIATED SALES; REPORTS TO CONGRESS

SEC. 403. (a) The head of any Federal agency may authorize the negotiation of a contract for the disposal of construction minerals, from leasable lands under his jurisdiction, (i) if the minerals are to be used in a public works program on behalf of a Federal, State, or local agency and the public exigencies will not allow the delay incident to advertising; and (ii) if the disposal involves a mineral deposit for which no competitive interest is shown.

(b) The head of any Federal agency shall report to the Congress on January 1 and July 1 of each year the number of negotiated sales, the names of the purchasers, the appraised value of the construction minerals, the amount of the contract, and the bases upon which the determination was made to enter into a negotiated contract rather than after competitive bidding.

TITLE V--Hard Rock Minerals

ACREAGE LIMITATIONS; MAXIMUM LEASE AREAS

SEC. 501. Not more than twenty thousand four hundred and eighty acres may be held or controlled under hard rock mineral leases by a person in any one State. The maximum area which may be included in any one hard rock mineral lease is six hundred and forty acres.

LEASE TERMS

SEC. 502. (a) A hard rock mineral exploration lease shall be issued for a period of ten years and shall grant an exclusive right to explore for all hard rock minerals in the land subject to the lease. The lease will be subject to an annual rental of not less than 50¢ per acre or fraction thereof and such other conditions as the Secretary may prescribe.

(b) At any time before the end of the ten-year period a production lease shall be issued to the exploration lessee, if he shows, to the satisfaction of the

Secretary, that he has discovered on the leased lands minerals in paying quantities. A production lease will grant the exclusive right to produce and develop only those hard rock minerals which the lessee discovered in paying quantities under the exploration lease. If the production lessee discovers on the land subject to his lease other hard rock minerals, his lease, shall, upon his application, be revised to include those additional minerals. A production lease will be subject to an annual rental of not less than $2 per acre or fraction thereof and such royalty and other conditions as the Secretary may prescribe. The production lease will be for a period of twenty years and as long thereafter as the lessee conducts diligent mining operations on lands subject to the lease or on other lands subject to a production lease embraced in the same logical mining unit, as approved by the Secretary. All terms and conditions of a production lease will be subject to readjustment at the end of twenty years and at the end of each ten-year period thereafter.

(c) If, at the end of twenty years after the issuance of the production lease, there is no production under the lease or any other production lease in the same approved logical mining unit, it will automatically terminate unless the lessee shall show, to the satisfaction of the Secretary, that the deposits subject to his production lease contain minerals in such quantity and quality as to justify retention for commercial development and production. Upon such a showing, the Secretary is authorized to renew the production lease for ten years and so long thereafter as there is production in paying quantities and upon such rental, royalty, and other conditions as he may prescribe. If, at the end of ten years, there is no production on a production lease renewed under this subsection or on another production lease in the same approved logical mining unit, the production lease shall terminate and shall not be subject to renewal.

(d) Where diligent mining operations are prevented by strikes or other circumstances neither caused by nor attributable to the lessee, the Secretary may, if in his judgment the public interest will be served thereby, provide in the lease for payment in advance of a minimum royalty in lieu of continuous operations under the lease.

Managing the Land

Mined Area Protection

THE SECRETARY OF THE INTERIOR

WASHINGTON

February 15, 1973

Dear Mr. [President/Speaker]:

There is enclosed a draft bill "To provide for the cooperation between the Federal government and the States with respect to environmental regulations for mining operations, and for other purposes".

We recommend that this bill, a part of the environmental program announced February 15, 1973, by the President in his Environment and Natural Resources State of the Union Message, be referred to the appropriate committee for consideration and that it be enacted.

The adverse environmental effects that can result from mining operations have been a subject of growing national concern in recent years. The ever increasing demand for minerals, coupled with dramatic developments in our ability to recover them has led to an increase in mining activity. These activities will continue to be an important part of the American economy.

Mining operations, however, also pose a serious threat to the environment. In varying degrees State legislatures and mining companies have responded to the problem, but this effort suffers from lack of uniformity and unanimity.

The proposed bill would require that all ongoing and future mining activities be conducted in a way as to minimize their adverse environmental effects. The legislation provides for the development of State regulations based on minimum Federal performance standards which will require environmental consideration to be built into the mining operation.

The Administration's bill recognizes that the responsibility for developing and enforcing regulations rests with the States, while also recognizing that the effort

must be nationwide with minimum standards enforced to protect the environment, and to the extent possible, place industry on an equal level in every State. The bill gives the States the opportunity to develop and submit regulations, in accordance with specific minimum performance standards, for approval by the Secretary of the Interior. If the State fails to develop an acceptable program within two years after enactment or if the State fails to enforce effectively its approved program at any time, the bill authorizes the Secretary to administer and enforce a mining and reclamation program within the State.

This legislation is long overdue. The longer it is put off, the larger the ultimate cost will be.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

/s/ Rogers C.B. Morton
Secretary of the Interior

Hon. Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Hon. Carl Albert
Speaker of the
House of Representatives
Washington, D.C. 20515

Enclosure

S. 923
H.R. 4863

A BILL

To provide for the cooperation between the Federal Government and the States with respect to environmental regulations for mining operations, 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 "Mined Area Protection Act of 1973".

TITLE I

Section 101. Definitions. For the purpose of this Act, the terms --

(a) "Secretary" means the Secretary of the Interior;

(b) "mining operations" means (1) activities conducted on the surface or underground for the exploration for, development of, or extraction of minerals, organic or inorganic, from their natural occurrences, including strip or auger mining, dredging, quarrying, open pit, in situ distillation or retorting and leaching; and (2) the cleaning, concentrating, refining, or other processing or preparation (excluding smeltering) and loading for interstate commerce of crude minerals at or near the mine site. It does not include the extraction of minerals in a liquid or gaseous state by means of wells or pipes unless the process includes in situ distillation or retorting. For the purposes of this Act, prospecting activities are excluded from this definition;

(c) "prospecting" means the first on-the-ground or airborne phase of a search limited to the gathering of evidence of mineralization of potential commercial worth and is not for the purpose of establishing mineral reserves. Prospecting includes geological reconnaissance, the use of geophysical and geochemical methods, and preliminary sampling but does not include the construction of access roads, mechanical trenching, construction of semi-permanent camp facilities or other activities which will result in appreciable disturbances to the natural condition of the area;

(d) "underground mining operations" means those mining operations carried out beneath the surface by means of shafts, tunnels, or other underground mine openings and such use of the adjacent surface as is

incidental thereto;

(e) "surface mining operations" means those mining operations carried out on the surface, including strip, area strip, contour strip, or auger mining, dredging, and leaching, or any combination thereof, and activities related thereto;

(f) "open pit mining" means that surface mining method in which the overburden is removed from atop the mineral and in which, by virtue of the thickness of the deposits, mining continues in the same area proceeding predominantly downward with lateral expansion of the pit necessary to maintain slope stability and necessary to accommodate the orderly expansion of the total mining operation. For the purposes of this Act, this definition shall include caving methods and leaching activities associated with open pit mining. For the purposes of this Act, the mining of surface coal deposits, except those relating to open pit anthracite coal operations, is excluded from this definition;

(g) "mined area" means the surface and subsurface of an area in which mining operations are being or have been conducted including private ways and roads appurtenant to any such area, land excavations, workings, refuse banks, tailings, spoil banks, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from or are used in, mining operations are situated;

(h) "operator of a mining operation" means an individual, society, joint stock company or a partnership, association, corporation, or other organization controlling or managing a mining operation;

(i) "previously mined area" means a mined area on which mining operations have been abandoned prior to the enactment of this Act or a mined area on which mining operations are abandoned subsequent to the enactment of this Act due to the impracticability of the mining operation under reclamation standards established by or under regulations pursuant to this Act;

(j) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(k) "reclamation" means the process of restoring a mined area affected by a mining operation to its original or other similarly appropriate condition,

considering past and possible future uses of the area and the surrounding topography and taking into account environmental, economic, and social conditions; and

(l) "soil" means all of the overburden materials that overlay a natural deposit of minerals, organic or inorganic, and also means such overburden materials after removal from their natural state by mining operations.

Section 102. Congressional Findings and Declarations. The Congress finds and declares--

(a) that mining operations are essential activities affecting interstate commerce which contribute to the economic well-being, security and general welfare of the Nation;

(b) that there are mining operations on public and private lands in the Nation which adversely affect the environment by destroying or diminishing the availability of public and private land for commercial, industrial, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods and the pollution of waters and air, by destroying fish and wildlife habitat and impairing natural beauty, by frustrating efforts to conserve soil, water and other natural resources, by destroying public and private property, and by creating hazards to life and property;

(c) that the initial and principal continuing responsibility for developing and enforcing environmental regulations for mining operations should rest with the States;

(d) that the cooperative effort established by this Act is necessary to the prevention and elimination of the adverse environmental effects of present and future mining operations; and

(e) that it is the purpose of this Act to encourage a nationwide effort to regulate mining operations to prevent or substantially reduce their adverse environmental effects, to stimulate and encourage the development of new, environmentally sound mining and reclamation techniques, and to assist the States in carrying out programs for those purposes.

TITLE II--ENVIRONMENTAL REGULATIONS FOR MINING OPERATIONS

Section 201. State Environmental Regulations for Mining Operations.

(a) Each State, after public hearings and within two years of the date of enactment of this Act, may submit to the Secretary for review and approval or disapproval in accordance with this section State environmental regulations for mining operations on all lands within such State, except Federally-owned land or land held in trust by the United States for Indians. A State may at any time thereafter submit revisions to such regulations to the Secretary for review and approval or disapproval in accordance with this section. The Secretary shall approve the regulations or revision of such regulations submitted to him if in his judgment:

(1) the regulations require that, for any mining operation or mining operation activity, as defined in section 101(b), not in existence on the date of the Secretary's approval of the regulations, the operator proposing to initiate such operation or activity must obtain a permit prior to the commencement thereof from a State agency established to administer the regulations and provide that such a permit will be issued only after the operator (i) files a mining and reclamation plan describing the manner in which his reclamation activity will be conducted showing that such activity will be conducted in a manner consistent with the regulations and (ii) establishes to the satisfaction of the State agency that the operator has the physical and financial capacity to conduct his mining and reclamation activity in accordance with the reclamation plan;

(2) the regulations require operators of mining operations in existence on the date of the Secretary's approval of the regulations to obtain permits in accordance with paragraph (1) of this subsection within one year of such date, except that (i) permits issued for such operations may allow up to two years from the date of the Secretary's approval of the regulations for the operators to come into compliance with performance standards adopted or designated under paragraphs (b)(3), (b)(4), and (b)(5) of this section; and (ii) permits issued for such operations producing less than 10,000 tons per year of mine run material may allow departures from the performance standards for up to five years from the date of the Secretary's approval of the regulations, to the extent found by the State agency to be necessary on the basis of the small size of such

operations, their significance to the local economy, and the extent of possible environmental damage;

(3) the regulations contain requirements designed to insure that the mining operation (i) will not result in a violation of applicable water or air effluent or emission standards and regulations, (ii) will control or prevent erosion or flooding, release of toxic substances, accidental subsidence of mined areas or land or rock slides, underground, outcrop, or refuse bank fires, damage to fish, or wildlife or their habitat, or public or private property, and hazards to public health and safety, and (iii) will be in conformance with any State land use planning process or program;

(4) the regulations require reclamation of mined areas and that reclamation work be performed as an integral part of the mining operation and be completed within reasonable prescribed time limits, and that, in the case of mining operations for which the Secretary has adopted performance standards; except that in order to encourage the reworking and reclamation of previously mined areas, the regulations may allow reclamation to depart from the specifications adopted by the Secretary pursuant to subsection (b)(3)(ii) in those individual cases where the State determines that the cost of reclamation on a previously mined area in strict compliance with such specifications is impracticable, and that the environmental quality of the entire permit area would, on balance, be clearly enhanced;

(5) the regulations allow the State agency, in order to encourage advances in mining and reclamation practices, to authorize departures in individual cases on an experimental basis from the specifications adopted by the Secretary pursuant to subsection (b)(3)(ii) of this section, if the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by such specifications, and if the mining operation is no larger than necessary to determine the effectiveness and economic feasibility of the experimental practices;

(6) the regulations require posting of performance bonds or other equally appropriate financial arrangements, in amounts and upon conditions at all

times sufficient to insure the reclamation of mined areas in the event that the regulations are not complied with or that reclamation is not completed in accordance with the mining and reclamation plan;

(7) the regulations provide for filing, updating, and permanent retention of engineering maps of all active surface and underground mining operations and of all inactive surface and underground mining operations for which engineering or other maps are available;

(8) the regulations provide that the responsible State agency will identify areas or types of areas in the State which, if mined, cannot be reclaimed with existing techniques to satisfy applicable performance standards adopted by the Secretary, and that the State agency will not issue permits to mine such areas until it determines that the technology is available to satisfy applicable performance standards;

(9) the regulations provide that regular reports will be made to the Secretary concerning the progress made by the State in carrying out the purposes of this title;

(10) the regulations require operators to make periodic reports to the responsible State agency, showing the progress of mining operations and of all required reclamation activities, and require regular monitoring by the State agency of environmental changes in mined areas to assess the effectiveness of the enviromental regulations for mining operations;

(11) the regulations designate a single agency, or with the Secretary's approval, an interstate organization upon which the responsibility for administering and enforcing the regulations is conferred by the State or States and will insure full participation of those agencies responsible for State land use planning and management, air quality, water quality, and other areas of environmental protection;

(12) the State agency or interstate organization responsible for the administration and enforcement of the regulations has vested in it the regulatory and other authorities necessary to carry out the purposes of this Act including, but not limited to, the authority to obtain the cessation of mining operations for violation of applicable laws and regulations adopted pursuant to this Act;

(13) the regulations were developed with full participation of all interested Federal departments and agencies, State agencies, local governments, and other interested bodies and groups;

(14) the regulations provide for regular review and updating, and for public notice and an opportunity for public participation in their revision;

(15) funding and manpower are or will be committed to the administration and enforcement of the regulations sufficient to carry out the purposes of this title;

(16) the regulations are authorized by law and will become effective no later than sixty days after approval by the Secretary;

(17) training programs will be established, as necessary, for persons engaged in mining operations and in enforcement of environmental regulations;

(18) the regulations are compatible to the maximum extent practicable with approved regulations of adjacent States; and

(19) the regulations which are developed by the State agency to meet or exceed performance standards should consider in addition to relative degrees of environmental protection, the relative costs involved;

(b) (1) In choosing among specifications or other requirements which satisfy the performance standards in this subsection the Secretary shall consider in addition to the relative degrees of environmental protection, the relative costs involved.

(2) The criteria set forth in subsection (a) of this section shall be further elaborated by the Secretary through guidelines which will be issued within 90 days after enactment of this Act and revised periodically as the Secretary deems appropriate.

(3) Within 180 days after enactment of this Act, the Secretary shall by regulation adopt performance standards for the reclamation of mined areas affected by surface mining operations. Those performance standards shall include specifications that will ensure (i) that mined areas will be returned, as soon as feasible, to their original contour or to a contour similarly appropriate considering the surrounding topography and possible future uses of the areas; (ii) that there is no deposition of spoil material, except

as necessary to the original excavation of earth in a new mining operation, on the undisturbed or natural surface within or adjacent to the mined area, and that reclamation be conducted concurrently with the mining operation; except that the State agency may allow departures from such specifications either through a State approved program pursuant to (a)(5) of this section or if the operator demonstrates that such departures will provide equal or better protection of life, property, and environmental quality; (iii) that throughout the mined area, soil conditions be stabilized and water management be conducted such that landslides are prevented, erosion is minimized, and water pollution by siltation and by acid, highly mineralized or toxic material drainage is minimized; and (iv) that the original type or similarly appropriate type of vegetation will be re-established on the area disturbed by the mining operations as soon after the soil handling is completed as feasible. He shall revise all such performance standards periodically as necessary

(4) Within 180 days after the enactment of this Act, the Secretary shall by regulation adopt performance standards for the reclamation of areas affected by open pit mining, taking into consideration the unique nature of such operations. Those performance standards should ensure (i) that new mined areas should be returned, to the extent feasible, to approximately their original contour or to a contour similarly appropriate considering the surrounding topography and possible future uses of the area; (ii) that, to the extent feasible, there is no permanent deposition of spoil material on undisturbed or natural surfaces within or adjacent to the mined area; (iii) that, throughout the permit area, soil conditions will be stabilized and water management conducted, such that landslides are prevented, erosion is minimized, and pollution of water, including that in water impoundments created by the mining operation, by siltation and by acid, highly mineralized and toxic material drainage is minimized; and (iv) that, to the extent feasible, original type or similarly appropriate type vegetation will be re-established on the disturbed land areas. He shall revise all such performance standards periodically as necessary.

(5) Within one year after enactment of this Act

the Secretary shall by regulation adopt performance standards for reclamation of areas affected by underground mining operations in order to prevent, minimize or correct environmental harm, including standards for minimizing subsidence and the continuing discharge of acid, mineralized and toxic material drainage. He shall revise all such performance standards periodically as necessary.

(c) To advise the Secretary in developing guidelines and performance standards under subsection (b) of this section, there is established an Advisory Committee composed of representatives from the Departments of Agriculture and Commerce, the Environmental Protection Agency, the Tennessee Valley Authority and the Appalachian Regional Commission, the Council of State Governments, and such other representatives as the Secretary may designate. In order to ensure consistency with the purposes of the Clean Air Act and the Federal Water Pollution Control Act, the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency in those aspects of the guidelines and regulations under subsection (b) which affect air or water quality.

(d) The Secretary shall not approve regulations submitted by a State pursuant to this section until he has solicited the views of Federal agencies principally interested in such regulations. In order to ensure consistency with the purposes of the Clean Air Act and the Federal Water Pollution Control Act, the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency in those aspects of each State's regulations which affect air or water quality. The Secretary shall approve or reject the State regulations within 180 days after such regulations are filed.

(e) If the Secretary approves the regulations or revision thereof submitted to him by a State for approval, he shall conduct a continuing review and evaluation of the effectiveness of the regulations and the administration and enforcement thereof. As a result of the evaluation and review the Secretary may determine that:

(1) the State has failed to enforce the regulations adequately;

(2) the State's regulations require revision as

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a result of experience or the guidelines on regulations issued by the Secretary pursuant to section 201(b);

(3) the State has otherwise failed to comply with the purposes of this Act.

Upon making such determination the Secretary shall notify the State and suggest appropriate action, remedies, or revisions to the regulations affording the State an opportunity for a hearing. If within a reasonable time, as determined by the Secretary, the State has not taken appropriate action as determined by the Secretary, the Secretary shall withdraw his approval of the regulations, and issue regulations for such State under section 202 of this title. After withdrawal of his approval and pending the issuance of regulations under section 202, the Secretary may administer and enforce the State regulations. Following the issuance of regulations under section 202 and while they are in effect, the Secretary is authorized to administer and enforce such regulations within such State.

Section 202. Federal Regulation of Mining Operations.

(a) If, at the expiration of two years after the date of enactment of this Act, a State has failed to submit environmental regulations for mining operations, or has submitted regulations which have been disapproved and within such period has failed to submit revised regulations for approval, the Secretary shall promptly issue environmental regulations for mining operations within such State. The Federal regulations issued by the Secretary for a particular State shall meet the requirements of the principles set forth in subsection (a) and (b) of section 201 of this Act.

(b) Regulations under this section shall be issued pursuant to the Federal Rule making procedures set forth in 5 U.S.C. 553.

(c) The Secretary may from time to time revise such regulations in accordance with the procedure prescribed in 5 U.S.C. 553.

Section 203. Where the Secretary administers and enforces the program for the State, or when the Secretary administers and enforces State regulations under Section 201(e) of this title, he shall recover the full cost of administering and enforcing the program through the use of mining permit charges to be levied against operators of mining operations within the State.

Section 204. Termination of Federal Regulations. If a State submits proposed State regulations to the Secretary after Federal regulations have been issued pursuant to section 202 of this title, and if the Secretary approves such regulations, such Federal regulations shall cease to be applicable to the State at such time as the State regulations become effective. Such Federal regulations, as changed or modified by the Secretary, shall again become effective if the Secretary subsequently withdraws his approval of the State regulations pursuant to subsection (e) of section 201 of this title.

Section 205. Inspections and Investigations. The Secretary is authorized to make such inspections and investigations of mining operations and mined areas as he considers necessary or appropriate to evaluate the administration and enforcement of any State's regulations, or to develop or enforce Federal regulations, or otherwise to carry out the purposes of this Act, and for such purposes authorized representatives of the Secretary shall have the right of entry to any mining operation and into any mined areas. In order to enforce the right of entry into a specific mining operation or mined area the Secretary may obtain a warrant from the appropriate district court to authorize such entry.

Section 206. Injunctions. At the request of the Secretary, the Attorney General may institute a civil action in a district court of the United States or a Federal District Court of the Commonwealth of Puerto Rico, the Virgin Islands, and Guam or the High Court of American Samoa for an injunction or other appropriate order (1) to prevent any operator of a mining operation from engaging in mining operations in violation of Federal regulations issued under section 202 of this title or State regulations which the Secretary is authorized to enforce under section 201(e) of this title; (2) to prevent an operator of a mining operation from placing in commerce the minerals produced by a mining operation in violation of State regulations approved under section 201 of this title; (3) to enforce a warrant issued under section 205 of this title; or (4) to collect a penalty under section 207(a) of this title. The district court of the United States or a

Federal District Court of the Commonwealth of Puerto Rico, the Virgin Islands, and Guam or the High Court of American Samoa for the district in which such operator of a mining operation resides or is doing business shall have jurisdiction to issue such injunction or order.

Section 207. Penalties. (a) If any person fails to comply with any regulation issued under section 202 of this title for a period of fifteen days after notice of such failure, the Secretary may order cessation of such person's mining operations and such person shall be liable for a civil penalty of not more than $1000 for each day of continuance of such failure after said fifteen days.

(b) Any person who knowingly violates any regulation issued pursuant to section 202 of this title shall, upon conviction, be punished by a fine not exceeding $10,000, or by imprisonment not exceeding one year, or both.

(c) The penalties prescribed in this section shall be in addition to any other remedies afforded by this title or by any other law or regulation.

Section 208. (a) Review of the Secretary's action in (i) promulgating any standards of performance under section 201(b)(2), (b)(3), (b)(4), and (b)(5); and (ii) approving or disapproving a State environmental regulations and standards or revision to those under section 201(a); may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within 90 days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

(b) Action of the Secretary with respect to which review could have been obtained under paragraph (a) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

Section 209. Research. The Secretary is authorized to conduct or promote research, or training programs to carry out the purposes of this title. In so doing, the Secretary may enter into contracts with institutions,

agencies, organizations, or individuals and make grants to non-profit organizations and collect and make available information resulting therefrom.

Section 210. Grants. (a) The Secretary is authorized to make a grant to any State for the purpose of assisting such State in developing, administering and enforcing environmental regulations under this title provided that such grants do not exceed 80% of the program development costs incurred during the year preceding approval by the Secretary and do not exceed 60% of the total costs incurred during the first year following approval, 45% during the second year following approval, 30% during the third year following approval and 15% during the fourth year following approval, at which time the Federal grants shall cease.

(b) The Secretary is authorized to cooperate with and provide non-financial assistance to any State for the purpose of assisting it in the administration and enforcement of its regulations. Such cooperation and assistance may include:

(1) technical assistance and training, including provision of necessary curricular and instructional materials, in the administration and enforcement of the State regulations or program; or

(2) assistance in preparing and maintaining a continuing inventory of mining operations and mined areas in such State for the purposes of evaluating the effectiveness of its environmental regulations for mining operations programs and identifying current and future needs of the State's activities under this Act.

Section 211. In extending technical assistance to States under section 210 and in the enforcement of regulations issued by the Secretary under section 202 concerning matters relating to the reclamation of areas affected by surface mining, the Secretary may utilize the services of the Secretary of Agriculture and the Administrator of the Environmental Protection Agency, and may transfer funds to cover the cost thereof.

Section 212. Any records, reports, or information obtained under this Act shall be available to the public, except that upon a showing satisfactory to the Secretary by any person that records, reports, or information, or particular part thereof, to which the Secretary has access under this Act if made public, would divulge

methods or processes entitled to protection as trade secrets of such person, the Secretary shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

Section 213. Rules and Regulations. The Secretary is authorized to promulgate such rules and regulations as he considers necessary to carry out the provisions of this title.

Section 214. Authorization of Appropriations. There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out the provisions of this Act.

TITLE III

Section 301. (a) The heads of all Federal departments or agencies which have jurisdiction over land on which mining operations are permitted are authorized to promulgate environmental regulations to govern such mining operations. Such department or agency heads shall issue regulations to assure at least the same degree of environmental protection and reclamation on lands under their jurisdiction as is required by any law and regulation established under an approved State program for the State in which such land is situated. Each Federal department and agency shall cooperate with the Secretary and the States, to the greatest extent practicable, in carrying out the provisions of this Act.

(b) Nothing in this Act or in any State regulations approved pursuant to it shall be construed to conflict with any of the following Acts or with any rule or regulation promulgated thereunder:

(1) the Federal Metal and Nonmetallic Mine Safety Act (80 Stat. 772; 30 U.S.C. 721-740);

(2) the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742);

(3) the Federal Water Pollution Control Act (79 Stat. 903), as amended, the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality;

(4) the Clean Air Act, as amended (79 Stat. 992; 42 U.S.C. 1857); and

(5) the Solid Waste Disposal Act, as amended (79 Stat. 997; 42 U.S.C. 3251).

Section 302. Separability. If any provision of this Act of the applicability thereof to any person or circumstance is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Protecting Our Natural Heritage

Endangered Species

THE SECRETARY OF THE INTERIOR

WASHINGTON

February 15, 1973

Dear Mr. [President/Speaker]:

There is enclosed a draft bill "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

We recommend that this bill, a part of the environmental program announced today by President Nixon, in his Environment and Natural Resources State of the Union Message, be referred to the appropriate committee for consideration, and that it be enacted.

This proposal addresses the need to identify those species or subspecies which, though not yet threatened with extinction, are likely within the foreseeable future to become so threatened. We are convinced that it is far more sound to take the steps necessary to keep a species or subspecies from becoming endangered than to attempt to save it after it has reached that critical point. Therefore, the bill defines "endangered" (Section 2(c)(1) as meaning any species or subspecies which is either presently threatened with extinction or likely within the foreseeable future to become threatened with extinction. To assure protection of all endangered species commensurate with the threat to their continued existence, we propose to (1) remove the current ceiling imposed by law on acquisition of essential wildlife habitat; (2) prohibit unauthorized import or export, taking, possession, sale, delivery, and transport of species presently threatened with extinction; (3) clarify authorities pertaining to warrantless searches and forfeiture of seized property;

and, (4) allow importation at other than designated ports of entry "in the interest of health or safety of fish and wildlife."

The bill follows closely the precedent established by the Congress in 1966 and 1967, when it enacted the first legislation to provide protection for fish and wildlife determined to be threatened with extinction in the United States and abroad. This proposal retains those provisions of the earlier Acts which laid the foundation for this Department's effort to protect endangered species and adds to them the authorities which, as demonstrated by experience, are needed to cope with a continuing decimation of the world's wildlife resources. It provides authority for a new program to be administered jointly by this Department and the Department of Commerce, pursuant to the allocation of responsibilities established by Reorganization Plan No. 4 of 1970.

We urge the Congress to take this further step forward for the protection of our diminishing wildlife resources. The Office of Management and Budget has advised that this legislation is in accord with the President's program.

Sincerely yours,

/s/ Rogers C.B. Morton
Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

Honorable Carl Albert
Speaker of the House of
Representatives
Washington, D. C. 20515

Enclosure

A BILL

To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; 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 "Endangered Species Conservation Act of 1973."

SEC. 2.(a) The Congress finds and declares that one of the unfortunate consequences of growth and development in the United States and elsewhere has been the extermination of some species or subspecies of fish and wildlife, that serious losses in other animals with educational, historical, recreational, and scientific value have occurred and are occurring; that the United States has pledged itself, pursuant to migratory bird treaties with Canada and Mexico, the migratory and endangered bird treaty with Japan, the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and other international agreements to conserve and protect, where practicable, the various species or subspecies of fish and wildlife, including game and nongame migratory birds, that are presently threatened with extinction; and that the conservation, protection, restoration, and propagation of such species or subspecies will inure to the benefit of all citizens. The purposes of this Act are to provide a program for the conservation, protection, restoration, and propagation of selected species or subspecies of fish and wildlife, including migratory birds, that are presently threatened with extinction, or are likely within the foreseeable future to become threatened with extinction.

(b) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to protect species or subspecies of fish and wildlife, including migratory birds, that are presently threatened with extinction or are likely within the foreseeable future to become threatened with extinction, and, insofar as is practicable and consistent with the primary purposes of such bureaus, agencies and

services, shall utilize their authorities in furtherance of the purpose of this Act.

(c)(1) A species or subspecies of fish or wildlife shall be regarded as an endangered species whenever, in his discretion, the Secretary determines, based on the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, and, in cooperation with the Secretary of State, the country or countries in which such fish and wildlife are normally found or whose citizens harvest the same on the high seas, and to the extent practicable, with interested persons and organizations, and other interested Federal agencies, that the continued existence of such species or subspecies of fish or wildlife, in the judgment of the Secretary, is either presently threatened with extinction or will likely within the foreseeable future become threatened with extinction, throughout all or a significant portion of its range, due to any of the following factors: (i) the destruction, drastic modification, or severe curtailment or the threatened destruction, drastic modification, or severe curtailment of its habitat; or (ii) its overutilization for commercial, sporting, scientific, or educational purposes; or (iii) the effect on it of disease or predation; or (iv) the inadequacy of existing regulatory mechanisms; or (v) other natural or man-made factors affecting its continued existence.

(2) After making such determination, the Secretary shall publish in the Federal Register, and from time to time he may revise, by regulation, a list, by scientific and common name of such endangered species, indicating as to each species or subspecies so listed whether such species or subspecies is presently threatened with extinction or likely with the foreseeable future to become threatened with extinction and, in either case, over what portion of the range of such species this condition exists. The endangered species lists which are effective as of the date of enactment shall be republished to conform to the classification of endangered species provided for in this Act: Provided, however, That until such republication such an endangered species already listed shall be considered an endangered species presently threatened with extinction pursuant to this Act. An endangered species which is

to be republished as a species presently threatened with extinction shall not require public hearing or comment under the provisions of section 553 of title 5, United States Code. Such provisions shall apply to any other regulation issued under this subsection. The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, also conduct a review of any listed or unlisted species or subspecies of fish and wildlife proposed to be removed from, added to, or reclassified within the list, but only when he finds and publishes his finding that, to his satisfaction, such person has presented substantial evidence to warrant such a review.

(d) For the purposes of this Act, the term--

(1) "fish and/or wildlife" means any wild animal, whether or not raised in captivity, including with limitation, any mammal, fish, bird, amphibian, reptile, mollusk, or crustacean; including any part, product, egg, or offspring thereof; or the dead body or parts thereof;

(2) "United States" or "State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam;

(3) "Person" includes any individual, firm, corporation, association, partnership, or private entity;

(4) "take" means to pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture or collect;

(5) "Secretary" means the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Number 4 of 1970;

(6) "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing or introduction constitutes an importation within the meaning of the tariff laws of the United States;

(7) "foreign commerce" includes, among other things, any transaction (1) between persons within one

foreign country, or (2) between persons in two or more foreign countries, or (3) between a person within the United States and a person in a foreign country, or (4) between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

SEC. 3. (a) The Secretary shall utilize the land acquisition and other authorities of the Migratory Bird Conservation Act (45 Stat. 1433), as amended (16 U.S.C. 715d-3), the Fish and Wildlife Act of 1956 (70 Stat. 1122), as amended (16 U.S.C. 742f), and the Fish and Wildlife Coordination Act (72 Stat. 566; 16 U.S.C. 663), as appropriate, to carry out a program in the United States of conserving, protecting, restoring, and propagating those species and subspecies of fish and wildlife that he lists as endangered species pursuant to section 2 of this Act.

(b) In addition to the land acquisition authorities otherwise available to him, the Secretary is hereby authorized to acquire by purchase, donation, or otherwise, land and water, or interests therein needed to carry out the purpose of this Act relating to the conservation, protection, restoration, and propagation of those species or subspecies of fish and wildlife that he lists as endangered species pursuant to section 2 of this Act.

(c) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), as amended (16 U.S.C. 460), may be used for the purpose of acquiring land and water, or interests therein that are needed for the purpose of conserving, protecting, restoring, and propagating those species or subspecies of fish and wildlife, including migratory birds, that he lists as endangered species pursuant to section 2 of this Act.

(d) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purpose of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purpose of this Act by carrying out programs for the protection of endangered species or subspecies of fish and wildlife and by taking such action necessary to insure that

actions authorized, funded, or carried out by them do not jeopardize the continued existence of endangered species.

SEC. 4. (a) Notwithstanding any other Act of Congress or regulation issued pursuant thereto, and except as authorized by this Act, it is unlawful for any person subject to the jurisdiction of the United States to:

(1) import into or export from the United States; or

(2) (A) take within the United States, the territorial sea of the United States, or upon the high seas; or
(B) when so unlawfully taken, to possess, sell, deliver, carry, transport, or ship, by any means whatsoever; or

(3) deliver, receive, carry, transport or ship in interstate or foreign commerce, by any means whatsoever, for commercial purposes; or

(4) sell or offer for sale in interstate or foreign commerce any species or subspecies of fish and wildlife which the Secretary has listed as an endangered species presently threatened with extinction pursuant to section 2 of this Act.

(b) Whenever the Secretary, pursuant to section 2 of this Act, lists a species or subspecies as an endangered species which is likely within the foreseeable future to become threatened with extinction he shall issue such regulations as he deems necessary and advisable to provide for the conservation, protection, restoration, and propagation of such species or subspecies, including regulations making unlawful any of the acts specified by this section.

(c) It is unlawful for any person subject to the jurisdiction of the United States to import into the United States any fish and wildlife, other than shellfish and fishery products imported for commercial purposes or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes, except at a port or ports designated by the Secretary. Any port or ports which have been designated by the Secretary by regulation under the authority of

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the Act of December 5, 1969 (83 Stat. 276; 16 U.S.C. 668cc-4(d)), and are in effect on the date of enactment shall remain effective under the authority of this Act unless modified by the Secretary. For the purpose of facilitating enforcement of this Act and reducing the costs thereof, the Secretary, with the approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and alter such designations. The Secretary, under such terms and conditions as he may prescribe, may permit the importation at non-designated ports in the interest of the health or safety of the fish and wildlife, or for other reasons, if in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(d) It is unlawful for any person subject to the jurisdiction of the United States to attempt or conspire to commit, or to cause to be committed, any offense defined in this section.

(e) Any State law or regulation is void to the extent that it would effectively permit or prohibit imports, exports, or transactions in interstate or foreign commerce in a manner inconsistent with subsection (a) hereof, or regulations issued under authority of subsection (b) hereof. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish and wildlife: provided, however, That any State law or regulation respecting the taking of an endangered species listed pursuant to section 2 of this Act which is less restrictive than the prohibitions provided by this Act shall be void to the extent that such State law or regulations is so less restrictive.

SEC.5. (a) The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by or pursuant to section 4 of this Act when he determines, to his satisfaction, that such act will be undertaken for zoological, educational, or scientific purposes, or to enhance the survival of such fish and wildlife, but only if he finds that such act will not adversely affect the survival of the wild population or the reproductive capacity of the species or subspecies concerned.

(b) In order to minimize undue economic hardship to any person who proposes to commit an act prohibited by subsection 4(a) of this Act under any contract entered into prior to the date of publication in the Federal Register of notice of a proposed listing of an endangered species presently threatened with extinction, the Secretary, upon such person filing an application with him and upon filing such information as the Secretary may require showing to his satisfaction, such hardship, may exempt such person from applicability of subsection 4 (a); Provided, however, That no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of a proposed listing of the affected species or in the quantities which exceed those specified by the Secretary; and Provided further, That the one year period for those species or subspecies of fish and wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of Section 3 of the Act of December 5, 1969 (83 Stat. 275).

(c) The prohibitions contained in subparagraph 4(a)(2) of this Act respecting the taking within a State or its territorial sea, as well as analogous regulations which may be issued pursuant to the authority provided in subsection 4(b) of this Act, may be suspended by the Secretary in any State which has entered into and, in the judgment of the Secretary, satisfactorily carries out an active program to manage and protect endangered species. The Secretary's determination that such a suspension is warranted shall include a finding that State laws and regulations are framed and enforced in a manner consistent with, and no less stringent than, the prohibition and exceptions of this Act. Said suspension shall take effect by notice published in the Federal Register, and it may be revoked whenever the Secretary finds either that the program to manage and protect such endangered species is not being satisfactorily carried out, or that State laws or regulations, or the enforcement thereof, permit acts prohibited by this Act and the exceptions thereto.

SEC. 6. (a)(1) Any person who violates any provision of this Act or of any regulation or permit issued hereunder may be assessed a civil penalty by the

Secretary of not more than $10,000 for each such violation. No such penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action solely on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the grazing of domestic livestock on Federal lands, to any person who is convicted of a criminal violation of this Act or any regulation or permit issued hereunder may immediately modify, suspend or revoke each lease, license, permit or other agreement. The Secretary

shall also suspend for a period of up to one year, or cancel any Federal hunting or fishing permits or stamps issued to any person who is convicted or a criminal violation of this Act or any regulation or permit issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(b) Any person who knowingly commits an act which is declared unlawful by this Act, or any regulation or permit issued hereunder, shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both.

(c) The several District Courts of the United States, including the courts enumerated in 28 United States Code 460, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the Judicial district of the District Court of the United States for the District of Hawaii.

(d)(1) The provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(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 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.

Such person so authorized may search and seize, with or without a warrant, as authorized by law.

(4) All fish and wildlife taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported or imported contrary to the provisions of this Act, any regulation made pursuant thereto or any permit issued thereunder, and all guns, traps, nets and other equipment, vessels, vehicles, aircraft and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting or importing of any fish and wildlife in violation of this Act, any regulation made pursuant thereto or any permit issued thereunder shall be subject to forfeiture to the United States.

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

(e) The Secretary may require any person importing or exporting fish and wildlife, other than shellfish and fishery products imported for commercial purposes or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes, to file a declaration with him stating such information as he deems necessary to facilitate enforcement of this Act.

(f) The Secretary, the Secretary of the Treasury and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to carry out the purposes of this Act, and charge reasonable fees for expenses to the Government connected with permits

authorized by this Act, including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish and wildlife and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

SEC. 7. (a) In order to carry out the provisions of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide for the protection, conservation and propagation of fish and wildlife, including those species listed as endangered pursuant to section 2 of this Act, and shall encourage bilateral and multilateral agreements with such countries for the protection, conservation, and propagation of fish and wildlife. The Secretary shall also encourage persons, taking directly or indirectly fish and wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide, conservation practices designed to enhance such fish and wildlife and their habitat. After consultation with the Secretary of State, the Secretary is authorized to assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the protection, conservation and propagation of fish and wildlife. He is authorized to conduct or provide financial assistance for educational training of foreign personnel, in this country or abroad, in the subjects of fish and wildlife management, research, and law enforcement and to render professional assistance abroad in such matters. After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary is authorized to conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(b) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the

administration of this Act and amendments made by this Act, with the administration of the animal quarantine laws (19 U.S.C. 1306; 21 U.S.C. 101-105, 111-135b, and 612-614) and the Tariff Act of 1930, as amended (sec. 1306 of title 19). Nothing in this Act or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture.

(c) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, as amended, including, without limitation, section 1527 of title 19, United States Code, relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

SEC. 8. (a) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the several States. Such cooperation may include consultation before the acquisition of any land and water, or interest therein, for the purpose of conserving, protecting, restoring, or propagating any endangered species.

(b) The Secretary may enter into agreements with the States for the administration and management of any area established for the conservation, protection, restoration, and propagation of endangered species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s).

SEC. 9. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928), as amended (16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species listed by the Secretary pursuant to section 2 of the Endangered Species

Conservation Act of 1973, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing or resident fish and wildlife on lands not within the system."

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224), as amended (16 U.S.C. 715i(a)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction".

(c) Subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s(a)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction" in the last sentence thereof.

(d) Subsection 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 903), as amended (16 U.S.C. 460-l-9(a)(1)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction".

SEC. 10. (a) Sections 1 through 3 of the Act of October 15, 1966 (80 Stat. 926, 927), as amended (16 U.S.C. 668aa-668cc) are hereby repealed in their entirety.

(b) Sections 1 through 6 of the Act of December 5, 1969 (83 Stat. 275-279; 16 U.S.C. 668cc-1 through 668c-6) are hereby repealed in their entirety.

SEC. 11. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

The Contracting States,

RECOGNIZING that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

CONSCIOUS of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

RECOGNIZING that peoples and States are and should be the best protectors of their own wild fauna and flora;

RECOGNIZING, in addition, that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

CONVINCED of the urgency of taking appropriate measures to this end;

HAVE AGREED as follows:

ARTICLE I

Definitions

For the purpose of the present Convention, unless the context otherwise requires:

(a) "Species" means any species, subspecies, or geographically separate population thereof;

(b) "Specimen" means:

(i) any animal or plant, whether alive or dead;

(ii) in the case of an animal: for species included in Appendices I and II, any readily recognizable part or derivative thereof; and for species included in Appendix III, any readily recognizable part or derivative thereof specified in Appendix III in relation to the species; and

(iii) in the case of a plant: for species included in Appendix I, any readily recognizable part or derivative thereof; and for species included in Appendices II and III, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species;

(c) "Trade" means export, re-export, import and introduction from the sea;

(d) "Re-export" means export of any specimen that has previously been imported;

(e) "Introduction from the sea" means transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State;

(f) "Scientific Authority" means a national scientific authority designated in accordance with Article IX;

(g) "Management Authority" means a national management authority designated in accordance with Article IX;

(h) "Party" means a State for which the present Convention has entered into force.

ARTICLE II

Fundamental Principles

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

2. Appendix II shall include:

(a) all species which although not necessarily now threatened with with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and

(b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

3. Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.

4. The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention.

ARTICLE III

Regulation of Trade in Specimens of Species included in Appendix I

1. All trade in specimens of species included in

Appendix I shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix I shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

(d) a Management Authority of the State of export is satisfied that an import permit has been granted for the specimen.

3. The import of any specimen of a species included in Appendix I shall require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. An import permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved;

(b) a Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.

4. The re-export of any specimen of a species included in Appendix I shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention;

(b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

(c) a Management Authority of the State of re-export is satisfied that an import permit has been granted for any living specimen.

5. The introduction from the sea of any specimen of a species included in Appendix I shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved;

(b) a Management Authority of the State of introduction is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(c) a Management Authority of the State of introduction is satisfied that the specimen is not to be used for primarily commercial purposes.

ARTICLE IV

Regulation of Trade in Specimens of Species included in Appendix II

1. All trade in specimens of species included in Appendix II shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix II shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

3. A Scientific Authority in each Party shall monitor

both the export permits granted by that State for specimens of species included in Appendix II and the actual exports of such specimens. Whenever a Scientific Authority determines that the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I, the Scientific Authority shall advise the appropriate Management Authority of suitable measures to be taken to limit the grant of export permits for specimens of that species.

4. The import of any specimen of a species included in Appendix II shall require the prior presentation of either an export permit or a re-export certificate.

5. The re-export of any specimen of a species included in Appendix II shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention; and

(b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

6. The introduction from the sea of any specimen of a species included in Appendix II shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved; and

(b) a Management Authority of the State of introduction is satisfied that any living specimen will be so handled as to minimize the risk of injury, damage to health or cruel treatment.

7. Certificates referred to in paragraph 6 of this Article may be granted on the advice of a Scientific Authority, in consultation with other national scientific authorities or, when appropriate, international

scientific authorities, in respect of periods not exceeding one year for total numbers of specimens to be introduced in such periods.

ARTICLE V

Regulation of Trade in Specimens of Species included in Appendix III

1. All trade in specimens of species included in Appendix III shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix III from any State which has included that species in Appendix III shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

(b) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

3. The import of any specimen of a species included in Appendix III shall require, except in circumstances to which paragraph 4 of this Article applies, the prior presentation of a certificate of origin and, where the import is from a State which has included that species in Appendix III, an export permit.

4. In the case of re-export, a certificate granted by the Management Authority of the State of re-export that the specimen was processed in that State or is being re-exported shall be accepted by the State of import as evidence that the provisions of the present Convention have been complied with in respect of the specimen concerned.

ARTICLE VI

Permits and Certificates

1. Permits and certificates granted under the provisions of Articles III, IV, and V shall be in accordance with the provisions of this Article.

2. An export permit shall contain the information specified in the model set forth in Appendix IV, and may only be used for export within a period of six months from

the date on which it was granted.
3. Each permit or certificate shall contain the title of the present Convention, the name and any identifying stamp of the Management Authority granting it and a control number assigned by the Management Authority.
4. Any copies of a permit or certificate issued by a Management Authority shall be clearly marked as copies only and no such copy may be used in place of the original, except to the extent endorsed thereon.
5. A separate permit or certificate shall be required for each consignment of specimens.
6. A Management Authority of the State of import of any specimen shall cancel and retain the export permit or re-export certificate and any corresponding import permit presented in respect of the import of that specimen.
7. Where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. For these purposes "mark" means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.

ARTICLE VII

Exemptions and Other Special Provisions Relating to Trade

1. The provisions of Articles III, IV and V shall not apply to the transit or trans-shipment of specimens through or in the territory of a Party while the specimens remain in Customs control.
2. Where a Management Authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen, the provisions of Articles III, IV and V shall not apply to that specimen where the Management Authority issues a certificate to that effect.
3. The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects. This exemption shall not apply where:
    (a) in the case of specimens of a species included in Appendix I, they were acquired by the owner outside his State of usual residence, and are being imported into that State; or
    (b) in the case of specimens of species included in Appendix II:
        (i) they were acquired by the owner outside

his State of usual residence and in a State where removal from the wild occurred;

(ii) they are being imported into the owner's State of usual residence; and

(iii) the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens;

unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.

4. Specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II.

5. Where a Management Authority of the State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or is a part of such an animal or plant or was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Articles III, IV or V.

6. The provisions of Articles III, IV and V shall not apply to the non-commercial loan, donation or exchange between scientists or scientific institutions registered by a Management Authority of their State, of herbarium specimens, other preserved, dried or embedded museum specimens, and live plant material which carry a label issued or approved by a Management Authority.

7. A Management Authority of any State may waive the requirements of Articles III, IV and V and allow the movement without permits or certificates of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition provided that:

(a) the exporter or importer registers full details of such specimens with that Management Authority;

(b) the specimens are in either of the categories specified in paragraphs 2 or 5 of this Article; and

(c) the Management Authority is satisfied that any living specimen will be so transported and cared for as

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to minimize the risk of injury, damage to health or cruel treatment.

ARTICLE VIII

Measures to be Taken by the Parties

1. The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:

(a) to penalize trade in, or possession of, such specimens, or both; and

(b) to provide for the confiscation or return to the State of export of such specimens.

2. In addition to the measures taken under paragraph 1 of this Article, a Party may, when it deems it necessary, provide for any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention.

3. As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay. To facilitate such passage, a Party may designate ports of exit and ports of entry at which specimens must be presented for clearance. The Parties shall ensure further that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

4. Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:

(a) the specimen shall be entrusted to a Management Authority of the State of confiscation;

(b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and

(c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under subparagraph (b) of this paragraph, including the choice of a rescue centre or other place.

5. A rescue centre as referred to in paragraph 4 of

this Article means an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated.

6. Each Party shall maintain records of trade in specimens of species included in Appendices I, II and III which shall cover:

(a) the names and addresses of exporters and importers; and

(b) the number and type of permits and certificates granted; the States with which such trade occurred; the numbers or quantities and types of specimens, names of species as included in Appendices I, II and III and, where applicable, the size and sex of the specimens in question.

7. Each Party shall prepare periodic reports on its implementation of the present Convention and shall transmit to the Secretariat:

(a) an annual report containing a summary of the information specified in sub-paragraph (b) of paragraph 6 of this Article; and

(b) a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention.

8. The information referred to in paragraph 7 of this Article shall be available to the public where this is not inconsistent with the law of the Party concerned.

ARTICLE IX

Management and Scientific Authorities

1. Each Party shall designate for the purposes of the present Convention:

(a) one or more Management Authorities competent to grant permits or certificates on behalf of that Party; and

(b) one or more Scientific Authorities.

2. A State depositing an instrument of ratification, acceptance, approval or accession shall at that time inform the Depositary Government of the name and address of the Management Authority authorized to communicate with other Parties and with the Secretariat.

3. Any changes in the designations or authorizations under the provisions of this Article shall be communicated by the Party concerned to the Secretariat for transmission to all other Parties.

4. Any Management Authority referred to in paragraph 2

of this Article shall if so requested by the Secretariat or the Management Authority of another Party, communicate to it impression of stamps, seals or other devices used to authenticate permits or certificates.

ARTICLE X

Trade with States not Party to the Convention

Where export or re-export is to, or import is from, a State not a party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party.

ARTICLE XI

Conference of the Parties

1. The Secretariat shall call a meeting of the Conference of the Parties not later than two years after the entry into force of the present Convention.
2. Thereafter the Secretariat shall convene regular meetings at least once every two years, unless the Conference decides otherwise, and extraordinary meetings at any time on the written request of at least one-third of the Parties.
3. At meetings, whether regular or extraordinary, the Parties shall review the implementation of the present Convention and may:

(a) make such provision as may be necessary to enable the Secretariat to carry out its duties;

(b) consider and adopt amendments to Appendices I and II in accordance with Article XV;

(c) review the progress made towards the restoration and conservation of the species included in Appendices I, II and III;

(d) receive and consider any reports presented by the Secretariat or by any Party; and

(e) where appropriate, make recommendations for improving the effectiveness of the present Convention.

4. At each regular meeting, the Parties may determine the time and venue of the next regular meeting to be held in accordance with the provisions of paragraph 2 of this Article.
5. At any meeting, the Parties may determine and adopt rules of procedure for the meeting.
6. The United Nations, its Specialized Agencies and the International Atomic Energy Agency, as well as any State

not a Party to the present Convention, may be represented at meetings of the Conference by observers, who shall have the right to participate but not to vote.

7. Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote.

ARTICLE XII

The Secretariat

1. Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme. To the extent and in the manner he considers appropriate, he may be assisted by suitable inter-governmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora.

2. The functions of the Secretariat shall be:

(a) to arrange for and service meetings of the Parties;

(b) to perform the functions entrusted to it under the provisions of Articles XV and XVI of the present Convention;

(c) to undertake scientific and technical studies in accordance with programmes authorized by the Conference of the Parties as will contribute to the implementation of the present Convention, including studies concerning standards for appropriate preparation and shipment of living specimens and the means of identifying specimens;

(d) to study the reports of Parties and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the present Convention;

(e) to invite the attention of the Parties to any

matter pertaining to the aims of the present Convention;

(e) to publish periodically and distribute to the Parties current editions of Appendices I, II and III together with any information which will facilitate identification of specimens of species included in those Appendices.

(g) to prepare annual reports to the Parties on its work and on the implementation of the present Convention and such other reports as meetings of the Parties may request;

(h) to make recommendations for the implementation of the aims and provisions of the present Convention, including the exchange of information of a scientific or technical nature;

(i) to perform any other function as may be entrusted to it by the Parties.

ARTICLE XIII

International Measures

1. When the Secretariat in the light of information received is satisfied that any species included in Appendices I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information to the authorized Management Authority of the Party or Parties concerned.

2. When any Party receives a communication as indicated in paragraph 1 of this Article, it shall, as soon as possible, inform the Secretariat of any relevant facts insofar as its laws permit and, where appropriate, propose remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.

3. The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate.

ARTICLE XIV

Effect on Domestic Legislation and International Conventions

1. The provisions of the present Convention shall in no way affect the right of Parties to adopt:

(a) stricter domestic measures regarding the conditions for trade, taking possession or transport of

specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or

(b) domestic measures restricting or prohibiting trade, taking possession, or transport of species not included in Appendices I, II or III.

2. The provisions of the present Convention shall in no way affect the provisions of any domestic measures or the obligations of Parties deriving from any treaty, convention, or international agreement relating to other aspects of trade, taking, possession, or transport of specimens which is in force or subsequently may enter into force for any Party including any measure pertaining to the Customs, public health, veterinary or plant quarantine fields.

3. The provisions of the present Convention shall in no way affect the provisions of, or the obligations deriving from, any treaty, convention or international agreement concluded or which may be concluded between States creating a union or regional trade agreement establishing or maintaining a common external customs control and removing customs control between the parties thereto insofar as they relate to trade among the States members of that union or agreement.

4. A State party to the present Convention, which is also a party to any other treaty, convention or international agreement which is in force at the time of the coming into force of the present Convention and under the provisions of which protection is afforded to marine species included in Appendix II, shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention or international agreement.

5. Notwithstanding the provisions of Articles III, IV and V, any export of a specimen taken in accordance with paragraph 4 of this Article shall only require a certificate from a Management Authority of the State of introduction to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question.

6. Nothing in the present Convention shall prejudice the codification and development of the law of the sea by

the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

ARTICLE XV

Amendments to Appendices I and II

1. The following provisions shall apply in relation to amendments to Appendices I and II at meetings of the Conference of the Parties:

(a) Any Party may propose an amendment to Appendix I or II for consideration at the next meeting. The text of the proposed amendment shall be communicated to the Secretariat at least 150 days before the meeting. The Secretariat shall consult the other Parties and interested bodies on the amendment in accordance with the provisions of sub-paragraphs (b) and (c) of paragraph 2 of this Article and shall communicate the response to all Parties not later than 30 days before the meeting.

(b) Amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.

(c) Amendments adopted at a meeting shall enter into force 90 days after that meeting for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

2. The following provisions shall apply in relation to amendments to Appendices I and II between meetings of the Conference of the Parties:

(a) Any Party may propose an amendment to Appendix I or II for consideration between meetings by the postal procedures set forth in this paragraph.

(b) For marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties. It shall also consult inter-governmental bodies having a function in relation to those species especially with a view to obtaining scientific data these bodies may be able to provide and to ensuring coordination with any conservation measures enforced by such bodies. The Secretariat shall

communicate the views expressed and data provided by these bodies and its own findings and recommendations to the Parties as soon as possible.

(c) For species other than marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties, and, as soon as possible thereafter, its own recommendations.

(d) Any Party may, within 60 days of the date on which the Secretariat communicated its recommendations to the Parties under sub-paragraphs (b) or (c) of this paragraph, transmit to the Secretariat any comments on the proposed amendment together with any relevant scientific data and information.

(e) The Secretariat shall communicate the replies received together with its own recommendations to the Parties as soon as possible.

(f) If no objection to the proposed amendment is received by the Secretariat within 30 days of the date the replies and recommendations were communicated under the provisions of sub-paragraph (e) of this paragraph, the amendment shall enter into force 90 days later for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

(g) If an objection by any Party is received by the Secretariat, the proposed amendment shall be submitted to a postal vote in accordance with the provisions of sub-paragraphs (h), (i) and (j) of this paragraph.

(h) The Secretariat shall notify the Parties that notification of objection has been received.

(i) Unless the Secretariat receives the votes for, against or in abstention from at least one-half of the Parties within 60 days of the date of notification under sub-paragraph (h) of this paragraph, the proposed amendment shall be referred to the next meeting of the Conference for further consideration.

(j) Provided that votes are received from one-half of the Parties, the amendment shall be adopted by a two-thirds majority of Parties casting an affirmative or negative vote.

(k) The Secretariat shall notify all Parties of the result of the vote.

(l) If the proposed amendment is adopted it shall enter into force 90 days after the date of the

notification by the Secretariat of its acceptance for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

3. During the period of 90 days provided for by sub-paragraph (c) of paragraph 1 or sub-paragraph (1) of paragraph 2 of this Article any Party may by notification in writing to the Depositary Government make a reservation with respect to the amendment. Until such reservation is withdrawn the Party shall be treated as a State not a party to the present Convention with respect to trade in the species concerned.

ARTICLE XVI

Appendix III and Amendments thereto

1. Any party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of sub-paragraph (b) of Article I.

2. Each list submitted under the provisions of paragraph 1 of this Article shall be communicated to the Parties by the Secretariat as soon as possible after receiving it. The list shall take effect as part of Appendix III 90 days after the date of such communication. At any time after the communication of such list, any Party may by notification in writing to the Depositary Government enter a reservation with respect to any species or any parts or derivatives, and until such reservation is withdrawn, the State shall be treated as a State not a Party to the present Convention with respect to trade in the species or part or derivative concerned.

3. A Party which has submitted a species for inclusion in Appendix III may withdraw it at any time by notification to the Secretariat which shall communicate the withdrawal to all Parties. The withdrawal shall take effect 30 days after the date of such communication.

4. Any Party submitting a list under the provisions of paragraph 1 of this Article shall submit to the Secretariat a copy of all domestic laws and regulations

applicable to the protection of such species, together with any interpretations which the Party may deem appropriate or the Secretariat may request. The Party shall, for as long as the species in question is included in Appendix III, submit any amendments of such laws and regulations or any new interpretations as they are adopted.

ARTICLE XVII

Amendment of the Convention

1. An extraordinary meeting of the Conference of the Parties shall be convened by the Secretariat on the written request of at least one-third of the Parties to consider and adopt amendments to the present Convention. Such amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.

2. The text of any proposed amendment shall be communicated by the Secretariat to all Parties at least 90 days before the meeting.

3. An amendment shall enter into force for the Parties which have accepted it 60 days after two-thirds of the Parties have deposited an instrument of acceptance of the amendment with the Depositary Government. Thereafter, the amendment shall enter into force for any other Party 60 days after that Party deposits its instrument of acceptance of the amendment.

ARTICLE XVIII

Resolution of Disputes

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.

2. If the dispute cannot be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.

ARTICLE XIX

Signature

The present Convention shall be open for signature at Washington until 30th April 1973 and thereafter at Berne until 31st December 1974.

ARTICLE XX

Ratification, Acceptance, Approval

The present Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Swiss Confederation which shall be the Depositary Government.

ARTICLE XXI

Accession

The present Convention shall be open indefinitely for accession. Instruments of accession shall be deposited with the Depositary Government.

ARTICLE XXII

Entry into Force

1. The present Convention shall enter into force 90 days after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, with the Depositary Government.
2. For each State which ratifies, accepts or approves the present Convention or accedes thereto after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the present Convention shall enter into force 90 days after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

ARTICLE XXIII

Reservations

1. The provisions of the present Convention shall not be subject to general reservations. Specific reservations may be entered in accordance with the provisions of this Article and Articles XV and XVI.
2. Any State may, on depositing its instrument of ratification, acceptance, approval or accession, enter a specific reservation with regard to:

(a) any species included in Appendix I, II or III; or

(b) any parts or derivatives specified in relation to a species included in Appendix III.

3. Until a Party withdraws its reservation entered under the provisions of this Article, it shall be treated as a State not a party to the present Convention with

respect to trade in the particular species or parts or derivatives specified in such reservation.

ARTICLE XXIV

Denunciation

Any Party may denounce the present Convention by written notification to the Depositary Government at any time. The denunciation shall take effect twelve months after the Depositary Government has received the notification.

ARTICLE XXV

Depositary

1. The original of the present Convention, in the Chinese, English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Depositary Government, which shall transmit certified copies thereof to all States that have signed it or deposited instruments of accession to it.

2. The Depositary Government shall inform all signatory and acceding States and the Secretariat of signatures, deposit of instruments of ratification, acceptance, approval or accession, entry into force of the present Convention, amendments thereto, entry and withdrawal of reservations and notifications of denunciation.

3. As soon as the present Convention enters into force, a certified copy thereof shall be transmitted by the Depositary Government to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this third day of March, One Thousand Nine Hundred and Seventy-three.

APPENDIX I

Interpretation:

1. Species included in this Appendix are referred to:
   (a) by the name of the species; or
   (b) as being all of the species included in a higher taxon or designated part thereof.
2. The abbreviation "spp." is used to denote all species of a higher taxon.
3. Other references to taxa higher than species are for the purposes of information or classification only.
4. An asterisk (*) placed against the name of a species or higher taxon indicates that one or more geographically separate populations, sub-species or species of that taxon are included in Appendix II and that these populations, sub-species or species are excluded from Appendix I.
5. The symbol (-) followed by a number placed against the name of a species or higher taxon indicates the exclusion from that species or taxon of designated geographically separate populations, sub-species or species as follows:
   - 101 Lemur catta
   - 102 Australian population
6. The symbol (+) followed by a number placed against the name of a species denotes that only a designated geographically separate population or sub-species of that species is included in this Appendix, as follows:
   + 201 Italian population only
7. The symbol (≠) placed against the name of a species or higher taxon indicates that the species concerned are protected in accordance with the International Whaling Commission's schedule of 1972.

FAUNA

MAMMALIA

MARSUPIALIA	
Macropodidae	Macropus parma
	Onychogalea frenata
	O. lunata
	Lagorchestes hirsutus
	Lagostrophus fasciatus
	Caloprymnus campestris
	Bettongia penicillata
	B. lesueur

	B. tropica
Phalangeridae	Wyulda squamicaudata
Burramyidae	Burramys parvus
Vombatidae	Lasiorhinus gillespiei
Peramelidae	Perameles bougainville
	Chaeropus ecaudatus
	Macrotis lagotis
	M. leucura
Dasyuridae	Planigale tenuirostris
	P. subtilissima
	Sminthopsis psammophila
	S. longicaudata
	Antechinomys laniger
	Myrmecobius fasciatus rufus
Thylacinidae	Thylacinus cynocephalus
PRIMATES	
Lemuridae	Lemur spp. -101
	Lepilemur spp.
	Hapalemur spp.
	Allocebus spp.
	Cheirogaleus spp.
	Mirocebus spp.
	Phaner spp.
Indriidae	Indri spp.
	Propithecus spp.
	Avahi spp.
Daubentoniidae	Daubentonia madagascariensis
Callithricidae	Leontopithecus (Leontideus) spp.
	Callimico goeldii
Cebidae	Saimiri oerstedii
	Chiropotes albinasus
	Cacajao spp.
	Alouatta palliata (villosa)
	Ateles geoffroyi frontatus
	A. g. panamensis
	Brachyteles arachnoides
Cercopithecidae	Cercocebus galeritus galeritus
	Macaca silenus
	Colobus badius rufomitratus
	C. b. kirkii
	Presbytis geei
	P. pileatus
	P. entellus
	Nasalis larvatus

	Simias concolor
	Pygathrix nemaeus
Hylobatidae	Hylobates spp.
	Symphalangus syndactylus
Pongidae	Pongo pygmaeus pygamaeus
	P. p. abelii
	Gorilla gorilla
EDENTATA	
Dasypodidae	Priodontes giganteus (=maximus)
PHOLIDOTA	
Manidae	Manis temmincki
LAGOMORPHA	
Leporidae	Romerolagus diazi
	Caprolagus hispidus
RODENTIA	
Sciuridae	Cynomys mexicanus
Castoridae	Castor fiber birulaia
	Castor canadensis mexicanus
Muridae	Zyzomys pedunculatus
	Leporillus conditor
	Pseudomys novaehollandiae
	P. praeconis
	P. shortridgei
	P. fumeus
	P. occidentalis
	P. fieldi
	Notomys aquilo
	Xeromys myoides
Chinchillidae	Chinchilla brevicaudata boliviana
CETACEA	
Platanistidae	Platanista gangetica
Eschrichtidae	Eschrichtius robustus (glaucus) ≠
Balaenopteridae	Balaenoptera musculus ≠
	Megaptera novaeangliae ≠
Balaenidae	Balaena mysticetus ≠
	Eubalaena spp. ≠
CARNIVORA	
Canidae	Canis lupus monstrabilis
	Vulpes velox hebes
Viverridae	Prionodon pardicolor
Ursidae	Ursus americanus emmonsii
	U. arctos pruinosus

	U. arctos +201
	U. a. nelsoni
Mustelidae	Mustela nigripes
	Lutra longicaudis (platensis/annectens)
	L. felina
	L. provocax
	Pteronura brasiliensis
	Aonyx microdon
	Enhydra lutris nereis
Hyaenidae	Hyaena brunnea
Felidae	Felis planiceps
	F. nigripes
	F. concolor coryi
	F. c. costaricensis
	F. c. cougar
	F. temmincki
	Felis bengalensis bengalensis
	F. yagouaroundi cacomitli
	F. y. fossata
	F. y. panamensis
	F. y. tolteca
	F. pardalis mearnsi
	F. p. mitis
	F. wiedii nicaraguae
	F. w. salvinia
	F. tigrina oncilla
	F. marmorata
	F. jacobita
	F. (Lynx) rufa escuinapae
	Neofelis nebulosa
	Panthera tigris*
	P. pardus
	P. uncia
	P. onca
	Acinonyx jubatus
PINNIPEDIA	
Phocidae	Monachus spp.
	Mirounga angustirostris
PROBOSCIDEA	
Elephantidae	Elephas maximus
SIRENIA	
Dugongidae	Dugong dugon -102
Trichechidae	Trichechus manatus

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	T. inunguis
PERISSODACTYLIA	
Equidae	Equus przewalskii
	E. hemionus hemionus
	E. h. khur
	E. zebra zebra
Tapiridae	Tapirus pinchaque
	T. bairdii
	T. indicus
Rhinocerotidae	Rhinoceros unicornis
	R. sondaicus
	Didermocerus sumatrensis
	Ceratotherium simum cottoni
ARTIODACTYLA	
Suidae	Sus salvanius
	Babyrousa babyrussa
Camelidae	Vicugna vicugna
	Camelus bactrianus
Cervidae	Moschus moschiferus moschiferus
	Axis (Hyelaphus) porcinus annamiticus
	A. (Hyelaphus) calamianensis
	A. (Hyelaphus) kuhlii
	Cervus duvauceli
	C. eldi
	C. elaphus hanglu
	Hippocamelus bisulcus
	H. antisiensis
	Blastoceros dichotomus
	Ozotoceros bezoarticus
	Pudu pudu
Antilocapridae	Antilocapra americana sonoriensis
	A. a. peninsularis
Bovidae	Bubalus (Anoa) mindorensis
	B. (Anoa) depressicornis
	B. (Anoa) quarlesi
	Bos gaurus
	B. (grunniens) mutus
	Novibos (Bos) sauveli
	Bison bison athabascae
	Kobus leche
	Hippotragus niger variani
	Oryx leucoryx

	Damaliscus dorcas dorcas
	Saiga tatarica mongolica
	Nemorhaedus goral
	Capricornis sumatraensis
	Rupicapra rupicapra ornata
	Capra falconeri jerdoni
	C. f. megaceros
	C. f. chiltanensis
	Ovis orientalis ophion
	O. ammon hodgsoni
	O. vignei
AVES	
TINAMIFORMES	
Tinamidae	Tinamus solitarius
PODICIPEDIFORMES	
Podicipedidae	Podilymbus gigas
PROCELLARIIFORMES	
Diomedeidae	Diomedea albatrus
PELECANIFORMES	
Sulidae	Sula abbotti
Fregatidae	Fregata andrewsi
CICONIIFORMES	
Ciconiidae	Ciconia ciconia boyciana
Threskiornithidae	Nipponia nippon
ANSERIFORMES	
Anatidae	Anas aucklandica nesiotis
	Anas oustaleti
	Anas laysanensis
	Anas diazi
	Cairina scutulata
	Rhodonessa caryophyllacea
	Branta canadensis leucopareia
	Branta sandvicensis
FALCONIFORMES	
Cathartidae	Vultur gryphus
	Gymnogyps californianus
Accipitridae	Pithecophaga jefferyi
	Harpia harpyja
	Haliaetus l. leucocephalus
	Haliaetus heliaca adalberti
	Haliaetus albicilla groenlandicus
Falconidae	Falco peregrinus anatum
	Falco peregrinus tundrius

	Falco peregrinus peregrinus
	Falco peregrinus babylonicus
GALLIFORMES	
Megapodiidae	Macrocephalon maleo
Cracidae	Crax blumenbachii
	Pipile p. pipile
	Pipile jacutinga
	Mitu mitu mitu
	Oreophasis derbianus
Tetraonidae	Tympanuchus cupido attwateri
Phasianidae	Colinus virginianus ridgwayi
	Tragopan blythii
	Tragopan caboti
	Tragopan melanocephalus
	Lophophorus sclateri
	Lophophorus lhuysii
	Lophophorus impejanus
	Crossoptilon mantchuricum
	Crossoptilon crossoptilon
	Lophura swinhoii
	Lophura imperialis
	Lophura edwardsii
	Syrmaticus ellioti
	Syrmaticus humiae
	Syrmaticus mikado
	Polyplectron emphanum
	Tetraogallus tibetanus
	Tetraogallus caspius
	Cyrtonyx montezumae merriami
GRUIFORMES	
Gruidae	Grus japonensis
	Grus leucogeranus
	Grus americana
	Grus canadensis pulla
	Grus canadensis nesiotes
	Grus nigricollis
	Grus vipio
	Grus monacha
Rallidae	Tricholimnas sylvestris
Rhynochetidae	Rhynochetos jubatus
Otididae	Eupodotis bengalensis
CHARADRIIFORMES	
Scolopacidae	Numenius borealis
	Tringa guttifer

Laridae	Larus relictus
COLUMBIFORMES	
Columbidae	Ducula mindorensis
PSITTACIFORMES	
Psittacidae	Strigops habroptilus
	Rhynchopsitta pachyrhyncha
	Amazona leucocephala
	Amazona vittata
	Amazona guildingii
	Amazona versicolor
	Amazona imperialis
	Amazona rhodocorytha
	Amazona petrei petrei
	Amazona vinacea
	Pyrrhura cruentata
	Anodorhynchus glaucus
	Anodorhynchus leari
	Cyanopsitta spixii
	Pionopsitta pileata
	Aratinga guaruba
	Psittacula krameri echo
	Psephotus pulcherrimus
	Psephotus chrysopterygius
	Neophema chrysogaster
	Neophema splendida
	Cyanoramphus novaezelandiae
	Cyanoramphus auriceps forbesi
	Geopsittacus occidentalis
	Psittacus erithacus princeps
APODIFORMES	
Trochilidae	Ramphodon dohrnii
TROGONIFORMES	
Trogonidae	Pharomachrus mocinno mocinno
	Pharomachrus mocinno costaricensis
STRIGIFORMES	
Strigidae	Otus gurneyi
CORACIIFORMES	
Bucerotidae	Rhinoplax vigil
PICIFORMES	
Picidae	Dryocopus javensis richardsii
	Campephilus imperialis
PASSERIFORMES	
Cotingidae	Cotinga maculata

	Xipholena atro-purpurea
Pittidae	Pitta kochi
Atrichornithidae	Atrichornis clamosa
Muscicapidae	Picathartes gymnocephalus
	Picathartes oreas
	Psophodes nigrogularis
	Amytornis goyderi
	Dasyornis brachypterus longirostris
	Dasyornis broadbenti littoralis
Sturnidae	Leucopsar rothschildi
Meliphagidae	Meliphaga cassidix
Zosteropidae	Zosterops albogularis
Fringillidae	Spinus cucullatus
	AMPHIBIA
URODELA	
Cryptobranchidae	Andrias (=Megalobatrachus) davidianus japonicus
	Andrias (=Megalobatrachus) davidianus davidianus
SALIENTIA	
Bufonidae	Bufo superciliaris
	Bufo periglenes
	Nectophrynoides spp.
Atelopodidae	Atelopus varius zeteki
	REPTILIA
CROCODYLIA	
Alligatoridae	Alligator mississippiensis
	Alligator sinensis
	Melanosuchus niger
	Caiman crocodilus apaporiensis
	Caiman latirostris
Crocodylidae	Tomistoma schlegelii
	Osteolaemus tetraspis tetraspis
	Osteolaemus tetraspis osborni
	Crocodylus cataphractus
	Crocodylus siamensis
	Crocodylus palustris palustris
	Crocodylus palustris kimbula
	Crocodylus novaequineae mindorensis
	Crocodylus intermedius
	Crocodylus rhombifer

	Crocodylus moreletii
	Crocodylus niloticus
Gavialidae	Gavialis gangeticus
TESTUDINATA	
Emydidae	Batagur baska
	Geoclemmys (=Damonia) hamiltonii
	Geoemyda (=Nicoria) tricarinata
	Kachuga tecta tecta
	Morenia ocellata
	Terrapene coahuila
Testudinidae	Geochelone (=Testudo) elephantopus
	Geochelone (=Testudo) geometrica
	Geochelone (=Testudo) radiata
	Geochelone (=Testudo) yniphora
Cheloniidae	Eretmochelys imbricata imbricata
	Lepidochelys kempii
Trionychidae	Lissemys punctata punctata
	Trionyx ater
	Trionyx nigricans
	Trionyx gangeticus
	Trionyx hurum
Chelidae	Pseudemydura umbrina
LACERTILIA	
Varanidae	Varanus komodoensis
	Varanus flavescens
	Varanus bengalensis
	Varanus griseus
SERPENTES	
Boidae	Epicrates inornatus inornatus
	Epicrates subflavus
	Python molurus molurus
RHYNCHOCEPHALIA	
Sphenodontidae	Sphenodon punctatus
PISCES	
ACIPENSERIFORMES	
Acipenseridae	Acipenser brevirostrum
	Acipenser oxyrhynchus
OSTEOGLOSSIFORMES	
Osteoglossidae	Scleropages formosus
SALMONIFORMES	
Salmonidae	Coregonus alpenae
CYPRINIFORMES	

Catostomidae	Chasmistes cujus
Cyprinidae	Probarbus jullieni
SILURIFORMES	
Schilbeidae	Pangasianodon gigas
PERCIFORMES	
Percidae	Stizostedion vitreum glaucum

MOLLUSCA

NAIADOIDA	
Unionidae	Conradilla caelata
	Dromus dromas
	Epioblasma (=Dysnomia) florentina curtisi
	Epioblasma (=Dysnomia) florentina florentina
	Epioblasma (=Dysnomia) sampsoni
	Epioblasma (=Dysnomia) sulcata perobliqua
	Epioblasma (=Dysnomia) torulosa gubernaculum
	Epioblasma (=Dysnomia) torulosa torulosa
	Epioblasma (=Dysnomia) turgidula
	Epioblasma (=Dysnomia) walkeri
	Fusconaia cuneolus
	Fusconaia edgariana
	Lampsilis higginsi
	Lampsilis orbiculata orbiculata
	Lampsilis satura
	Lampsilis virescens
	Plethobasis cicatricosus
	Plethobasis cooperianus
	Pleurobema plenum
	Potamilus (=Proptera) capax
	Quadrula intermedia
	Quadrula sparsa
	Toxolasma (=Carunculina) cylindrella
	Unio (Megalonaias/?/) nickliniana
	Unio (Lampsilis/?/) tampicoensis tecomatensis
	Villosa (=Micromya) trabalis

	FLORA
ARACEAE	Alocasia sanderiana
	Alocasia zebrina
CARYOCARACEAE	Caryocar costaricense
CARYOPHYLLACEAE	Gymnocarpos przewalskii
	Melandrium mongolicum
	Silene mongolica
	Stellaria pulvinata
CUPRESSACEAE	Pilgerodendron uviferum
CYCADACEAE	Encephalartos spp.
	Microcycas calocoma
	Stangeria eriopus
GENTIANACEAE	Prepusa hookeriana
HUMIRIACEAE	Vantanea barbourii
JUGLANDACEAE	Engelhardtia pterocarpa
LEGUMINOSAE	Ammopiptanthus mongolicum
	Cynometra hemitomophylla
	Platymiscium pleiostachyum
LILIACEAE	Aloe albida
	Aloe pillansii
	Aloe polyphylla
	Aloe thorncroftii
	Aloe vossii
MELASTOMACEAE	Lavoisiera itambana
MELIACEAE	Guarea longipetiola
	Tachigalia versicolor
MORACEAE	Batocarpus costaricense
ORCHIDACEAE	Cattleya jongheana
	Cattleya skinneri
	Cattleya trianae
	Didiciea cunninghamii
	Laelia lobata
	Lycaste virginalis var. alba
	Peristeria elata
PINACEAE	Abies guatamalensis
	Abies nebrodensis
PODOCARPACEAE	Podocarpus costalis
	Podocarpus parlatorei
PROTEACEAE	Orothamnus zeyheri
	Protea ordorata
RUBIACEAE	Balmea stormae
SAXIFRAGACEAE (GROSSULARIACEAE)	Ribes sardoum
TAXACEAE	Fitzroya cupressoides

ULMACEAE	Celtis aetnensis
WELWITSCHIACEAE	Welwitschia bainesii
ZINGIBERACEAE	Hedychium philippinense

APPENDIX II

Interpretation:

1. Species included in this Appendix are referred to:
   (a) by the name of the species; or
   (b) as being all of the species included in a higher taxon or designated part thereof.
2. The abbreviation "spp." is used to denote all the species of a higher taxon.
3. Other references to taxa higher than species are for the purposes of information or classification only.
4. An asterisk (*) placed against the name of a species or higher taxon indicates that one or more geographically separate populations, sub-species or species of that taxon are included in Appendix I and that these populations, sub-species or species are excluded from Appendix II.
5. The symbol (#) followed by a number placed against the name of a species or higher taxon designates parts or derivatives which are specified in relation thereto for the purposes of the present Convention as follows:
   # 1 designates root
   # 2 designates timber
   # 3 designates trunks
6. The symbol (-) followed by a number placed against the name of a species or higher taxon indicates the exclusion from that species or taxon of designated geographically separated populations, sub-species, species or groups of species as follows:
   - 101 Species which are not succulents
7. The symbol (+) followed by a number placed against the name of a species or higher taxon denotes that only designated geographically separate populations, sub-species or species of that species or taxon are included in this Appendix as follows:
   + 201 All North American sub-species
   + 202 New Zealand species
   + 203 All species of the family in the Americas.

FAUNA

MAMMALIA

MARSUPIALIA

Macropodidae — Dendrolagus inustus
Dendrolagus ursinus

INSECTIVORA

Erinaceidae	Erinaceus frontalis
PRIMATES	
Lemuridae	Lemur catta
Lorisidae	Nycticebus coucang
	Loris tardigradus
Cebidae	Cebus capucinus
Cercopithecidae	Macaca sylvanus
	Colobus badius gordonorum
	Colobus verus
	Rhinopithecus roxellanae
	Presbytis johnii
Pongidae	Pan paniscus
	Pan troglodytes
EDENTATA	
Myrmecophagidae	Myrmecophaga tridactyla
	Tamandua tetradactyla chapadensis
Bradypodidae	Bradypus boliviensis
PHOLIDOTA	
Manidae	Manis crassicaudata
	Manis pentadactyla
	Manis javanica
LAGOMORPHA	
Leporidae	Nesolagus netscheri
RODENTIA	
Heteromyidae	Dipodomys phillipsii phillipsii
Sciuridae	Ratufa spp.
	Lariscus hosei
Castoridae	Castor canadensis frondator
	Castor canadensis repentinus
Cricetidae	Ondatra zibethicus bernardi
Canidae	Canis lupus pallipes
	Canis lupus irremotus
	Canis lupus crassodon
	Chrysocyon brachyurus
	Cuon alpinus
Ursidae	Ursus (Thalarctos) maritimus
	Ursis arctos +201
	Helarctos malayanus
Procyonidae	Ailurus fulgens
Mustelidae	Martes americana atrata
Viveridae	Prionodon linsang
	Cynogale bennetti

	Heloqale derbianus
Felidae	Felis yaqouaroundi*
	Felis colocolo pajeros
	Felis colocolo crespoi
	Felis colocolo budini
	Felis concolor missoulensis
	Felis concolor mayensis
	Felis concolor azteca
	Felis serval
	Felis lynx isabellina
	Felis wiedii*
	Felis pardalis*
	Felis tigrina*
	Felis (=Caracal) caracal
	Panthera leo persica
	Panthera tigris altaica (=amurensis)
PINNIPEDIA	
Otariidae	Arctocephalus australis
	Arctocephalus galapagoensis
	Arctocephalus philippii
	Arctocephalus townsendi
Phocidae	Mirounga australis
	Mirounga leonina
TUBULIDENTATA	
Orycteropidae	Orycteropus afer
SIRENIA	
Dugongidae	Dugong dugon*
Trichechidae	Trichechus senegalensis
PERISSODACTYLA	
Equidae	Equus hemionus*
Tapiridae	Tapirus terrestris
Rhinocerotidae	Diceros bicornis
ARTIODACTYLA	
Hippopotamidae	Choeropus liberiensis
Cervidae	Cervus elaphus bactrianus
	Pudu mephistophiles
Antilocapridae	Antilocapra americana mexicana
Bovidae	Cephalophus monticola
	Oryx (tao) dammah
	Addax nasomaculatus
	Pantholops hodgsoni
	Capra falconeri*
	Ovis ammon*

	Ovis canadensis
AVES	
SPHENISCIFORMES	
Spheniscidae	Spheniscus demersus
RHEIFORMES	
Rheidae	Rhea americana albescens
	Pterocnemia pennata pennata
	Pterocnemia pennata garleppi
TINAMIFORMES	
Tinamidae	Rhynchotus rufescens rufescens
	Rhynchotus rufescens pallescens
	Rhynchotus rufescens maculicollis
CICONIIFORMES	
Ciconiidae	Ciconis nigra
Threskiornithidae	Geronticus calvus
	Platalea leucorodia
Phoenicopteridae	Phoenicopterus ruber chilensis
	Phoenicoparrus andinus
	Phoenicoparrus jamesi
PELECANIFORMES	
Pelecanidae	Pelecanus crispus
ANSERIFORMES	
Anatidae	Anas aucklandica aucklandica
	Anas aucklandica chlorotis
	Anas bernieri
	Dendrocygna arborea
	Sarkidiornis melanotos
	Anser albifrons gambelli
	Cygnus bewickii jankowskii
	Cygnus melancoryphus
	Coscoroba coscoroba
	Branta ruficollis
FALCONIFORMES	
Accipitridae	Gypaetus barbatus meridionalis
	Aquila chrysaetos
Falconidae	Spp.*
GALLIFORMES	
Megapodiidae	Megapodius freycinet nicobariensis
	Megapodius freycinet abbotti
Tetraonidae	Tympanuchus cupido pinnatus
Phasianidae	Francolinus ochropectus

	Francolinus swierstrai
	Catreus wallichii
	Polyplectron malacense
	Polyplectron germaini
	Polyplectron bicalcaratum
	Gallus sonneratii
	Argusianus argus
	Ithaginus cruentus
	Cyrtonyx montezumae montezumae
	Cyrtonyx montezumae mearnsi
GRUIFORMES	
Gruidae	Balearica regulorum
	Grus canadensis pratensis
Rallidae	Gallirallus australis hectori
Otididae	Chlamydotis undulata
	Choriotis nigriceps
	Otis tarda
CHARADRIIFORMES	
Scolopacidae	Numenius tenuirostris
	Numenius minutus
Laridae	Larus brunneicephalus
COLUMBIFORMES	
Columbidae	Gallicolumba luzonica
	Goura cristata
	Goura scheepmakeri
	Goura victoria
	Caloenas nicobarica pelewensis
PSITTACIFORMES	
Psittacidae	Coracopsis nigra barklyi
	Prosopeia personata
	Eunymphicus cornutus
	Cyanoramphus unicolor
	Cyanoramphus novaezelandiae
	Cyanoramphus malherbi
	Poicephalus robustus
	Tanygnathus luzoniensis
	Probosciger aterrimus
CUCULIFORMES	
Musophagidae	Turaco corythaix
	Gallirex porphyreolophus
STRIGIFORMES	
Strigidae	Otus nudipes newtoni
CORACIIFORMES	
Bucerotidae	Buceros rhinoceros rhinoceros

	Buceros bicornis
	Buceros hydrocorax hydrocorax
	Aceros narcondami
PICIFORMES	
Picidae	Picus squamatus flavirostris
PASSERIFORMES	
Cotingidae	Rupicola rupicola
	Rupicola peruviana
Pittidae	Pitta brachyura nympha
Hirundinidae	Pseudochelidon sirintarae
Paradisaeidae	Spp.
Muscicapidae	Muscicapa ruecki
Fringillidae	Spinus yarrellii
AMPHIBIA	
URODELA	
Ambystomidae	Ambystoma mexicanum
	Ambystoma dumerillii
	Ambystoma lermaensis
SALIENTIA	
Bufonidae	Bufo retiformis
CROCODYLIA	
Alligatoridae	Caiman crocodilus crocodilus
	Caiman crocodilus yacare
	Caiman crocodilus fuscus (chiapasius)
	Paleosuchus palpebrosus
	Paleosuchus trigonatus
Crocodylidae	Crocodylus johnsoni
	Crocodylus novaequineae novaequineae
	Crocodylus porosus
	Crocodylus acutus
TESTUDINATA	
Emydidae	Clemmys muhlenbergi
Testudinidae	Chersine spp.
	Geochelone spp.*
	Gopherus spp.
	Homopus spp.
	Kinixys spp.
	Malacochersus spp.
	Pyxis spp.
	Testudo spp.*
Cheloniidae	Caretta caretta
	Chelonia mydas

	Chelonia depressa
	Eretmochelys imbricata bissa
	Lepidochelys olivacea
Dermochelidae	Dermochelys coriacea
Pelomedusidae	Podocnemis spp.
LACERTILIA	
Teiidae	Cnemidophorus hyperythrus
Iguanidae	Cololophus pallidus
	Cololophus subscristatus
	Amblyrhynchus cristatus
	Phrynosoma coronatum blainvillei
Helodrmatidae	Heloderma suspectum
	Heloderma horridum
Varanidae	Varanus spp.*
SERPENTES	
Boidae	Epicrates cenchris cenchris
	Eunectes notaeus
	Constrictor constrictor
	Python spp.*
Colubridae	Cyclagras gigas
	Pseudoboa cloelia
	Elachistodon westermanni
	Thamnophis elegans hammondi
PISCES	
ACIPENSERIFORMES	
Acipenseridae	Acipenser fulvescens
	Acipenser sturio
OSTEOGLOSSIFORMES	
Osteoglossidae	Arapaima gigas
SALMONIFORMES	
Salmonidae	Stenodus leucichthys leucichthys
	Salmo chrysogaster
CYPRINIFORMES	
Cyprinidae	Plagopterus argentissimus
	Ptychocheilus lucius
ATHERINIFORMES	
Cyprinodontidae	Cynolebias constanciae
	Cynolebias marmoratus
	Cynolebias minimus
	Cynolebias opalescens
	Cynolebias splendens
Poeciliidae	Xiphophorus couchianus

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COELACANTHIFORMES	
Coelacanthidae	Latimeria chalumnae
CERATODIFORMES	
Ceratodidae	Neoceratodus forsteri
	MOLLUSCA
NAIADOIDA	
Unionidae	Cyprogenia aberti
	Epioblasma (=Dysnomia) torulosa rangiana
	Fusconaia subrotunda
	Lampsilis brevicula
	Lexingtonia dolabelloides
	Pleorobema clava
STYLOMMATOPHORA	
Camaenidae	Papustyla (=Papuina) pulcherrima
Paraphantidae	Paraphanta spp. +202
PROSOBRANCHIA	
Hydrobiidae	Coahuilix hubbsi
	Cochliopina milleri
	Durangonella coahuilae
	Mexipyrgus carranzae
	Mexipyrgus churinceanus
	Mexipyrgus escobedae
	Mexipyrgus lugoi
	Mexipyrgus mojarralis
	Mexipyrgus multilineatus
	Mexithauma quadripaludium
	Nymphophilus minckleyi
	Paludiscala caramba
	INSECTA
LEPIDOPTERA	
Papilionidae	Parnassius apollo apollo
	FLORA
APOCYNACEAE	Pachypodium spp.
ARALIACEAE	Panax quinquefolium
ARAUCARIACEAE	Araucaria araucana
CACTACEAE	Cactaceae spp. +203
	Rhipsalis spp.
COMPOSITAE	Saussurea lappa #1
CYATHEACEAE	Cyathea (Hemitelia) capensis #3
	Cyathea dredgei #3
	Cyathea mexicana #3

	Cyathea (Alsophila) salvinii #3
DIOSCOREACEAE	Dioscorea deltoidea #1
EUPHORBIACEAE	Euphorbis spp. -101
FAGACEAE	Quercus copeyensis #2
LEGUMINOSAE	Thermopsis mongolica
LILIACEAE	Aloe spp.*
MELIACEAE	Swietenia humilis #2
ORCHIDACEAE	Spp.*
PALMAE	Arenga ipot
	Phoenix hanceana var. philippinensis
	Zalacca clemensiana
PORTULACACEAE	Anacampseros spp.
PRIMULACEAE	Cyclamen spp.
SOLANACEAE	Solanum sylvestris
STERCULIACEAE	Basiloxylon excelsum #2
VERBENACEAE	Caryopteris mongolica
ZYGOPHYLLACEAE	Guaiacum sanctum #2

APPENDIX IV

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA

EXPORT PERMIT NO. ____

Exporting Country: Valid Until: (Date)

This permit is issued to: _____

address: _____

who declares that he is aware of the provisions of the Convention, for the purpose of exporting: _____
(specimen(s), or part(s) or derivative(s) of specimen(s)) 1/
of a species listed in Appendix I)
Appendix II)-2/
Appendix III of the Convention as specified below.)

(bred in captivity or cultivated in _____) 2/

This (these) specimen(s) is (are) consigned to: _____

address: _____ country: _____

_____

at _____ on _____

_____
(signature of the applicant for the permit)

at _____ on _____

_____
(stamp and signature of the Management Authority issuing the export permit)

1/ Indicate the type of product

2/ Delete if not applicable

Description of the specimen(s) or part(s) or derivative(s) of specimen(s), including any mark(s) affixed:

Living Specimens

Species (scientific and common name)	Number	Sex	Size (or volume)	Mark (if any)

Parts or Derivatives

Species (scientific and common name)	Quantity	Type of Goods	Mark (if any)

Stamps of the authorities inspecting:

(a) on exportation

(b) on importation *

*This stamp voids this permit for further trade purposes, and this permit shall be surrendered to the Management Authority.

Protecting Our Natural Heritage

Predator Control

THE SECRETARY OF THE INTERIOR

WASHINGTON,

February 15, 1973

Dear Mr. [President/Speaker]:

There is enclosed a draft bill "To authorize the Secretary of the Interior to assist the States in controlling damage caused by predatory and depredating animals; to establish a program of research concerning the control and conservation of predatory and depredating animals; to restrict the use of toxic chemicals as a method of predator control; and for other purposes," to which the President refers in his Environment and Natural Resources State of the Union Message transmitted to you today.

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

Predatory animal management has been a vexing problem from the time of the early settlers. Existing Federal programs are carried out pursuant to the Act of March 2, 1931 (7 U.S.C. 426-426(b)), which directs that we "conduct campaigns for the destruction or control of (predatory) animals." Through the years, however, attitudes toward predatory animal control have changed. Of particular recent concern has been the use of non-selective poisons to kill predatory animals because significant numbers of beneficial animals are vulnerable to the poisons used to control predatory animals. An advisory committee, reporting to the Secretary of the Interior and the Chairman of the Council on Environmental Quality in January of 1972, recommended a prohibition against the use of poisons in predatory animal destruction, and expanded research to determine the economics and ecology of predator losses.

Following receipt of recommendations from the 1972 report, President Nixon on February 8, 1972, issued an

Executive Order restricting the use of chemical toxicants in Federal programs and on public lands for predatory animal control,, and proposed legislation on predator damage control.

As a result of Executive Order No. 11643, the Bureau of Sport Fisheries and Wildlife moved promptly to modify its animal control program. Field personnel retrieved all poison baits. All "coyote getters" were deactivated and bait stations containing the toxicant 1080 were destroyed. The Bureau selectively provided those services for which there was demonstrable need. No poisons were used.

The intervening months have provided a period for evaluation of our efforts, and we have concluded that a reasonable level of control can be achieved without the use of poisons. We have also had time for extensive discussion and consultation. The proposed bill reflects the results of these exchanges and the experience gained in conducting a non-toxic program.

Our present proposal closely follows H.R. 13152, the bill approved last year by the House of Representatives. Our proposed legislation is based on the conclusion that operational animal damage control programs should be a State responsibility. It seeks to encourage State assumption of this responsibility by providing grants-in-aid to States whose predator control programs meet standards to be established by the Secretary. No Federal assistance would be available, however, to a State whose program entails use of chemical toxicants against predators or any use of chemical toxicants having secondary poisoning effects. Provision is made for continued Federal operational assistance during a transitional period, but after this period, it is intended that Federal operational participation will cease. The Secretary will have discretion to provide operational assistance to States in emergencies when the States cannot deal with the emergency themselves, but such Federal assistance would only be on a limited basis and for a limited time since the Federal Government will not continue to have any significant operational capability.

Federal participation in animal control programs would continue not only through the grants-in-aid program, but also through an expanded Federal program of research into methods of animal damage control. The bill also provides authority for a cooperative Federal-State management program on Federal lands.

In recognition of growing concern over the use of non-selective poisons, section 5 of the draft bill would prohibit the use on all Federal lands of chemical toxicants for the purpose of destroying predatory animals, or use of chemical toxicants having secondary poisoning effects against any animal, except when such use is found, in emergency situations, to be essential to the preservation of human health or safety, to the protection of endangered wildlife species, or to the prevention of substantial irretrievable damage to nationally significant resources.

We urge prompt and favorable consideration of this legislation. We believe that the course of action contemplated by it will provide both for the abatement of damage caused by predatory and depredating animals and for the maintenance of environmental quality.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

/s/ Rogers C.B. Morton
Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C., 20510

Honorable Carl Albert
Speaker of the House
of Representatives
Washington, D.C., 20515

Enclosure

S. 887
H.R. 4759

A BILL

To authorize the Secretary of the Interior to assist the States in controlling damage caused by predatory and depredating animals; to establish a program of research concerning the control and conservation of predatory and depredating animals; to restrict the use of toxic chemicals as a method of predator control; 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 "Federal Animal Damage Abatement Act of 1973".

SEC. 2. For the purpose of this Act--

(a) the term "person" means any individual, organization or association, including any department, agency, or instrumentality of the Federal Government, a State government, or a political subdivision thereof;

(b) the term "State" means the several states of the Union, Puerto Rico, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the District of Columbia, but shall not include any political subdivision of the foregoing entities;

(c) the term "chemical toxicant" means any chemical substance which, when ingested, inhaled, or absorbed, or when applied to, or injected into the body, in relatively small amounts, by its chemical action may cause significant injury or illness, or death to animals or man, but excluding those chemical substances that interfere with reproduction, attract or repel animals, or deplete the oxygen temporarily within a restricted area thus causing death by asphyxiation.

(d) the term "predatory animal" means any wild mammal which habitually preys upon other animals;

(e) the term "depredating animal" means any non-predatory wild mammal other than wild populations of even-toed ungulates (ARTIODACTYLA) which may cause damage to agricultural or natural resources;

(f) the term "secondary poisoning effect" means the result attributable to the field use of a chemical toxicant that, when ingested, inhaled, absorbed, or when applied to or injected into an animal, is retained

in the animal's tissue, or is otherwise retained by the animal, in such a manner and quantity that the tissue itself or the retaining part, through the chemical action of the chemical toxicant, may cause significant injury or illness, or death to man or other animals if ingested by them;

(g) the term "field use" means any use on rural lands not in or immediately adjacent to occupied buildings; and

(h) the term "animal" includes mammals, birds and reptiles.

SEC. 3. (a) In order to assist the States in controlling damage caused by predatory and depredating animals, and in order to encourage the use by States of animal damage control methods which are consistent with accepted principles of wildlife management and the maintenance of environmental quality, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to conduct directly or by agreement with qualified agencies or institutions, public and private, a program of research which shall concern the management and conservation of predatory and depredating animals and the abatement of damage caused by such animals. Research objectives, and the program of research authorized by this subsection, shall be developed by the Secretary in cooperation with the affected States.

(b) The program of research authorized by subsection (a) hereof shall include, but need not be limited to (1) the testing of methods in use for the management and control of predatory and depredating animals and the abatement of damage caused by such animals; (2) the development of effective methods for management and control of predatory and depredating animals, which methods shall contribute to the maintenance of environmental quality and conserve, to the greatest degree possible, the Nation's wildlife resources, including predatory and depredating animals; (3) the improvement of techniques for and the maintenance of a continuing inventory, in cooperation with the States, of the Nation's predatory and depredating animals; (4) the development of methods for and the identification of losses caused by predatory and

depredating animals; and (5) the development of means by which to disseminate to States the findings of studies conducted pursuant to this section.

(c) The Secretary is authorized to conduct such demonstrations of methods developed pursuant to subsection (b) and to provide such other extension services as may be reasonably requested by the State.

SEC. 4. (a) In furtherance of the purposes of this Act, the Secretary is authorized to provide financial assistance to any State, on an annual basis, for administration by the State of a program for the management of predatory and depredating animals. To qualify for assistance under this section, any such State program must be reviewed by the State agency designated for wildlife management and be found by the Secretary to meet such standards as he may, by regulation, establish: Provided, however, That the Secretary shall not approve any such State program which (1) proposes to use funds derived under this section for the payment of bounties, (2) entails the field use of any chemical toxicant for the purpose of killing predatory animals, or (3) entails the field use of any chemical toxicant that causes any secondary poisoning effect, for the purpose of killing animals, including but not limited to predatory or depredating animals: Provided further, however, That he may approve a State program which entails such emergency use of a chemical toxicant, including use of a chemical toxicant that causes a secondary poisoning effect, as he may authorize, for the protection of human health or safety, for the preservation of one or more fish or wildlife species or subspecies threatened with extinction throughout all or a significant portion of its range or likely within the foreseeable future to become so threatened, or for the prevention of substantial irretrievable damage to nationally significant resources.

(b) An annual payment under subsection (a) hereof may be made to any State in such amount as the Secretary may determine: Provided, however, That no such annual payment shall exceed an amount equal to 75 percent in each of the first two years or 50 percent in each of the succeeding fiscal years of the cost of

the program approved under subsection (a) hereof: And Provided further, That no such annual payment to any State shall exceed $300,000 in each of the first two fiscal years following enactment, or $200,000 in each of the succeeding fiscal years following enactment. No payment otherwise authorized by this section shall be made to a State whose share, in whole or part, of the cost of the program approved under subsection (a) hereof is to be paid from funds not appropriated or otherwise authorized by its legislature: Provided, however, That not more than 10 percent of the State share may be from funds derived from sale of hunting, fishing and trapping licenses or permits.

(c) The Secretary may at the request of a State which proposes a program under subsection (a) hereof conduct such operational programs for the control of predatory and depredating animals as he may deem necessary or desirable. Such operational assistance may be terminated in a State not having statutory authority to implement a program under subsection (a) hereof not earlier than 120 days after adjournment of the first regular legislative session of such State which follows enactment hereof.

(d) The head of a Federal department, agency, or establishment may cooperate with a State in the conduct of a mutually acceptable program for the management of predatory and depredating animals on lands subject to his jurisdiction: Provided, That such program is reviewed by the State agency designated for wildlife management: And Provided further, That such program is otherwise consistent with the provisions of this Act.

SEC. 5. (a) No person shall (1) make field use of any chemical toxicant on any Federal lands for the purpose of killing predatory animals; or (2) make field use on such lands of any chemical toxicant that causes any secondary poisoning effect, for the purpose of killing animals, including but not limited to predatory or depredating animals: Provided, however, That nothing in this section shall be deemed to affect the administration of lands held in trust for Indians.

(b) Notwithstanding subsection (a) hereof, the head of a Federal department, agency, or establishment

may authorize on lands subject to his administrative jurisdiction the emergency field use of a chemical toxicant for the purpose of killing predatory animals or of a chemical toxicant that causes a secondary poisoning effect, for the purpose of killing animals, but only if in each specific case he makes a written finding, following consultation with the Secretaries of the Interior, Agriculture, and Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, that an emergency exists that cannot be dealt with by means which do not involve use of chemical toxicants, and that such use is essential--

(1) to the protection of human health or safety;

(2) to the preservation of one or more fish or wildlife species or subspecies threatened with extinction throughout all or a significant portion of its range or likely within the foreseeable future to become so threatened; or

(3) to the prevention of substantial irretrievable damage to nationally significant resources.

(c) Any person who willfully violates this section or any regulation promulgated under this section, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

SEC. 6. Heads of Federal departments, agencies, or establishments are hereby authorized to issue such regulations as may be necessary to carry out the purposes of this Act.

SEC. 7. There is hereby repealed in its entirety the Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C. 426-426(b)), pertaining to the eradication and control of predatory and other wild animals.

SEC. 8. Prior to five years from the date of enactment, the Secretary shall submit to the President and the Congress a report which evaluates the status of the programs authorized by this Act and makes such recommendations concerning these programs as he deems appropriate.

SEC. 9. Nothing in this Act shall be construed as superseding or limiting the authorities and responsibilities of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 973) as amended (7 U.S.C. 135 et seq.).

SEC. 10. Nothing in this Act shall be construed as superseding or limiting the authorities and responsibilities of the Secretary under the Migratory Bird Treaty Act (40 Stat. 755-757) as amended (16 U.S.C. 703-711), under the Fish and Wildlife Act of 1956 (70 Stat. 1119-1124) as amended (16 U.S.C. 742), or under the Act of December 15, 1971 (85 Stat. 649-651, 16 U.S.C. 1331-1340), dealing with the protection, management, and control of wild horses and burros on the public lands.

SEC. 11. There is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

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FEDERAL ANIMAL DAMAGE ABATEMENT ACT OF 1973
SECTION-BY-SECTION ANALYSIS

1. Short Title

Section 1 of the bill would cite this Act as the "Federal Animal Damage Abatement Act of 1973".

2. Definitions

Section 2 provides definitions of the following terms: person, State, chemical toxicant, predatory animal, depredating animal, secondary poisoning effect, field use, and animal.

The term "chemical toxicant" means a chemical substance which when ingested, inhaled, or absorbed, or when applied to or injected into the body, even in relatively small amounts, may by its chemical action cause significant illness or injury, or death, to animals (including mammals, reptiles, and birds) or man. The term does not include chemical substances that operate by interfering with reproduction, attracting or repelling animals, or depleting the oxygen temporarily within a restricted area thus causing death by asphyxication.

The term "predatory animal" means any wild mammal which habitually preys on other animals.

The term "depredating animal" means any non-predatory wild mammal, which may cause damage to agricultural or natural resources, but the term does not include even-toed ungulates such as deer, elk, moose and Mountain goats.

The term "secondary poisoning effect" means the result attributable to the field use of a chemical toxicant that is retained in the flesh or other parts of an animal in such manner as to, through the chemical action of the toxicant, cause significant illness or injury or death to men or animals (including mammals, birds, and reptiles) if they ingest that flesh.

The term "animal" includes mammals, birds, and reptiles, except as used in sections 2(d) and (e) where the term is specifically confined to mammals.

3. Research Program

Section 3 authorizes the Secretary of the Interior to conduct directly or by agreement with agencies or institutions a research program on the management and conservation of predatory and depredating animals, and on the abatement of damage caused by them. The research

program is to be developed in cooperation with the affected States.

Subsection (b) of section 3 provides that the research program shall include (1) the testing of existing methods and the development of new methods for management and control of predatory and depredating animals and for abatement of damage caused by them; (2) the development and maintenance of a continuing inventory of these animals; (3) the development of methods for identification and the identification of losses caused by them; and (4) the development of means to disseminate information obtained by the studies to the States. Subsection (c) authorizes the Secretary to demonstrate methods developed by the research program and provide other extension services requested by the States.

4. Financial assistance to States

Section 4 authorizes the Secretary to provide financial assistance, on an annual basis, to a State for administration of a program for management of predatory and depredating animals. The State program must be reviewed by the State agency designated for wildlife management and must be found by the Secretary to meet such standards as he may by regulation establish. No program may be approved which proposes to use funds obtained under section 4 for payment of bounties; or which entails field use of a chemical toxicant to kill predatory animals or entails field use of any chemical toxicant with secondary poisoning effects for the purpose of killing any animals. A State program may be approved, however, which entails such emergency use of chemical toxicants as the Secretary may authorize, in order to protect human health and safety, preserve endangered species, or prevent substantial irretrievable damage to nationally significant resources.

Subsection (b) of section 4 provides that grant payments to the States under section 4(a) may not exceed 75% of the cost of the program in the first 2 years following enactment, or 50% of the cost in succeeding years. No annual payment to a State may exceed $300,000 in each of the first 2 years following enactment, or $200,000 in the succeeding years. The State share must be paid from funds authorized by the State legislature, except that 10% of the State share may come from sale of hunting, fishing, and trapping licenses or permits.

Subsection (c) provides that, at the request of a

State which proposes a program under subsection (a), the Secretary may conduct operational programs to control predatory and depredating animals. It is expected, however, that operational assistance will be terminated, except in emergency situations, after an interim period during which State programs approved under subsection (a) are being started. The Secretary is not to terminate operational programs in a State which does not have statutory authority to conduct such a program until the State has had an opportunity to obtain such authority; however, 120 days after the close of the first regular legislative session of the State following enactment, the Secretary may terminate operational programs in States which have not yet obtained authority to carry out section 4(a) programs.

Subsection (d) of section 4 authorizes cooperative Federal-State programs for management of predatory and depredating animals on Federal lands. Such a cooperative program between a Federal agency and a State must be reviewed by the State wildlife management agency, and must be consistent with the provisions of the Act.

5. Prohibitions on use of chemical toxicants on public lands

Section 5 provides criminal penalties for (1) field use of any chemical toxicant on any Federal lands to kill predatory animals, and (2) field use on these lands of any chemical toxicant which causes any secondary poisoning effect--including a secondary poisoning effect on mammals, birds, and reptiles--for the purpose of killing animals, including mammals, birds, and reptiles. Nothing in section 5, however, is deemed to affect administration of lands held in trust for Indians.

Such use of chemical toxicants is permitted however if, in each case, the head of the Federal department whose lands are involved, makes a written finding, after consultation with the Secretaries of Agriculture, Interior, and Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, that an emergency exists which cannot be dealt with by means that do not involve chemical toxicants and that such use is essential to (1) protect human health and safety; (2) preserve fish or wildlife species or subspecies threatened with extinction throughout all or a significant portion of its range or likely within the

foreseeable future to become so threatened; or (3) prevent substantial irretrievable damage to nationally significant resources.

The criminal penalty for willful violation of section 5, or regulations promulgated under it, is a $10,000 fine, imprisonment for not more than 1 year, or both.

6. Rule-making authority

Section 6 provides that regulations may be promulgated as may be necessary to carry out the purposes of the Act.

7. Repeal

Section 7 repeals the Act of March 2, 1931, which directs the Secretary to conduct programs to eradicate and control predatory and other wild animals.

8. Report to President and the Congress

Section 8 provides that prior to five years from enactment, the Secretary shall report, to the President and the Congress, evaluating the status of programs authorized by this Act and making recommendations as he deems appropriate.

9. Statutory Construction of other legislation

Sections 9 and 10 provide that nothing in this bill is to be construed as limiting the authority and responsibility of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, or of the Secretary under the Migratory Bird Treaty Act, as amended, or the Fish and Wildlife Act of 1956, as amended, or of the Secretary or the Secretary of Agriculture under the Act of December 15, 1971, dealing with protection, management, and control of wild horses and burros on the public lands.

10. Appropriation authorization

Section 11 provides that there are authorized to be appropriated such sums as may be necessary to carry out the purposes of the bill.

Protecting Our Natural Heritage

Wilderness Areas

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

February 21, 1973

Honorable Spiro T. Agnew
President of the Senate
United States Senate
Washington, D. C. 20510

Honorable Carl Albert
Speaker of the House
of Representatives
Washington, D. C. 20515

Dear Mr. [President/Speaker]:

Transmitted herewith for the consideration of the Congress is a draft bill "To provide for the addition of certain eastern national forest lands to the National Wilderness Preservation System, to amend Section 3(b) of the Wilderness Act, and for other purposes."

The Department of Agriculture strongly recommends that the draft legislation be enacted by the Congress.

This proposed draft legislation, the Eastern Wilderness Amendments of 1973, would provide a means for supplementing the National Wilderness Preservation System within National Forests east of the one hundredth meridian. It would permit inclusion in the Wilderness System certain National Forest lands in the eastern United States which were once significantly affected by man's works, but where the imprint of man's work is substantially erased, and which have generally reverted to a natural appearance.

The Act would also specifically provide for the review of fifty-three listed areas for possible addition to the System. With respect to approximately one-fourth of these fifty-three "study" areas, the Forest Service has completed many of the studies and procedures needed to

make specific recommendations on their suitability for inclusion in the Wilderness System. We believe analyses and interagency reviews of these areas should be at least analogous to those contemplated for National Forest Primitive Areas by the Wilderness Act. We expect to complete this review process soon and will be in a position to present further recommendations in the near future.

The Act would further provide that all National Forest System units east of the one hundredth meridian would be generally managed in accordance with the provisions of the Wilderness Act. Notable exceptions would be that the condemnation limitation of the Wilderness Act would not apply to eastern units, all Federal lands within such units would be withdrawn from appropriation or disposition under the mining and mineral leasing laws, and commercial grazing would not be permitted in such units. Although the need for acquisition of private lands in eastern National Forests results from fragmented ownership patterns, we intend to use the condemnation authority sparingly.

In his February 8, 1972, message on the environment, President Nixon highlighted the unequal distribution of wilderness units throughout the Nation. The President directed the Secretaries of Agriculture and the Interior to accelerate identification of areas in the eastern United States having wilderness potential.

In response to this directive, the Forest Service has invited public input on several alternative ways of meeting eastern needs for areas such as those included in the National Wilderness Preservation System. A series of public listening sessions was held in 21 eastern states in the summer of 1972, to discuss the issues raised by these alternatives. This proposed legislation represents an assessment of the input from those meetings and recommendations to further the President's directive.

An environmental statement is being prepared pursuant to the provisions of subsection 102(2)(c) of the National Environmental Policy Act (83 Stat. 853), and will be transmitted as soon as it is available.

A similar letter is being sent to the [Speaker of the House of Representatives/President of the Senate].

The Office of Management and Budget advises there is no objection to the submission of this report and that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely,

/s/ J. Phil Campbell
Under Secretary

S. 938
H.R. 5116

A BILL

To provide for the addition of certain eastern national forest lands to the National Wilderness Preservation System, to amend Section 3(b) of the Wilderness Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That this Act may be cited as "The Eastern Wilderness Amendments of 1973."

SEC. 2.(a) The Secretary of Agriculture shall review each area listed in subsection (b) of this section as to its suitability or nonsuitability for preservation as a part of the National Wilderness Preservation System in accordance with the criteria specified by subsection 3(b)(2) of the Wilderness Act, as added by this Act. In conducting his review, the Secretary shall comply with the provisions of subsection 3(d) of the Wilderness Act of September 3, 1964 (78 Stat. 892, 16 U.S.C. 1132(d)), and upon transmittal of the Secretary of Agriculture's recommendations to the President, the President shall advise the Senate and House of Representatives of his recommendations with respect to designation as wilderness of the areas reviewed by the Secretary of Agriculture.

(b) The following areas, as generally depicted on maps appropriately referenced, dated February, 1973, and on file and available for public inspection in the Office of the Chief, Forest Service, Department of Agriculture, are hereby designated for review by the Secretary of Agriculture, as to their suitability or nonsuitability for designation as additions to the National Wilderness Preservation System:

(1) the area generally depicted on a map entitled "Sipsey Wilderness Study Area," Bankhead National Forest, Alabama, comprising approximately nine thousand, four hundred acres.

(2) the area generally depicted on a map entitled "Belle Star Cave Wilderness Study Area," Ouachita National Forest, Arkansas, comprising approximately five thousand, seven hundred acres.

(3) the area generally depicted on a map entitled "Caney Creek Wilderness Study Area," Ouachita National Forest, Arkansas, comprising approximately ten thousand, two hundred acres.

(4) the area generally depicted on a map entitled "Dry Creek Wilderness Study Area," Ouachita National Forest, Arkansas, comprising approximately five thousand, five hundred acres.

(5) the area generally depicted on a map entitled "Upper Buffalo River Wilderness Study Area," Ozark National Forest, Arkansas, comprising approximately ten thousand, six hundred acres.

(6) the area generally depicted on a map entitled "Richland Creek Wilderness Study Area," Ozark National Forest, Arkansas, comprising approximately two thousand, one hundred acres.

(7) the area generally depicted on a map entitled "Bradwell Bay Wilderness Study Area," Apalachicola National Forest, Florida, comprising approximately twenty-two thousand acres.

(8) the area generally depicted on a map entitled "Alexander Springs Wilderness Study Area," Ocala National Forest, Florida, comprising approximately ten thousand acres.

(9) the area generally depicted on a map entitled "Cohutta Wilderness Study Area," Chattahoochee and Cherokee National Forests, Georgia and Tennessee, comprising approximately thirty-four thousand, five hundred acres.

(10) the area generally depicted on a map entitled "Nebo Ridge Wilderness Study Area," Hoosier National Forest, Indiana, comprising approximately fifteen thousand, five hundred acres.

(11) the area generally depicted on a map entitled "LaRue-Pine Hills Wilderness Study Area," Shawnee National Forest, Illinois, comprising approximately two thousand, eight hundred acres.

(12) the area generally depicted on a map entitled "Lusk Creek Wilderness Study Area," Shawnee National Forest, Illinois, comprising approximately eleven thousand acres.

(13) the area generally depicted on a map entitled "Beaver Creek Wilderness Study Area," Daniel Boone National Forest, Kentucky, comprising approximately five thousand, five hundred acres.

(14) the area generally depicted on a map entitled "Kisatchie Hills Wilderness Study Area," Kisatchie National Forest, Louisiana, comprising

approximately ten thousand acres.

(15) the area generally depicted on a map entitled "Saline Bayou Wilderness Study Area," Kisatchie National Forest, Louisiana, comprising approximately five thousand acres.

(16) the area generally depicted on a map entitled "Big Island Lake Wilderness Study Area," Hiawatha National Forest, Michigan, comprising approximately six thousand, six hundred acres.

(17) the area generally depicted on a map entitled "Rock River Canyon Wilderness Study Area," Hiawatha National Forest, Michigan, comprising approximately five thousand, four hundred acres.

(18) the area generally depicted on a map entitled "Sturgeon River Wilderness Study Area," Ottawa National Forest, Michigan, comprising approximately thirteen thousand, two hundred acres.

(19) the area generally depicted on a map entitled "Bell Mountain Wilderness Study Area," Clark National Forest, Missouri, comprising approximately ten thousand, two hundred acres.

(20) the area generally depicted on a map entitled "Rock Pile Mountain Wilderness Study Area," Clark National Forest, Missouri, comprising approximately nine thousand acres.

(21) the area generally depicted on a map entitled "Hercules Wilderness Study Area," Mark Twain National Forest, Missouri, comprising approximately sixteen thousand, six hundred acres.

(22) the area generally depicted on a map entitled "White's Creek Wilderness Study Area," Mark Twain National Forest, Missouri, comprising approximately nineteen thousand, one hundred acres.

(23) the area generally depicted on a map entitled "Caribou Mountain-Speckled Mountain Wilderness Study Area," White Mountain National Forest, New Hampshire, comprising approximately twelve thousand acres.

(24) the area generally depicted on a map entitled "Car Mountain Wilderness Study Area," White Mountain National Forest, New Hampshire, comprising approximately ten thousand acres.

(25) the area generally depicted on a map entitled "Kilkenny Wilderness Study Area," White

Mountain National Forest, New Hampshire, comprising approximately sixteen thousand acres.

(26) the area generally depicted on a map entitled "Presidential Range Wilderness Study Area," White Mountain National Forest, New Hampshire, comprising approximately forty thousand acres.

(27) the area generally depicted on a map entitled "Wild River Wilderness Study Area," White Mountain National Forest, New Hampshire, comprising approximately twenty thousand acres.

(28) the area generally depicted on a map entitled "Craggy Mountain Wilderness Study Area," Pisgah National Forest, North Carolina, comprising approximately one thousand, one hundred acres.

(29) the area generally depicted on a map entitled "Pocosin Wilderness Study Area," Croatan National Forest, North Carolina, comprising approximately seventeen thousand acres.

(30) the area generally depicted on a map entitled "Clear Fork Wilderness Study Area," Wayne National Forest, Ohio, comprising approximately nineteen thousand acres.

(31) the area generally depicted on a map entitled "Ellicott's Rock Wilderness Study Area," Sumter National Forest, South Carolina, comprising approximately three thousand, six hundred acres.

(32) the area generally depicted on a map entitled "Wambaw Swamp Wilderness Study Area," Francis Marion National Forest, South Carolina, comprising approximately one thousand, five hundred acres.

(33) the area generally depicted on a map entitled "Big Frog Wilderness Study Area," Cherokee National Forest, Tennessee, comprising approximately three thousand acres.

(34) the area generally depicted on a map entitled "Gee Creek Wilderness Study Area," Cherokee National Forest, Tennessee, comprising approximately one thousand, one hundred acres.

(35) the area generally depicted on a map entitled "Joyce Kilmer-Slickrock Wilderness Study Area," Cherokee and Nantahala National Forests, Tennessee and North Carolina, comprising approximately fifteen thousand acres.

(36) the area generally depicted on a map

entitled "Big Slough Wilderness Study Area," Davy Crockett National Forest, Texas, comprising approximately four thousand acres.

(37) the area generally depicted on a map entitled "Chambers Ferry Wilderness Study Area," Sabine National Forest, Texas, comprising approximately four thousand acres.

(38) the area generally depicted on a map entitled "Bristol Cliffs Wilderness Study Area," Green Mountain National Forest, Vermont, comprising approximately four thousand, nine hundred acres.

(39) the area generally depicted on a map entitled "Lye Brook Wilderness Study Area," Green Mountain National Forest, Vermont, comprising approximately nine thousand, one hundred acres.

(40) the area generally depicted on a map entitled "James River Face Wilderness Study Area," Jefferson National Forest, Virginia, comprising approximately eight thousand, eight hundred acres.

(41) the area generally depicted on a map entitled "Laurel Fork Wilderness Study Area," George Washington and Monongahela National Forests, Virginia and West Virginia, comprising approximately eight thousand, three hundred acres.

(42) the area generally depicted on a map entitled "Mill Creek Wilderness Study Area," Jefferson National Forest, Virginia, comprising approximately four thousand acres.

(43) the area generally depicted on a map entitled "Mountain Lake Wilderness Study Area," Jefferson National Forest, Virginia, comprising approximately eight thousand, four hundred acres.

(44) the area generally depicted on a map entitled "Peters Mountain Wilderness Study Area," Jefferson National Forest, Virginia, comprising approximately five thousand acres.

(45) the area generally depicted on a map entitled "Ramsey Draft Wilderness Study Area," George Washington National Forest, Virginia, comprising approximately six thousand, seven hundred acres.

(46) the area generally depicted on a map entitled "Cranberry Wilderness Study Area," Monongahela National Forest, West Virginia, comprising approximately thirteen thousand, two hundred acres.

(47) the area generally depicted on a map entitled "Dolly Sods Wilderness Study Area," Monongahela National Forest, West Virginia, comprising approximately ten thousand, two hundred acres.

(48) the area generally depicted on a map entitled "Otter Creek Wilderness Study Area," Monongahela National Forest, West Virginia, comprising approximately eighteen thousand acres.

(49) the area generally depicted on a map entitled "Black Jack Springs Wilderness Study Area," Nicolet National Forest, Wisconsin, comprising approximately two thousand, six hundred acres.

(50) the area generally depicted on a map entitled "Flynn Lake Wilderness Study Area," Chequamegon National Forest, Wisconsin, comprising approximately six thousand, three hundred acres.

(51) the area generally depicted on a map entitled "Rainbow Lake Wilderness Study Area," Chequamegon National Forest, Wisconsin, comprising approxmately six thousand, six hundred acres.

(52) the area generally depicted on a map entitled "Whisker Lake Wilderness Study Area," Nicolet National Forest, Wisconsin, comprising approximately two thousand, seven hundred acres.

(53) the area generally depicted on a map entitled "El Cacique Wilderness Study Area," Caribbean National Forest, Puerto Rico, comprising approximately eight thousand, five hundred acres.

(c) The areas listed in subsection (b) of this section shall be managed by the Secretary of Agriculture so as to maintain their potential for inclusion in the National Wilderness Preservation System until Congress has acted on a recommendation that the area be included in the Wilderness System, or until the President has determined that the area should not be included in the System.

SEC. 3. Section 3(b) of the Wilderness Act (78 Stat. 891, 16 U.S.C. 1132(b)), is hereby amended by redesignating said section as subsection 3(b)(1) and by adding the following as subsection 3(b)(2):

"(2) The Secretary of Agriculture may, through publication in the Federal Register, designate national forest system areas other than those specified in subsection (b)(1) of this section, for review as to

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suitability or nonsuitability for preservation as wilderness pursuant to the criteria set forth in section 2(c) of this Act: Provided, That only within those national forest system units east of the one hundredth meridian the Secretary of Agriculture may consider for review areas where man and his own works have once significantly affected the landscape but are now areas of land (1) where the imprint of man's work is substantially erased; (2) which has generally reverted to a natural appearance; and (3) which can provide outstanding opportunities for solitude or a primitive and unconfined type of recreation. Nothing in this subsection shall be construed as limiting the authority of the Secretary to carry out management programs, development, and activities in accordance with the Multiple Use-Sustained Yield Act of 1960 (74 Stat. 215, 16 U.S.C. 528-31) within areas not designated by him for review in accordance with the provisions of this subsection."

SEC. 4. Any national forest system areas east of the one hundredth meridian heretofore or hereafter designated as wilderness shall be administered in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that --

(a) subject to valid existing rights, federally-owned lands within such national forest system areas designated as components of the National Wilderness Preservation System, or lands hereafter acquired within the boundaries of such areas, are hereby withdrawn from all forms of appropriation under the mining laws, and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(b) the Secretary of Agriculture may acquire privately-owned lands or interests therein within such national forest system areas heretofore or hereafter designated as wilderness, without the consent of the owner.

(c) subject to valid existing rights, the commercial grazing of livestock shall not be permitted within such wilderness areas.

(d) nothing in this Act shall apply to management of the Boundary Waters Canoe Area, Superior National Forest, Minnesota, which shall continue to be managed in accordance with applicable provisions of law in effect on the date of this Act.

Protecting Our Natural Heritage

Wild and Scenic Rivers

THE SECRETARY OF THE INTERIOR

WASHINGTON

February 15, 1973

Dear Mr. [President/Speaker]:

Enclosed is a draft of a proposed bill "To Amend the Wild and Scenic Rivers Act", to which the President refers in his Environment and Natural Resources State of the Union Message transmitted to you today.

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

The draft bill amends sections 7(b) and 16 of the Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906, 914 and 918; 16 U.S.C. 1278(b) and 1287).

The enclosed draft bill would extend the 5-year moratorium contained in section 7(b) of the Act for an additional 5-year period, by which time we expect to complete studies on all of the 27 river areas. Completion of these studies and implementation of resulting management plans would assure the wise use of these rivers and their immediate environments for this and future generations of Americans.

The enclosed draft bill also amends section 16 of the Wild and Scenic Rivers Act. Section 16 authorizes the appropriation of not more than $17,000,000 for the acquisition of the initial components of the National Wild and Scenic Rivers System, of which some $16.9 million have been appropriated. The draft bill would raise the appropriation authorization to $37,600,000, the amount we estimate will be needed to complete acquisitions at the river areas.

Our experience with the initial authorization tends to confirm projections of the conferees on the original Act, who recognized that the ceiling imposed by section 16 might well be inadequate.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely,

/s/ Rogers C.B. Morton
Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Honorable Carl Albert
Speaker of the
House of Representatives
Washington, D.C. 20515

Enclosure

S. 921
H.R. 4864

A B I L L

To amend the Wild and Scenic Rivers Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Wild and Scenic Rivers Act (82 Stat. 906) is amended as follows:

(a) In section 7(b)(i) delete "five-year" and substitute "ten-year".

(b) In section 16 delete "$17,000,000" and substitute "$37,600,000."

ANALYSIS OF DRAFT BILL

Section 1 would amend section 7(b)(i) of the Wild and Scenic Rivers Act to extend for an additional 5 years the existing 5-year moratorium on licensing and construction along rivers now under study for addition to the wild and scenic rivers system. The existing moratorium expires October 2, 1973.

Section 2 would amend section 16 of that Act to raise the appropriation authorization from $17 million to $37.6 million, for acquisition of lands along rivers that are the initial components of the wild and scenic rivers system. It is estimated that the additional $20.6 million will be needed to complete acquisition along these rivers.

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

January 29, 1973

Honorable Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

Honorable Carl Albert
Speaker of the
House of Representatives
Washington, D. C. 20515

Dear Mr. [President/Speaker]:

Transmitted herewith for the consideration of the Congress is a draft bill "To provide for study of a certain segment of the Oklawaha River for potential addition to the National Wild and Scenic Rivers System."

The Department of Agriculture recommends that the draft bill be enacted.

The draft bill would provide for study of the Oklawaha River in accord with the provisions of the Wild and Scenic Rivers Act.

On January 19, 1971, the President ordered the halt to further construction of the Cross Florida Barge Canal to prevent potentially serious environmental damages. In his statement the President described the Oklawaha River as "A natural treasure...a uniquely beautiful, semi-tropical stream, one of a very few of its kind in the United States..." The President also asked the Secretary of the Army to work with the Council on Environmental Quality in developing recommendations for the future management of the area. On May 12, 1972, the Council on Environmental Quality and the Department of Army presented joint recommendations for the Cross Florida Barge Canal area. Following in depth environmental studies, public hearings and

reviews, it was recommended that the section of the Oklawaha River between St. Johns River and Dead River Swamp be designated as a study river for potential inclusion in the National Wild and Scenic Rivers System. The enclosed draft bill is intended to implement this recommendation.

In connection with the recommendations of the Council on Environmental Quality and the Department of Army, the Forest Service of this Department prepared and published a draft environmental statement relating to management alternatives for the Oklawaha River area. The Forest Service has reviewed and evaluated comments on the draft statement and has prepared a final environmental statement. The final environmental statement evaluates the environmental impacts of a proposed action which includes both administrative and legislative action. This final environmental statement was transmitted to the Council on Environmental Quality on January 16, 1973.

The estimated cost for the proposed study of the Oklawaha River for potential addition to the National Wild and Scenic Rivers System is $175,000.

A similar letter is being sent to the [President of the Senate/Speaker of the House of Representatives].

The Office of Management and Budget advises that there is no objection to the presentation of this proposed legislation from the standpoint of the Administration's program.

Sincerely,

/s/ J. Phil Campbell
Acting Secretary

Enclosures

S. 883
H.R. 4469

A BILL

To provide for study of a certain segment of the Oklawaha River for potential addition to the National Wild and Scenic Rivers System.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5(a) of the Act of October 2, 1968 (82 Stat. 910) is amended by adding the following new subsection:

"(28) Oklawaha, Florida: The segment between the Dead River Swamp downstream to its confluence with the St. Johns River."

Protecting Our Natural Heritage

Big Cypress National Fresh Water Reserve

THE SECRETARY OF THE INTERIOR

WASHINGTON

February 15, 1973

Dear Mr. [President/Speaker]:

Enclosed is a draft of a bill "To authorize the acquisition of the Big Cypress National Fresh Water Reserve in the State of Florida, and for other purposes", to which the President refers in his Environment and Natural Resources State of the Union Message transmitted to you today.

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

The bill authorizes the Secretary of the Interior to acquire lands, waters, and interests therein within an area depicted on a map on file with the Department. The area to be acquired, consisting of not to exceed 522,000 acres of private land and approximately 48,000 acres of publicly owned land, is to be known as the Big Cypress National Fresh Water Reserve.

The reserve is to be administered by the Secretary of the Interior in accordance with the laws applicable to the National Park System. However, the bill authorizes the Secretary to enter into an agreement with the State of Florida or a local government, pursuant to which it may manage and administer the lands acquired for the reserve, subject to the provisions and limitations of the bill. The Secretary is directed to permit hunting, fishing, and trapping within the reserve in accordance with applicable State and Federal laws. Section 5 of the bill authorizes the appropriation of such sums as may be necessary, but not to exceed $156 million for the acquisition of lands and interests therein.

Everglades National Park, authorized in 1934, represents one of the most unique ecosystems in the world. The

biological values of the park however depend on fresh water supplies, and considerably more than half of the 1,400,533 acres within the authorized boundaries is dependent upon the Big Cypress for its supply of fresh water.

A vital factor in the Big Cypress-Everglades ecosystem is the almost imperceptible slope of the land. This results in exceedingly slow drainage, which extends the "wet months" well beyond the period of actual rainfall. A water level change of only a few inches ofttimes affects thousands of acres, and can seriously disrupt the food chain on which the larger animals in the park depend.

The Big Cypress Watershed serves as a natural water storage area, and supplements the man-made storage areas in conservation areas one, two, and three, that are considered vital for the protection of an adequate fresh water supply for south Florida.

Aside from its water supply benefits, Big Cypress is a highly significant resource in itself. The Big Cypress is a wilderness of sloughs, tree islands (or hammocks), and bay and cypress heads. Cypress dominates, and gives the area its name. Large portions of Big Cypress have so far experienced little man-made disturbance. Nearly all the wildlife species native to semitropical Florida are contained within the watershed. Big Cypress provides important feeding, nesting, and wintering areas, as well as a resting place for migrating birds. Acquisition of the Big Cypress Swamp would preserve important habitat for at least nine species of wildlife determined by the Secretary of the Interior to be threatened with extinction. To species that have far wider ranges, Big Cypress, along with the adjacent Everglades National Park, serves as a stronghold or retreat.

We urge the Congress to take early and favorable action to authorize the Big Cypress National Fresh Water Reserve, as proposed herein.

A draft of an environmental impact statement, prepared in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, was forwarded to your Committee during the 92d Congress, by letter dated February 4, 1972.

The Office of Management and Budget has advised that the enactment of the enclosed bill would be in accord with the Administration's program.

Sincerely,

/s/ Rogers C. B. Morton
Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Honorable Carl Albert
Speaker of the
House of Representatives
Washington, D.C. 20515

Enclosures

497-578 O - 73 - 35

S. 920
H.R. 4866

A B I L L

To authorize the acquisition of the Big Cypress National Fresh Water Reserve in the State of Florida, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds--

(a) the unique natural environment of the Big Cypress area of southwestern Florida should be protected from further development which would significantly and adversely affect its ecology;

(b) the Big Cypress is a fragile area, ecologically interlocked with Everglades National Park and the continued viability of Everglades National Park and certain of the estuarine fisheries of south Florida are directly dependent upon fresh water of adequate quality and volume from the Big Cypress area; and

(c) appropriate measures must be taken by the United States and the State of Florida to assure the conservation of fresh water from the Big Cypress area.

It is, accordingly, the purpose of this Act to provide for the protection of the Big Cypress area and for appropriate uses thereof through cooperative action by the Federal Government and the State of Florida.

SEC. 2. In order to effectuate the purpose of this Act the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to acquire by donation, purchase with donated or appropriated funds, transfer from any other Federal agency, or exchange, lands, waters, and interests therein within the area generally depicted on the map entitled "Boundary Map, Big Cypress National Fresh Water Reserve, Florida", numbered BC-91,001, and dated November 1971, which shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The Secretary may from time to time make minor revisions in the boundaries of the area by publication of a revised map or other boundary description in the Federal Register, and he may acquire property within the revised boundaries in accordance with the provisions of this section: Provided, That the boundaries of the area may not encompass more than

522,000 acres of privately owned land. Property owned by the State of Florida or any political subdivision thereof may be acquired only by donation. Notwithstanding any other provision of law, Federal property within the boundaries of the area may, with the concurrence of the head of the administering agency, be transferred to the administrative jurisdiction of the Secretary for the purposes of this Act, without a transfer of funds.

SEC. 3. (a) The owner of improved property on the date of its acquisition by the Secretary may, as a condition of such acquisition, retain for himself and his heirs and assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term of not more than twenty-five years or, in lieu thereof, for a term ending at the death of the owner or the death of his spouse, whichever is later. The owner shall elect the term to be reserved. Unless this property is wholly or partially donated to the United States, the Secretary shall pay the owner the fair market value of the property on the date of acquisition less the fair market value on that date of the right retained by the owner. A right retained pursuant to this section shall be subject to termination by the Secretary upon his determination that it is being exercised in a manner inconsistent with the purposes of this Act, and it shall terminate by operation of law upon the Secretary's notifying the holder of the right of such determination and tendering to him an amount equal to the fair market value of that portion of the right which remains unexpired.

(b) As used in this Act the term "improved property" means a detached, one-family dwelling, construction of which was begun before November 23, 1971, which is used for noncommercial residential purposes, together with not to exceed three acres of the land on which the dwelling is situated, such land being in the same ownership as the dwelling, together with any structures accessory to the dwelling which are situated on such land.

SEC. 4. The area within the boundaries depicted on the map referred to in section 2, or as such boundaries

may be revised, shall be known as the Big Cypress National Fresh Water Reserve, and it shall be administered by the Secretary in accordance with the laws applicable to the National Park System, and in a manner consistent with the findings and purposes of this Act. The Secretary is authorized to enter into an agreement with the State of Florida, or any political subdivision thereof having jurisdiction over the lands, waters, and interests therein within the reserve, pursuant to which such State or political subdivision may agree to manage and administer any property acquired by the Secretary pursuant to this Act for the purpose of protecting the unique natural environment of the Big Cypress area. Any such agreement shall contain provisions which, as applied to the area within the reserve, will limit or control the use of the lands and waters therein for the purposes of motorized access, exploration for and extraction of oil, gas, and other minerals, grazing, draining or constructing works to alter the natural water courses, agriculture, hunting, fishing, and trapping, new construction of any kind, and such other uses as the Secretary determines must be limited or controlled in order to carry out the purpose of this Act; Provided, however, that the Secretary shall consult and cooperate with the Secretary of Transportation to assure that necessary transportation facilities shall be located within existing or reasonably expanded rights-of-way and constructed within the reserve in a manner consistent with the purposes of this Act.

SEC. 5. The Secretary shall permit hunting, fishing, and trapping on lands and waters under his jurisdiction within the reserve in accordance with the applicable laws of the United States and the State of Florida, except that he may designate zones where and periods when no hunting, fishing, or trapping may be permitted for reasons of public safety, administration, fish or wildlife management, or public use and enjoyment. Except in emergencies, any regulations prescribing such restrictions shall be put into effect only after consultation with the appropriate State agency having jurisdiction over hunting, fishing, and trapping activities. Notwithstanding this section or any other provision of this Act, the Secretary may authorize

members of the Miccosukee Tribe of Indians of Florida and members of the Seminole Tribe of Florida to continue their customary use and occupancy of Federal lands and waters within the reserve, including hunting, fishing and trapping on a subsistence basis and traditional tribal ceremonials.

SEC. 6. Notwithstanding any other provision of law, before entering into any contract for the provision of revenue-producing visitor services, the Secretary shall provide those members of the Miccosukee and Seminole Indian Tribes who on January 1, 1972, were engaged in the provision of similar services, a reasonable opportunity to continue providing such services within the reserve in accordance with such terms and conditions as he may by agreement, hereby authorized, provide.

SEC. 7. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, but not to exceed $156,000,000 for the acquisition of lands and interests therein.

BIG CYPRESS NATIONAL FRESH WATER RESERVE

Section-by-Section Analysis

Congressional findings

Section 1 contains Congressional findings concerning the need to protect the Big Cypress area in southwestern Florida and to provide for appropriate uses of it through cooperative State-Federal action.

Acquisition authority

Section 2 authorizes the Secretary of the Interior to acquire by donation, purchase, transfer from a Federal agency, or exchange, lands, waters, and interests therein as depicted on a map on file and available for inspection in the National Park Service.

The Secretary may make minor boundary revisions by publication in the Federal Register. The boundaries may not, however, encompass more than 522,000 acres of privately owned land, and land owned by state or local governments may be acquired only by donation. Notwithstanding any other provision of law, Federal property within the boundaries may be transferred with the concurrence of the head of the administering agency without a transfer of funds.

Rights of owners of noncommercial property

Section 3 provides that the owner of improved property may retain a right of use and occupancy of the improved property for noncommercial residential purposes for a limited period. Improved property means a detached, one-family dwelling, construction of which was begun before November 23, 1971, together with not to exceed three acres of land on which the dwelling is situated. The retained use period is either 25 years or a term ending at the death of the owner or his spouse, whichever is later. The purchase price will take into account the value of any such retained right. The right of use and occupancy may be terminated by the Secretary upon his determination that it is being exercised in a manner

inconsistent to the purposes of this Act.

Administration

Section 4 provides that the area referred to in section 2 shall be known as the Big Cypress National Fresh Water Reserve. It is to be administered in accordance with the laws applicable to the National Park System, and with this Act. The Secretary may agree with the State of Florida or a local government to manage any property acquired by the Secretary pursuant to this Act.

The agreement must contain provisions limiting or controlling use of the area for purposes of motorized access, exploration for and extraction of oil, gas, and other minerals, grazing, draining or constructing works to alter the natural water courses, agriculture, hunting, fishing, and trapping, new construction of any kind, and such other purposes as the Secretary determines must be limited or controlled to carry out the purpose of this Act. The Secretary is to consult and cooperate with the Secretary of Transportation to assure that necessary transportation facilities shall be located within existing or reasonably expanded rights of way and constructed in a manner consistent with this Act.

Hunting, Fishing

Section 5 provides that the Secretary shall permit hunting, fishing and trapping in the reserve, except he may designate zones and periods where they will not be permitted for reasons of public safety, administration, fish and wildlife management, or public use and enjoyment. Except in emergencies, the Secretary may not prescribe such restrictions until he consults with the State.

Indian Tribes

Section 5 also provides that members of the Miccosukee and Seminole Tribes may be authorized by the Secretary to continue their usual and customary use and occupancy of Federal lands, including hunting, fishing, and trapping

on a subsistence basis, and traditional tribal ceremonials.

Section 6 provides that the Secretary, before entering into contracts for providing revenue-producing visitor services, must provide members of these two tribes who on January 1, 1972, were providing similar services, a reasonable opportunity to continue to do so pursuant to agreement with the Secretary.

Appropriation Authorization

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this Act, but not to exceed $156 million for acquisition of lands and interests in them.

Protecting Our Natural Heritage

Protecting Marine Fisheries

THE SECRETARY OF COMMERCE

WASHINGTON, D.C. 20230

February 13, 1973

Honorable Spiro T. Agnew
President of the Senate
United States Senate
Washington, D. C. 20510

Honorable Carl Albert
Speaker of the House
of Representatives
Washington, D. C. 20515

Dear Mr. [President/Speaker]:

Enclosed are four copies of a draft bill

"To provide for the conservation and management of fisheries and for other purposes,"

together with a statement of purpose and need in support thereof and a section-by-section analysis.

We estimate expenditures under this legislation will approximate $100,000 annually during the first five years.

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

Sincerely,

/s/ Frederick B. Dent
Secretary of Commerce

Enclosures

S. 1069
H.R. 4760

A BILL

To provide for the conservation and management of fisheries 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 "High Seas Fisheries Conservation Act of 1973."

DEFINITIONS

SEC. 2. For the purposes of this Act, the term --

(a) "International Fishery Agreement" means any bilateral or multilateral agreement to which the United States is a party, dealing with fishery management or conservation, but does not include those provisions of any agreement which deal solely with methods of enforcement at sea.

(b) "Contracting Party" means any government party to an international fishery agreement;

(c) "Fishing" means the catching, taking, harvesting, or attempted catching, taking or harvesting of any species of fish for any purpose, and any activity in support of such taking, catching or harvesting.

(d) "Fish" includes mollusks, crustaceans, marine mammals (except polar bears, walrus, and sea otter) and all other forms of marine animal or plant life, exclusive of birds, including the Continental Shelf fishery resource as defined in the Act of May 20, 1964 (78 Stat. 196);

(e) "Vessel" means every description of watercraft or other contrivance which is used or is capable of use on water for fishing purposes;

(f) "Owner or operator" means any individual, firm, corporation, association, partnership, government or government enterprise which owns, operates, or charters a vessel;

(g) "Fisheries Zone" means the zone contiguous to the territorial sea of the United States which was established by the Act of October 14, 1966 (80 Stat. 908);

(h) "Secretary" means the Secretary of Commerce;

(i) "State" means the several States of the United States; the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam;

(j) "Person" means any individual, corporation,

partnership, association, or organization.

REGULATIONS

SEC. 3. (a) The Secretary is authorized to promulgate regulations governing fishing in the fisheries zone and all high seas seaward of such zone by vessels of a party to an international fishery agreement with the United States, pursuant to and for the purposes of such agreement.

(b) The Secretary is also authorized to promulgate regulations governing fishing in the fisheries zone and all high seas seaward of such zone by vessels documented under the laws of the United States, or otherwise registered under the laws of any State, for the purposes of:

(i) fulfilling the international obligations of the United States under any international fishery agreement;
(ii) conserving and managing the fish in such waters in such manner as the Secretary determines will result in the optimum overall nutritional, economic, and social benefits; and
(iii) controlling or prohibiting the fishing for fish which the Secretary determines, in consultation with the Food and Drug Administration, the Environmental Protection Agency, and State sanitation authorities, to be unsanitary for the purpose for which they are intended, on the basis of examination of the fish or the water quality of the marine environment from which such fish were taken.

Regulations under paragraphs (ii) and (iii) of this subsection (b) may designate zones where, and establish periods when, no fishing shall be permitted; establish size and catch limits for any species of fish; prohibit the use of certain types of fishing gear, and prescribe such other measures as the Secretary deems appropriate to carry out such purposes. In making any determination as to appropriate conservation and management measures, the Secretary may take into account relevant economic and social factors, and shall consider whether such measures will unreasonably limit competition. The

Secretary may provide by regulation for the issuance of permits related to and in furtherance of such measures, except that such permits shall not be used for revenue purposes.

(c) The promulgation of regulations under this section shall be governed by the following rules:

(i) Before any regulations are promulgated under this section, the Secretary shall, to the extent practicable, consult with other agencies, with the interested States, with persons interested in the conservation of fish in these waters, and in the enhancement of all aspects of the marine fisheries of the United States, for the purpose of obtaining adequate information to develop reasonable and effective regulations: Provided, however, that insofar as such regulations are applicable to foreign vessels beyond the fisheries zone, the Secretary shall consult with the Secretary of State, and Provided further, that insofar as such regulations involve methods and procedures for enforcement at sea, the Secretary shall consult with the Secretary of the Department in which the Coast Guard is operating.

(ii) The Secretary shall publish in the FEDERAL REGISTER the regulations which he proposes to promulgate for all or part of the waters of the fisheries zone and all high seas seaward of such zone. Interested persons shall be afforded a period of not less than 30 days after such publication within which to submit written data, views, or comments. Except as provided in paragraph (iii) of this subsection, the Secretary may, after the expiration of such period and after consideration of all relevant matters presented, promulgate the regulations with such modifications, if any, as he deems appropriate.

(iii) On or before the last day of a period fixed for the submission of written data, views, or comments, any person who, or

State which, may be adversely affected by such proposed regulations may file with the Secretary written objections to the specific provisions of such proposed regulations, stating the grounds therefor, and may request a public hearing on such objections. If the Secretary determines that the person filing objections may be adversely affected, or if a State requests a hearing, the Secretary shall not promulgate regulations with respect to which such objections have been filed until he has taken a final action upon them as provided in paragraph (iv) of this subsection.

(iv) As soon as practicable after the period of filing objections has expired, if the Secretary determines that the person filing objections may be adversely affected, or if a State requests a hearing, the Secretary shall publish in the FEDERAL REGISTER a notice specifying the time and place at which a public hearing shall be held, and the provisions of the regulations to which such objections have been filed and such other provisions as he may designate for consideration and shall hold a public hearing in accordance with 5 U.S.C. 553 for the purpose of receiving information relevant to the matters identified in the notice of hearing. If two or more persons or States request hearings within the prescribed period and the Secretary deems such hearing appropriate, the Secretary may, as he deems appropriate, consolidate such hearings in the interests of time and economy. At the hearing any interested person or State may be heard. As soon as practicable after the completion of the hearing, the Secretary shall act upon such objections and make his determinations public and shall promulgate the regulations with such modifications, if any, as he deems appropriate.

(v) The Secretary may from time to time

revise such regulations in accordance with the procedures prescribed in paragraphs (i) through (iv) of this subsection.

(vi) Notwithstanding the provisions of paragraphs (ii) through (v) of this subsection, the Secretary may waive the requirements for notice and public hearing detailed herein, if he finds (and incorporates the finding and a brief statement of the reasons therefor in the publication of the rule) that, due to an emergency situation, notice and hearing thereon are impracticable, unnecessary, or contrary to the public interest. Written objections may be submitted within 30 days of the effective date of the emergency regulation. If any such written objection is so received, the Secretary shall, not later than 40 days after the effective date of the emergency regulation, initiate the procedures in paragraphs (ii) through (iv). The emergency regulation shall remain in effect for 90 days beyond the date on which the Secretary publishes the notice of proposed rulemaking required in paragraph (ii), unless the Secretary terminates the regulation by notice in the FEDERAL REGISTER at any earlier date.

APPLICATION TO OTHER TREATIES, CONVENTIONS, AND LAWS

SEC. 4. The provisions of this Act shall be deemed to be in addition to and not in contravention of the provisions of any existing international fishery agreement, or any statute implementing the same, which may apply to the subject matter of this Act.

STATE REGULATIONS

SEC. 5.

(a) In the exercise of his powers under subsection 3(b), and subject to subsection (c) of this section, the Secretary may, at any time, adopt as Federal regulations the regulations of any State or group of States regarding fishing adjacent to such State or States in the fisheries zone or in all high seas seaward of such zone, if he finds that such regulations will achieve the objectives of subsection 3(b), taking into account, as he deems appropriate,

uniformity with other regulations.

(b) Any regulations adopted pursuant to this section shall become Federal regulations, and shall be subject to modification, amendment, revision, or revocation in the same manner as regulations adopted pursuant to subsection 3(c) of this Act.

(c) For the purposes of subsection (a) of this section, any State or group of States may submit regulations to the Secretary for adoption. The Secretary shall within 180 days indicate his approval or disapproval of such regulations with notice thereof to the State or group of States which submitted them. In the event of disapproval, such notice shall specify the reason therefor, and the State or group of States which submitted the regulations shall be entitled, within 60 days of the receipt of notice of disapproval, to request a hearing on the matter. All interested parties may be heard at such hearing, and evidence may be offered. The burden shall be on the State or group of States to show that the regulations should be approved. Unless the Secretary shall have indicated his disapproval of such regulations within the 180-day period specified above, he shall proceed promptly with respect to such regulations in accordance with the procedures set forth in subsection 3(c) of this Act.

(d) The Congress hereby consents to any compact or agreement which is not in conflict with any law or treaty in force of the United States, between any two or more States for the purpose of preparing regulations for submission to the Secretary in accordance with this section. The right to alter, amend, or repeal this subsection or the consent granted herein is expressly reserved to the Congress.

AGREEMENTS WITH FOREIGN COUNTRIES

SEC. 6.

(a) The Secretary of State, in consultation with the Secretary, and when appropriate, with the Secretary of the Department in which the Coast Guard is operating, may engage in negotiations with any contracting party to the Convention on Fishing and Conservation of the Living Resources of the High Seas in regard to measures for the conservation of the living resources of the high seas, when such negotiations are necessary to carry out the purposes of articles 4, 6, 7, 8, and 12 of the

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aforesaid Convention and with any contracting party to any other international fishery agreement.

(b) The Secretary of State shall notify the Secretary of receipt of the following pursuant to the aforesaid Convention:

(1) Communications from the Director-General of the Food and Agriculture Organization of the United Nations, as provided in article 5(1) of the Convention;

(2) Notice of the adoption of conservation measures by any contracting party pursuant to article 7(1) of the Convention;

(3) Notice of findings of a Special Commission provided for by article 9 of the Convention;

(4) Notification of the withdrawal of a conservation measure by the contracting party initially adopting such measures; and

(5) All other communications related to the duties of the Secretary under the Convention.

(c) The Secretary of State shall, upon notification from the Secretary of the promulgation of regulations pursuant to subsection 3(a) of this Act for waters of the high seas seaward of the fisheries zone, notify the Director-General of the Food and Agriculture Organization of the United Nations and any Contracting party to the aforesaid Convention whose nationals fish in the waters covered by such regulations of their contents. The Secretary of State, in consultation with the Secretary, is authorized to enter into agreements with any contracting party to the aforesaid Convention for the implementation of regulations adopted by the United States or by such contracting party pursuant to the aforesaid Convention in waters beyond the respective jurisdiction of any such contracting party. Such agreements may provide for authorization of designated personnel of a contracting party to act as enforcement officers in implementing such regulations.

(d) The Secretary of State, in consultation with the Secretary, may, with regard to the aforesaid Convention:

(1) Enter into an agreement with any contracting party for the establishment of a Special Commission pursuant to article 9 of the Convention, and for the payment of costs and expenses of such Special

Commission.

(2) Appoint the United States member to the Special Commission; and

(3) Appoint, upon the request of any contracting party to the Convention or upon the request of the Secretary-General of the United Nations, members to a Special Commission invoked to resolve a dispute between contracting parties to the Convention and to which dispute the United States is not a party.

PROHIBITIONS--PENALTIES

SEC. 7. In the case of vessels not documented under the laws of the United States or otherwise registered under the laws of any State, penalties or prohibitions with respect to fishing in all high seas seaward of the fisheries zone will only be applied if pursuant to and for the purposes of an applicable international fishery agreement.

(a) Any owner or operator of a vessel who knowingly engages in fishing in violation of any regulation pursuant to this Act shall, upon conviction, be fined not more than $25,000, and for each subsequent offense of a similar nature, in addition to a fine, the fish or the fishing gear on board such vessel, or both, or the monetary value thereof as determined by the court, may also be ordered forfeited in whole or in part to the United States or otherwise disposed of by the court.

(b) Whoever knowingly ships, transports, purchases, sells, offers for sale, imports, exports, or has in custody, possession or control any fish taken in violation of such regulations shall, upon conviction, be fined not more than $5,000, and for each subsequent offense of a similar nature, not more than $10,000.

(c) Whoever knowingly

(1) fails to make, keep, submit, or furnish any record or report required by regulation to be made, kept, submitted, or furnished;

(2) refuses to permit anyone authorized pursuant to section 8 to board a vessel for the purposes of inspecting the catch and fishing gear, or resists any lawful arrest;

(3) refuses to permit anyone authorized pursuant to section 8 to inspect any record or report required by regulation to be made, kept, submitted, or furnished, shall, upon

conviction, be fined not more than $10,000;

(d) Any vessel used in fishing in violation of any regulation promulgated under this Act shall be liable for a civil penalty of not more than $10,000. Such penalty shall be assessed by the Federal District Court in the District having jurisdiction over the vessel. Clearance of a vessel against which a penalty has been assessed, from a port of the United States may be withheld until such penalty is paid or until a bond or otherwise satisfactory surety is posted. Such penalty shall constitute a maritime lien on such vessel which may be recovered by action in rem in the Federal District Court of the United States having jurisdiction over the vessel.

ENFORCEMENT

SEC. 8. This section applies only under the express terms of Section 3. For vessels other than those documented under the laws of the United States or otherwise registered under the laws of any State, enforcement on all high seas beyond the fisheries zone is authorized only when pursuant to and for the purposes of an applicable international fishery agreement.

(a) The provisions of this Act and the regulations issued thereunder shall be enforced by the Secretary, and the Secretary of the Department in which the Coast Guard is operating. The Secretary and the Secretary of the Department in which the Coast Guard is operating may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or, for the purpose of enforcement with respect to any vessel in the fisheries zone, or, wherever found, with respect to any vessel documented under the laws of the United States or otherwise registered under the laws of any State, any State agency, in carrying out the provisions of this Act and the regulations issued thereunder, including those relating to enforcement.

(b) Anyone authorized pursuant to subsection (a) of this section to enforce the provisions of this Act and the regulations issued thereunder may --

(1) Board and inspect any vessel documented under the laws of the United States or otherwise registered under the laws of any State or any other vessel subject to the jurisdiction of the United States pursuant to

subsection 3(a), and its catch and gear upon the waters of the fisheries zone or upon all high seas seaward of such zone;

(2) Arrest any person, with or without a warrant, when he has reasonable cause to believe that such person has violated this Act or any regulation issued hereunder.

(3) Execute any warrant or other process issued by an officer or court of competent jurisdiction; and

(4) Seize all fish and fishing gear found on board any vessel which violates the provisions of this Act or any regulations issued thereunder and any fish taken in violation of this Act or the regulations issued thereunder wherever found. Any fish and fishing gear so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable in a manner prescribed by regulations.

(c) State officers authorized pursuant to subsection (a) to function as Federal law enforcement agents shall not be considered to be Federal employees of the United States for the purposes of any laws administered by the Civil Service Commission.

(d) The Federal District Courts shall have exclusive jurisdiction over all cases arising under this Act, and may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions.

(e) Notwithstanding the provisions of section 2464 of title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the respondent or claimant of the fish a bond or other surety satisfactory to the court, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its

equivalent value in money or otherwise to answer the decree of the court in such case. Such bond or other surety shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.

STATE JURISDICTION

SEC. 9. Nothing in this Act shall be construed to

(a) restrict the authority of any State to regulate its citizens regarding fishery matters where such regulation is not contrary to regulations adopted pursuant to this Act;

(b) extend the jurisdiction of the States to the natural resources beneath and in the waters beyond the territorial seas of the United States, or to diminish their jurisdiction to such resources beneath and in the waters of the territorial seas of the United States.

APPROPRIATIONS

SEC. 10. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEVERABILITY

SEC. 11. The provisions of this Act shall be severable and if any part of the Act is declared unconstitutional or the applicability thereof is held invalid, the constitutionality of the remainder and the applicability thereof shall not be affected thereby.

STATEMENT OF PURPOSE AND NEED

This proposed legislation serves two major purposes:

1. It provides conservation and management authority to regulate United States vessels for fishing beyond the territorial sea;

2. It authorizes the United States to carry out its international obligations under international fisheries agreement.

Experience has shown that unregulated or only partially regulated fishing almost invariably leads to decline of the resource, and corresponding economic hardship for the fisherman. At the present time fishing by United States vessels within the contiguous zone and on the high seas is only partially regulated, either by the States, in which case only the particular State's citizens are affected, or by international treaty in those few instances where treaties exist. This proposed legislation would enable the Federal Government to act in this regard in a manner which would remedy the additional problem of "split jurisdiction," which arises from the welter of jurisdictional zones which exist today. For instance, seaward from the shoreline, the oceans are divided into three jurisdictional zones; the territorial sea, within which fishing is managed by the States pursuant to the grant of jurisdiction in the Submerged Land Act (43 U.S.C. 1301-1315); the contiguous fisheries zone, established by the Act of October 14, 1966, (16 U.S.C. 1091-1094) which, at present, is not effectively regulated by any governmental agency for fisheries management and conservation purposes; and high seas, in which fishing is unregulated except where treaties apply. In addition, laterally along the coast, the territorial sea is split into different jurisdictions by State boundaries. This multiplicity of jurisdictional zones, each with a different degree or substance of regulation, creates an institutional barrier to the efficient management and utilization of almost all of the important sport and commercial fisheries in which United States vessels

engage. This legislation would authorize Federal regulation of United States vessels in all waters beyond the territorial seas for conservation and management purposes, thus unifying and rationalizing conservation programs.

It is, recognized, however, that the several coastal States have strong legitimate interests in the management of fisheries adjacent to their respective territorial seas. It is also beneficial to promote completely unified management of our fishery stocks within the territorial sea, where they are subject to State regulation, and beyond. Therefore, the proposed legislation offers those States, or groups of cooperating States, opportunities for direct participation in the management process, by encouraging them to develop regulations for fisheries beyond the territorial sea. These regulations, upon being approved by the Secretary after opportunity for a public hearing, will be adopted by the Federal Government as Federal regulations in the contiguous fisheries zone and in the high seas beyond the zone.

Useful management of the fisheries also requires, however, that we come to grips with foreign fishing in the high seas beyond the contiguous fisheries zone. This is done presently through a series of international agreements.

The proposed legislation contains specific authority for the United States to carry out its obligations under international fishery agreements, negotiated to resolve specific problems. Several agreements have been negotiated on a bilateral basis with Japan and the Soviet Union since vessels of these countries began fishing off U. S. coasts. An example is the agreement between the United States and Japan on the King Crab Fishery in the eastern Bering Sea, signed November 25, 1964. These bilateral agreements are based on principles similar to those in the Convention, i.e., they include implicit recognition of the special interest of coastal countries in fishery resources adjacent to their coast. The proposed legislation will insure that adequate authority is present for the United States to implement these and other agreements.

In addition to the bilateral agreements referred to

above, the United States has been a party to the Convention on Fishing and Conservation of the Living Resources of the High Seas since 1966. There is no specific legislation for the implementation of the Convention. This proposed legislation would provide the specific authority to discharge these treaty obligations.

The Convention came into force for the United States on March 20, 1966, after having been ratified by the required 22 countries. It imposes on all contracting governments the duty to adopt, or to cooperate with other contracting governments in adopting, such measures for their respective nationals as may be necessary to conserve high seas fishery resources. The Convention also asserts the special interest of a coastal country to maintain the productivity of those living resources which may be found on the high seas adjacent to its territorial sea, and requires other contracting governments to recognize that special interest.

Under the Convention, the United States might adopt high seas conservation measures: (1) on a unilateral basis; (2) as a result of an agreement between the United States and other contracting parties; (3) when U. S. fishermen begin fishing on the high seas in areas regulated under the Convention by other contracting governments; and (4) as a result of a decision by an arbitration committee established under the Convention.

SECTION-BY-SECTION-ANALYSIS

Section 1 of the bill gives a short title for the proposed legislation.

Section 2 defines certain terms used in the bill, The definition of "Fish" preserves the jurisdictional breakdown presently existing between the Departments of Commerce and Interior.

Section 3 sets forth the regulatory authority of the Secretary beyond the territorial sea and the procedural steps necessary for the promulgation of such regulations. Subsection (a) provides the Secretary with authority over foreign vessels but only to the extent that the flag nation has consented to such regulation in an international fishery agreement. Subsection (b) provides the Secretary with authority over United States vessels for three purposes:

(1) to fulfill our international obligations,

(2) for the conservation and management of fishery resources; and

(3) to regulate the taking of contaminated fish.

Relevant economic and social factors may be taken into account in any such regulations in order to maximize the economic and social benefits to be obtained from our fisheries resources. Provisions have been included to insure that the views, suggestions, and objections of interested persons and States will be heard before any regulations are promulgated by the Secretary of Commerce, except when the Secretary finds that an emergency situation requires immediate publication of a rule.

Section 4 makes it clear that the bill will not supersede or invalidate the authority contained in other Federal statutes. Thus, authority in legislation implementing other international conventions concerned with fisheries will continue to be exercised in the

manner specified in those acts.

Section 5 provides for the relationship between the States and the Federal Government in regulation of the fishery resources beyond the territorial sea. State regulations may be adopted by the Secretary as Federal regulations, pursuant to subsection 3(b), for application to the contiguous fishery zone and the high seas beyond. Any such regulations become Federal regulations, and must be promulgated in accordance with the procedures in subsection 3(c).

Section 6 states the responsibilities of the Secretary of State under the Convention on Fishing and Conservation of the Living Resources of the High Seas, including the cooperation needed between the Secretary of State and the Secretary of Commerce in order to discharge the obligations arising under the Convention. It also authorizes the Secretary of State to engage in negotiations regarding any other international fishery agreement.

Section 7 sets forth unlawful activities and penalties under the proposed legislation.

Section 8 describes enforcement procedures. These are similar to those found in other statutes implementing treaties concerned with fisheries.

Section 9 is a disclaimer clause which recognizes the authority of a State to continue to regulate its own citizens on fishery matters where such regulation is not contrary to regulations issued under this proposed legislation. This section also makes it clear that this bill does not change the State's present jurisdiction beyond or within the territorial sea.

Section 10 authorizes the appropriation of such sums as may be necessary to carry out the provisions of the proposed legislation.

Section 11 contains severability provisions.

Protecting Our Natural Heritage

World Heritage Trust Convention

RECOMMENDATION CONCERNING THE PROTECTION, AT NATIONAL LEVEL, OF THE CULTURAL AND NATURAL HERITAGE

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris, at its seventeenth session, from 17 October to 21 November 1972,

Considering that, in a society where living conditions are changing at an accelerated pace, it is essential for man's equilibrium and development to preserve for him a fitting setting in which to live, where he will remain in contact with nature and the evidences of civilization bequeathed by past generations, and that, to this end, it is appropriate to give the cultural and natural heritage an active function in community life and to integrate into an overall policy the achievements of our time, the values of the past and the beauty of nature,

Considering that such integration into social and economic life must be one of the fundamental aspects of regional development and national planning at every level,

Considering that particularly serious dangers engendered by new phenomena peculiar to our times are threatening the cultural and natural heritage, which constitute an essential feature of mankind's heritage and a source of enrichment and harmonious development for present and future civilization,

Considering that each item of the cultural and natural heritage is unique and that the disappearance of any one item constitutes a definite loss and an irreversible impoverishment of that heritage,

Considering that every country in whose territory there are components of the cultural and natural heritage has an obligation to safeguard this part of mankind's heritage and to ensure that it is handed down to future generations,

Considering that the study, knowledge and protection of the cultural and natural heritage in the various countries of the world are conducive to mutual understanding among the peoples,

Considering that the cultural and natural heritage forms an harmonious whole, the components of which are indissociable,

Considering that a policy for the protection of the cultural and natural heritage, thought out and formulated in common, is likely to bring about a continuing interaction among Member States and to have a decisive effect on the activities of the United Nations Educational, Scientific and Cultural Organization in this field,

Noting that the General Conference has already adopted international instruments for the protection of the cultural and natural heritage, such as the Recommendation on International Principles Applicable to Archaeological Excavations (1956), the Recommendation concerning the Safeguarding of the Beauty and Character of Landscapes and Sites (1962) and the Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works (1968),

Desiring to supplement and extend the application of the standards and principles laid down in such recommendations,

Having before it proposals concerning the protection of the cultural and natural heritage, which question appears on the agenda of the session as item 23,

Having decided, at its sixteenth session, that this question should be made the subject of international regulations, to take the form of a recommendation to Member States,

Adopts this sixteenth day of November 1972, this Recommendation.

I. DEFINITIONS OF THE CULTURAL AND THE NATURAL HERITAGE

1. For the purposes of this Recommendation, the following shall be considered as "cultural heritage":

monuments: architectural works, works of monumental sculpture and painting, including cave dwellings and inscriptions, and elements, groups of elements or structures of special value from the point of view of archaeology, history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of special value from the point of view of history, art or science;

sites: topographical areas, the combined works of man

and of nature, which are of special value by reason of their beauty or their interest from the archaeological, historical, ethnological or anthropological points of view.

2. For the purposes of this Recommendation, the following shall be considered as "natural heritage":

natural features consisting of physical and biological formations or groups of such formations, which are of special value from the aesthetic or scientific point of view;

geological and physiographical formations and precisely delineated areas which constitute the habitat of species of animals and plants, valuable or threatened, of special value from the point of view of science or conservation;

natural sites or precisely delineated natural areas of special value from the point of view of science, conservation or natural beauty, or in their relation to the combined works of man and of nature.

II. NATIONAL POLICY

3. In conformity with their jurisdictional and legislative requirements, each State should formulate, develop and apply as far as possible a policy whose principal aim should be to co-ordinate and make use of all scientific, technical, cultural and other resources available to secure the effective protection, conservation and presentation of the cultural and natural heritage.

III. GENERAL PRINCIPLES

4. The cultural and natural heritage represents wealth, the protection, conservation and presentation of which impose responsibilities on the States in whose territory it is situated, both vis-a-vis their own nationals and vis-a-vis the international community as a whole; Member States should take such action as may be necessary to meet these responsibilities.

5. The cultural or natural heritage should be considered in its entirety as a homogeneous whole, comprising not only works of great intrinsic value, but also more modest items that have, with the passage of time, acquired cultural or natural value.

6. None of these works and none of these items should, as a general rule, be dissociated from its environment.

7. As the ultimate purpose of protecting, conserving and presenting the cultural and natural heritage is the

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development of man, Member States should, as far as possible, direct their work in this field in such a way that the cultural and natural heritage may no longer be regarded as a check on national development but as a determining factor in such development.

8. The protection, conservation and effective presentation of the cultural and natural heritage should be considered as one of the essential aspects of regional development plans, and planning in general, at the national, regional or local level.

9. An active policy for the conservation of the cultural and natural heritage and for giving it a place in community life should be developed. Member States should arrange for concerted action by all the public and private services concerned, with a view to drawing up and applying such a policy. Preventive and corrective measures relating to the cultural and natural heritage should be supplemented by others, designed to give each of the components of this heritage a function which will make it a part of the nation's social, economic, scientific and cultural life for the present and future, compatible with the cultural or natural character of the item in question. Action for the protection of the cultural and natural heritage should take advantage of scientific and technical advances in all branches of study involved in the protection, conservation and presentation of the cultural or natural heritage.

10. Increasingly significant financial resources should, as far as possible, be made available by the public authorities for the safeguarding and presentation of the cultural and natural heritage.

11. The general public of the area should be associated with the measures to be taken for protection and conservation and should be called on for suggestions and help, with particular reference to regard for and surveillance of the cultural and natural heritage. Consideration might also be given to the possibility of financial support from the private sector.

IV. ORGANIZATION OF SERVICES

12. Although their diversity makes it impossible for all Member States to adopt a standard form of organization, certain common criteria should nevertheless be observed.

Specialized public services

13. With due regard for the conditions appropriate to each country, Member States should set up in their territory, wherever they do not already exist, one or more specialized public services to be responsible for the efficient discharge of the following functions:

(a) developing and putting into effect measures of all kinds designed for the protection, conservation and presentation of the country's cultural and natural heritage and for making it an active factor in the life of the community; and primarily, compiling an inventory of the cultural and natural heritage and establishing appropriate documentation services;

(b) training and recruiting scientific, technical and administrative staff as required, to be responsible for working out identification, protection, conservation and integration programmes and directing their execution;

(c) organizing close co-operation among specialists of various disciplines to study the technical conservation problems of the cultural and natural heritage;

(d) using or creating laboratories for the study of all the scientific problems arising in connexion with the conservation of the cultural and natural heritage;

(e) ensuring that owners or tenants carry out the necessary restoration work and provide for the upkeep of the buildings in the best artistic and technical conditions.

Advisory bodies

14. The specialized services should work with bodies of experts responsible for giving advice on the preparation of measures relating to the cultural and natural heritage. Such bodies should include experts, representatives of the major preservation societies, and representatives of the administrations concerned.

Co-operation among the various bodies

15. The specialized services dealing with the protection, conservation and presentation of the cultural and natural heritage should carry out their work in liaison and on an equal footing with other public services, more particularly those responsible for regional development planning, major public works, the environment, and economic and social planning. Tourist development programmes involving

the cultural and natural heritage should be carefully drawn up so as not to impair the intrinsic character and importance of that heritage, and steps should be taken to establish appropriate liaison between the authorities concerned.

16. Continuing co-operation at all levels should be organized among the specialized services whenever large-scale projects are involved, and appropriate co-ordinating arrangements made so that decisions may be taken in concert, taking account of the various interests involved. Provision should be made for joint planning from the start of the studies and machinery developed for the settlement of conflicts.

Competence of central, federal, regional and local bodies

17. Considering the fact that the problems involved in the protection, conservation and presentation of the cultural and natural heritage are difficult to deal with, calling for special knowledge and sometimes entailing hard choices, and that there are not enough specialized staff available in this field, responsibilities in all matters concerning the devising and execution of protective measures in general should be divided among central or federal and regional or local authorities on the basis of a judicious balance adapted to the situation that exists in each State.

V. PROTECTIVE MEASURES

18. Member States should, as far as possible, take all necessary scientific, technical and administrative, legal and financial measures to ensure the protection of the cultural and natural heritage in their territories. Such measures should be determined in accordance with the legislation and organization of the State.

Scientific and technical measures

19. Member States should arrange for careful and constant maintenance of their cultural and natural heritage in order to avoid having to undertake the costly operations necessitated by its deterioration; for this purpose, they should provide for regular surveillance of the components of their heritage by means of periodic inspections. They should also draw up carefully planned programmes of conservation and presentation work, gradually taking in all the cultural and natural heritage, depending upon the scientific, technical and financial means at their disposal.

20. Any work required should be preceded and accompanied by such thorough studies as its importance may necessitate. Such studies should be carried out in co-operation with or by specialists in all related fields.

21. Member States should investigate effective methods of affording added protection to those components of the cultural and natural heritage that are threatened by unusually serious dangers. Such methods should take account of the interrelated scientific, technical and artistic problems involved and make it possible to determine the treatment to be applied.

22. These components of the cultural and natural heritage should, in addition, be restored, wherever appropriate, to their former use or given a new and more suitable function, provided that their cultural value is not thereby diminished.

23. Any work done on the cultural heritage should aim at preserving its traditional appearance, and protecting it from any new construction or remodelling which might impair the relations of mass or colour between it and its surroundings.

24. The harmony established by time and man between a monument and its surroundings is of the greatest importance and should not, as a general rule, be disturbed or destroyed. The isolation of a monument by demolishing its surroundings should not, as a general rule, be authorized; nor should the moving of a monument be contemplated save as an exceptional means of dealing with a problem, justified by pressing considerations.

25. Member States should take measures to protect their cultural and natural heritage against the possible harmful effects of the technological developments characteristic of modern civilization. Such measures should be designed to counter the effects of shocks and vibrations caused by machines and vehicles. Measures should also be taken to prevent pollution and guard against natural disasters and calamities, and to provide for the repair of damage to the cultural and natural heritage.

26. Since the circumstances governing the rehabilitation of groups of buildings are not everywhere identical, Member States should provide for a social science inquiry in appropriate cases, in order to ascertain precisely what are the social and cultural needs of the community in which the group of buildings concerned is situated. Any

rehabilitation operation should pay special attention to enabling man to work, to develop and to achieve fulfilment in the restored setting.

27. Member States should undertake studies and research on the geology and ecology of items of the natural heritage, such as park, wildlife, refuge or recreation areas, or other equivalent reserves, in order to appreciate their scientific value, to determine the impact of visitor use and to monitor interrelationships so as to avoid serious damage to the heritage and to provide adequate background for the management of the fauna and flora.

28. Member States should keep abreast of advances in transportation, communication, audio-visual techniques, automatic data-processing and other appropriate technology, and of cultural and recreational trends, so that the best possible facilities and services can be provided for scientific study and the enjoyment of the public, appropriate to the purpose of each area, without deterioration of the natural resources.

Administrative measures

29. Each Member State should draw up, as soon as possible, an inventory for the protection of its cultural and natural heritage, including items which, without being of outstanding importance, are inseparable from their environment and contribute to its character.

30. The information obtained by such surveys of the cultural and natural heritage should be collected in a suitable form and regularly brought up to date.

31. To ensure that the cultural and natural heritage is effectively recognized at all levels of planning, Member States should prepare maps and the fullest possible documentation covering the cultural and natural property in question.

32. Member States should give thought to finding suitable uses for groups of historic buildings no longer serving their original purpose.

33. A plan should be prepared for the protection, conservation, presentation and rehabilitation of groups of buildings of historic and artistic interest. It should include peripheral protection belts, lay down the conditions for land use, and specify the buildings to be preserved and the conditions for their preservation. This plan should be incorporated into the overall town and country planning policy for the areas concerned.

34. Rehabilitation plans should specify the uses to which historic buildings are to be put, and the links there are to be between the rehabilitation area and the surrounding urban development. When the designation of a rehabilitation area is under consideration, the local authorities and representatives of the residents of the area should be consulted.

35. Any work that might result in changing the existing state of the buildings in a protected area should be subject to prior authorization by the town and country planning authorities, on the advice of the specialized services responsible for the protection of the cultural and natural heritage.

36. Internal alterations to groups of buildings and the installation of modern conveniences should be allowed if they are needed for the well-being of their occupants and provided they do not drastically alter the real characteristic features of ancient dwellings.

37. Member States should develop short- and long- range plans, based on inventories of their natural heritage, to achieve a system of conservation to meet the needs of their countries.

38. Member States should provide an advisory service to guide non-governmental organizations and owners of land on national conservation policies consistent with the productive use of the land.

39. Member States should develop policies and programmes for restoration of natural areas made derelict by industry, or otherwise despoiled by man's activities.

Legal measures

40. Depending upon their importance, the components of the cultural and natural heritage should be protected, individually or collectively, by legislation or regulations in conformity with the competence and the legal procedures of each country.

41. Measures for protection should be supplemented to the extent necessary by new provisions to promote the conservation of the cultural or natural heritage and to facilitate the presentation of its components, To that end, enforcement of protective measures should apply to individual owners and to public authorities when they are the owners of components of the cultural and natural heritage.

42. No new building should be erected, and no demolition,

transformation, modification or deforestation carried out, on any property situated on or in the vicinity of a protected site, if it is likely to affect its appearance, without authorization by the specialized services.

43. Planning legislation to permit industrial development, or public and private works should take into account existing legislation on conservation. The authorities responsible for the protection of the cultural and natural heritage might take steps to expedite the necessary conservation work, either by making financial assistance available to the owner, or by acting in the owner's place and exercising their powers to have the work done, with the possibility of their obtaining reimbursement of that share of the costs which the owner would normally have paid.

44. Where required for the preservation of the property, the public authorities might be empowered to expropriate a protected building or natural site subject to the terms and conditions of domestic legislation.

45. Member States should establish regulations to control bill-posting, neon signs and other kinds of advertisement, commerical signs, camping, the erection of poles, pylons and electricity or telephone cables, the placing of television aerials, all types of vehicular traffic and parking, the placing of indicator panels, street furniture, etc., and, in general, everything connected with the equipment or occupation of property forming part of the cultural and natural heritage.

46. The effects of the measures taken to protect any element of the cultural or natural heritage should continue regardless of changes of ownership. If a protected building or natural site is sold, the purchaser should be informed that it is under protection.

47. Penalties or administrative sanctions should be applicable, in accordance with the laws and constitutional competence of each State, to anyone who wilfully destroys, multilates or defaces a protected monument, group of buildings or site, or one which is of archaeological, historical or artistic interest. In addition, equipment used in illicit excavation might be subject to confiscation.

48. Penalties or administrative sanctions should be imposed upon those responsible for any other action detrimental to the protection, conservation or

presentation of a protected component of the cultural or natural heritage, and should include provision for the restoration of an affected site to its original state in accordance with established scientific and technical standards.

Financial measures

49. Central and local authorities should, as far as possible, appropriate, in their budgets, a certain percentage of funds, proportionate to the importance of the protected property forming part of their cultural or natural heritage, for the purposes of maintaining, conserving and presenting protected property of which they are the owners, and of contributing financially to such work carried out on other protected property by the owners, whether public bodies or private persons.

50. The expenditure incurred in protecting, conserving and presenting items of the privately-owned cultural and natural heritage should, so far as possible, be borne by their owners or users.

51. Tax concessions on such expenditures, or grants or loans on favourable terms, could be granted to private owners of protected properties, on condition that they carry out work for the protection, conservation, presentation and rehabilitation of their properties in accordance with approved standards.

52. Consideration should be given to indemnifying, if necessary, owners of protected cultural and natural areas for losses they might suffer as a consequence of protective programmes.

53. The financial advantages accorded to private owners should, where appropriate, be dependent on their observance of certain conditions laid down for the benefit of the public, such as their allowing access to parks, gardens and sites, tours through all or parts of natural sites, monuments or groups of buildings, the taking of photographs, etc.

54. Special funds should be set aside in the budgets of public authorities for the protection of the cultural and natural heritage endangered by large-scale public or private works.

55. To increase the financial resources available to them, Member States may set up one or more "Cultural and Natural Heritage Funds", as legally established public agencies, entitled to receive private gifts,

donations and bequests, particularly from industrial and commercial firms.

56. Tax concessions could also be granted to those making gifts, donations or bequests for the acquisition, restoration or maintenance of specific components of the cultural and natural heritage.

57. In order to facilitate operations for rehabilitation of the natural and cultural heritage, Member States might make special arrangements, particularly by way of loans for renovation and restoration work, and might also make the necessary regulations to avoid price rises caused by real-estate speculation in the areas under consideration.

58. To avoid hardship to the poorer inhabitants consequent on their having to move from rehabilitated buildings or groups of buildings, compensation for rises in rent might be contemplated so as to enable them to keep their accommodation. Such compensation should be temporary and determined on the basis of the income of the parties concerned, so as to enable them to meet the increased costs occasioned by the work carried out.

59. Member States might facilitate the financing of work of any description for the benefit of the cultural and natural heritage, by instituting "Loan Funds", supported by public institutions and private credit establishments, which would be responsible for granting loans to owners at low interest rates and with repayment spread out over a long period.

VI. EDUCATIONAL AND CULTURAL ACTION

60. Universities, educational establishments at all levels and life-long education establishments should organize regular courses, lectures, seminars, etc., on the history of art, architecture, the environment and town planning.

61. Member States should undertake educational compaigns to arouse widespread public interest in, and respect for, the cultural and natural heritage. Continuing efforts should be made to inform the public about what is being and can be done to protect the cultural or natural heritage and to inculcate appreciation and respect for the values it enshrines. For this purpose, all media of information should be employed as required.

62. Without overlooking the great economic and social value of the cultural and natural heritage, measures should be taken to promote and reinforce the eminent

cultural and educational value of that heritage, furnishing as it does the fundamental motive for protecting, conserving and presenting it.

63. All efforts on behalf of components of the cultural and natural heritage should take account of the cultural and educational value inherent in them as representative of an environment, a form of architecture or urban design commensurate with man and on his scale.

64. Voluntary organizations should be set up to encourage national and local authorities to make full use of their powers with regard to protection, to afford them support and, if necessary, to obtain funds for them; these bodies should keep in touch with local historical societies, amenity improvement societies, local development committees and agencies concerned with tourism, etc., and might also organize visits to, and guided tours of, different items of the cultural and natural heritage for their members.

65. Information centres, museums or exhibitions might be set up to explain the work being carried out on components of the cultural and natural heritage scheduled for rehabilitation.

VII. INTERNATIONAL CO-OPERATION

66. Member States should co-operate with regard to the protection, conservation and presentation of the cultural and natural heritage, seeking aid, if it seems desirable, from international organizations, both intergovernmental and non-governmental. Such multilateral or bilateral co-operation should be carefully co-ordinated and should take the form of measures such as the following:

(a) exchange of information and of scientific and technical publications;
(b) organization of seminars and working parties on particular subjects;
(c) provision of study and travel fellowships, and of scientific, technical and administrative staff, and equipment;
(d) provision of facilities for scientific and technical training abroad, by allowing young research workers and technicians to take part in architectural projects, archaeological excavations and the conservation of natural sites;
(e) co-ordination, within a group of Member States, of large-scale projects involving conservation,

excavations, restoration and rehabilitation work, with the object of making the experience gained generally available.

The foregoing is the authentic text of the Recommendation duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its seventeenth session, which was held in Paris and declared closed the twenty-first day of November 1972.

IN FAITH WHEREOF we have appended our signatures this twenty-third day of November 1972.

The President of the General Conference

TORU HAGUIWARA

The Director-General

RENE MAHEU

Certified copy
Paris,

Director, Office of International
Standards and Legal Affairs,
United Nations Educational,
Scientific and Cultural Organization

Protecting Our Natural Heritage

Weather Modification

WEATHER MODIFICATION

Intentional modification of the weather first achieved widespread scientific recognition a quarter of a century ago. Since then the state-of-the-art has advanced significantly in sophistication and predictability. Although much remains to be learned about influencing the weather, some relatively reliable techniques are now in widespread commercial use.

Weather modification can provide various economic and social benefits -- such as augmenting the rainfall needed by farmers or clearing hazardous fog from an airport -- but it also has the potential, if used unwisely or incompetently, for endangering persons, property, and the environment. Moreover, private weather modification activities may interfere with Federal weather modification research projects.

Under Public Law 92-205, enacted at the Administration's request in 1971, non-Federal weather modification projects must be reported in advance to the National Oceanic and Atmospheric Administration in the Department of Commerce. States have the responsibility and opportunity for preventing potential adverse effects of weather modification, but the Federal information-gathering program can be used to assist the States.

The President has directed the Secretary of Commerce to expand the Department's regulations under Public Law 92-205 to provide for Federal notification, including recommendations when appropriate, to operators and State officials when a report discloses that a proposed project may endanger persons, property, or the environment or the success of a Federal research project. These notifications from the Commerce Department will be available to the public.

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