

FISH AND WILDLIFE

Activities in the 92nd Congress

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INTRODUCTION

Fish and wildlife activity during the 92nd Congress has reflected strong public concern over endangered or inhumanely treated wildlife species. As of March 15, 1972, four laws have been enacted: (1) P.L. 92-159 prohibiting the shooting of wildlife from aircraft, (2) P.L. 92-195 protecting wild horses and burros on public lands, (3) P.L. 92-214 increasing the price of duck hunting stamps, and (4) P.L. 92-219 allowing prohibition of importation of fish products from nations fishing in violation of certain conservation standards.

During the early part of the Second Session, further action was taken in the House on several refuge bills, ocean mammal protection and legislation dealing with golden eagles.

Legislation Enacted During the First Session

Hunting from Aircraft

H.R. 5060, a bill to amend the Fish and Wildlife Act of 1956 to provide a criminal penalty for shooting at certain birds, fish, and other animals from an aircraft, was passed and became Public Law 92-159 on November 18, 1971.

The main impetus for the bill goes back 3 years or more. In November 1969, the NBC television network showed a documentary film entitled "The Wolf Men." Several scenes from the film depicted the hunting of wolves from aircraft and presented an interesting account of the status of the North American wolf. The film generated more mail from concerned citizens in support of legislation to prohibit hunting from aircraft than any other conservation legislation considered by the House Committee on Merchant Marine and Fisheries in the past decade.

Following the public outcry, several Members introduced bills to put an end to the practice. Hearings were held on H.R. 15188 which was passed by the House on December 7, 1970, but failed to pass in the Senate.

On February 25, 1971, Congressman John Saylor (R. Pa.) introduced H.R. 5060, a bill substantially the same as the one that failed to pass in the previous Congress. The main difference between the two bills was that H.R. 5060 contained a provision to require States issuing permits to file an annual report with the Secretary of the Interior.

On May 17, 1971, the bill passed in the House and on November 4, it passed in the Senate. On November 5, the House concurred in Senate amendments and on November 18, it was signed by the President.

The new law not only prohibits the hunting or shooting from aircraft, it also prohibits harassment. Violators are subject to a fine of \$5,000 or 1 year imprisonment or both. The Act applies to all lands in the United States, not the Federal lands alone. It does, however, permit certain exceptions when duly authorized for administrative or protective purposes.

The Act is intended to protect several endangered species as well as other animals without unduly interfering with the States' right to manage resident game. Some opponents of the bill felt that the whole matter should be regulated by the States themselves, not by Federal law. The Justice Department expressed doubts concerning the constitutionality of the bill.

The legislative history is given below:

House Report No. 92-202 (Committee on Merchant Marine and Fisheries).

Senate Report No. 92-421 (Committee on Commerce).

Congressional Record, Vol. 117 (1971):

May 17, considered and passed House.

Nov. 4, considered and passed Senate, amended.

Nov. 5, House concurred in Senate amendments.

Wild Horses and Burros

A bill (S. 1116) to require the protection, management, and control of wild free-roaming horses and burros on public lands was enacted late in the first session. It became Public Law 92-195 on December 15, 1971.

The Act places these animals under the jurisdiction of the Secretary of the Interior when they are on areas administered by the Bureau of Land Management and under the jurisdiction of the Secretary of Agriculture when they are on Forest Service lands. The Act authorizes the creation of special ranges or sanctuaries when deemed desirable. The proposal to form special, zoo-like ranges was one of the items that generated considerable debate during the hearings.

A brief history of events and legislative actions that led to final passage of the Act is contained in the following excerpts from Senate Report No. 92-242:

National attention was focused on the plight of the wild horses and burros of the public lands of the western United States during the 1950's. At that time, widespread objection was raised to the use of motorized vehicles or aircraft in the pursuit of the animals. The campaign against these activities was culminated on September 8, 1959, when President Dwight D. Eisenhower signed into law Public Law 86-234 which prohibits the use of aircraft or motorized vehicles to hunt certain wild horses or burros on land belonging to the United States.

During the latter part of the 1960's, widespread publicity about the hunting of wild horses and burros served to once again focus national attention and led to increased interest in legislation at a Federal level for their protection. In the 91st Congress, legislation was introduced by Senator Frank Moss which would have designated the Spanish Barb and Andalusian wild mustangs as endangered species. The bill, S. 2166, was referred to the Senate Committee on Commerce but no further action was taken.

The first comprehensive measure to provide for the protection of all wild horses and burros on lands administered by the Bureau of Land Management was introduced in the second session of the 91st Congress by Senator Clifford Hansen. The bill, S. 3358, would have placed all free-roaming horses and burros under the exclusive jurisdiction of the Secretary of the Interior for purposes of management and pro-

tection. The bill was referred to the Senate Interior and Insular Affairs Committee but no action was taken.

Four measures were introduced in the Senate in the beginning of the 92d Congress which were patterned after the comprehensive nature of S. 3358. Hearings on the four measures, S. 862 by Senator Caylor Nelson, S. 1090 by Senators Mike Mansfield and Mark O. Hatfield, and S. 1119 by Senator Frank Moss, were held on April 20, 1971, before the Public Lands Subcommittee of the Interior and Insular Affairs Committee. Following a staff study and consultation with representatives of the Department of the Interior, the committee considered S. 1116 in executive session on June 16, 1971. Following the adoption of a number of committee amendments, the measure was ordered reported to the Senate on June 16, 1971.

Throughout 1971, hundreds of pleas from school children were received by Members of Congress. Something of a children's crusade was formed to save the wild horse. One 10-year-old boy came all the way from Oregon to testify at the Senate hearings. His simple plea for Congressional action was picked up by the TV networks across the country. A wide range of other groups also favored the legislation.

Violators of P.L. 92-195 may be fined \$2,000 or imprisoned for 1 year, or both.

The Act does not authorize the Secretaries to relocate wild, free-roaming horses and burros to areas of the public lands where they do not presently exist. It provides for a 9-member joint advisory board, cooperative agreements with other landowners, recovery rights, private maintenance, and the destruction or removal of certain animals in a humane manner.

The legislative history is given below:

House Report: No. 92-480 accompanying H.R. 9890 (Committee on Interior and Insular Affairs) and No. 92-681 (Committee of Conference).

Senate Report: No. 92-242 (Committee on Interior and Insular Affairs).

Congressional Record, Vol. 117 (1971):

June 29, considered and passed Senate.

Oct. 4, considered and passed House, amended, in lieu of H.R. 9890.

Dec. 2, House agreed to conference report.

Dec. 3, Senate agreed to conference report

Weekly Compilation of Presidential Documents, Vol. 7, No. 51: Dec. 17, Presidential statement.

Migratory Bird Hunting Stamps

H.R. 701, a bill which authorizes the Secretary of the Interior to increase the price of the migratory bird hunting stamp from \$3.00 to \$5.00, was signed into law on December 22, 1971 (P.L. 92-214). This amendment to the Migratory Bird Hunting Stamp Act also corrects the language to reflect recent organizational changes in the U. S. Postal Service which is responsible for selling the stamp.

Funds from the sale of the so-called "Duck Stamps" are earmarked for use by the Bureau of Sport Fisheries and Wildlife to acquire waterfowl wetlands. Some 3,000,000 Duck Stamps were sold for the 1971-72 season; thus the increase should produce about \$6 million in added revenue. The price of Duck Stamps has been increased only two times since it was first established in 1934. In 1949 it was raised from \$1 to \$2. In 1958, from \$2 to \$3.

The legislative history is given below:

House Report No. 92-424 (Committee on Merchant Marine and Fisheries).

Senate Report No. 92-578 (Committee on Commerce).

Congressional Record, Vol. 117 (1971):

Aug. 2, considered and passed House.

Dec. 13, considered and passed Senate.

Fisherman's Protective Act

A bill (H.R. 3304) designed to help protect and conserve the North Atlantic Salmon, as well as other marine species, was enacted on December 23, 1971 (P.L. 92-219). This new law permits the Secretary of Treasury to prohibit the importation into the United States of any fish products from any country which conducts fishing operations in a manner which diminishes the effectiveness of domestic conservation programs. This is an amendment to the Fisherman's Protective Act of 1967.

A fine of \$10,000 may be imposed for the first violation, and fines of up to \$25,000 for each subsequent violation are authorized. Illegal imports of their value may be forfeited.

The definition of fish products includes marine mammals as well as fish.

The legislative history is given below:

House Report No. 92-468 (Committee on Merchant Marine and Fisheries).

Senate Reports: No. 92-582 accompanying S. 2191 (Committee on Commerce) and No. 92-583 (Committee on Commerce).

Congressional Record, Vol. 117 (1971):

Oct. 4, considered and passed House.

Dec. 15, considered and passed Senate, in lieu of S. 2191.

Activity During the Second Session
(through March 15, 1972)

On February 7, 1972, the House of Representatives passed three important fish and wildlife bills under suspension of the rules. H.R. 7088 would establish a Tinicum National Environmental Center in Pennsylvania; H.R. 12143 would establish a San Francisco Bay National Wildlife Refuge in California; H.R. 12186 would protect bald and golden eagles by strengthening the Bald Eagle Protection Act of 1940.

On February 8, 1972, the President delivered his 1972 Environmental Message to Congress which included the following discussion of endangered species:

ENDANGERED SPECIES

It has only been in recent years that efforts have been undertaken to list and protect those species of animals whose continued existence is in jeopardy. Starting with our national symbol, the bald eagle, we have expanded our concern over the extinction of these animals to include the present list of over 100. We have already found, however, that even the most recent act to protect endangered species, which dates only from 1969, simply does not provide the kind of management tools needed to act early enough to save a vanishing species. In particular, existing laws do not generally allow the Federal Government to control shooting, trapping, or other taking of endangered species.

—I propose legislation to provide for early identifications and protection of endangered species. My new proposal would make the taking of endangered species a Federal offense for the first time, and would permit protective measures to be undertaken before a species is so depleted that regeneration is difficult or impossible.

MIGRATORY SPECIES

The protection of migratory species, besides preserving wildlife values, exemplifies cooperative environmental effort among the United States, Canada, and Mexico. By treaties entered into among these three countries, migratory species are protected. New species may be added by common agreement between the United States and Mexico.

—I have authorized the Secretary of State, in conjunction with the Secretary of the Interior, to seek the agreement of the Mexican Government to add 33 new families of birds to the protected list.

Included in the proposal are eagles, hawks, falcons, owls, and many of the most attractive species of wading birds. I am hopeful that treaty protection can be accorded them in the near future.

On March 9, 1972, H.R. 10420, the Marine Mammal Protection Act of 1971 was debated and passed by the House of Representatives. The bill, which had previously failed to pass under suspension of the rules, was brought to the floor of the House for consideration under H. Res. 878. It was amended to provide a five year moratorium on the taking of marine mammals or importation of marine mammal products. Exceptions to be allowed are for: (1) scientific purposes, (2) takings incidental to commercial fishing, (3) the North Pacific Fur Seal Treaty, and (4) importation of seal skins for processing if they are subsequently exported. Amendments rejected would have transferred administering authorities from the Department of Commerce to the Department of the Interior and after one or two years would have prohibited the killing of porpoises and dolphins while tuna fishing.

Legislation Pending

Predator Control Program

Conservationists increasingly have expressed concern during the decade of the 1960's over the Federal program which destroys various predatory animals. The program is administered by the Division of Wildlife Services, Bureau of Sport Fisheries and Wildlife in the Department of the Interior. Among the species taken in this program are wolves, coyotes, foxes, lynx, bobcats and mountain lions. The main purpose of the controls is to reduce the damage to sheep and cattle in the Western States, although nuisance animals in suburban areas are also destroyed under the program.

Stockmen and their associations have long attributed much of the loss of animals on the open range to the work of these predatory mammals as well as to bald and golden eagles.

Shooting and trapping are used as control methods, but the most widespread--and most criticized--means of killing is by poisoning.

A major review of the Federal predator control program was conducted in 1964 by Interior Secretary Stewart Udall's Advisory Board on Wildlife Management. The board was chaired by Dr. A. Starker Leopold, and the report of the group has been referred to as the Leopold report. In summary, it stated:

Federal responsibility for minimizing animal damage is properly assigned to the Fish and Wildlife Service. But the program of animal control, under the Branch of Predator and Rodent Control, has become an end in itself and no longer is a balanced component of an overall scheme of wildlife husbandry and management. In the opinion of this Board, far more animals are being killed than would be required for effective protection of livestock, agricultural crops, wildland resources, and human health. This unnecessary destruction is further augmented by state, county, and individual endeavor. The Federal Government, it would seem, should be setting an example in the proper scientific management of all wildlife resources, with a view to total public interest and welfare. Instead, the Branch of Predator and Rodent Control has developed into a semi-autonomous bureaucracy whose function in many localities bears scant relationship to real need and less still to scientific management.

It is our recommendation that there be a complete reassessment of the goals, policies, and field operations of the Branch of Predator and Rodent Control with a view to limiting the killing program strictly to cases of proven need, as determined by rigidly prescribed criteria. Where control must be undertaken, as for example of coyotes on important sheep ranges, the operation should be precisely accomplished, under close supervision, with minimum danger to non-target species. Some of the funds saved in this belt-tightening process could well be devoted to research on better and more precise methods of alleviating damage. An Advisory Board on Predator and Rodent Control, appointed by the Secretary of the Interior, is suggested as one mechanism for assuring consideration of total public interest in this program.

The Report was accepted by Secretary Udall as a guide, but not as departmental policy. The operating agency, the Branch of Predator and Rodent Control, was renamed as the Division of Wildlife Services on July 1, 1965.

In 1971 it was discovered that individual sheepmen in Wyoming were hiring airborne gunners to kill eagles. Investigation revealed that over 570 eagles had been shot, along with an unknown number of coyotes. Some 50 eagles were also found killed by thallium poisoning in the State.

Following discovery of the poisoned eagles, oversight hearings were held in June, 1971 by the Subcommittee on Agriculture, Environmental, and Consumer Protection of the Senate Appropriations Committee. Testimony was received from the Environmental Protection Agency, the Interior Department, the Department of Agriculture, and the Council on Environmental Quality as well as from private witnesses.

During the August 2, 1971 session of these hearings pilot James Vogan testified to the use of aircraft in killing eagles over Wyoming ranches.

Hearings were also held by the Subcommittee in December, 1971, at which time emphasis was placed on the problems caused by coyotes. The latter hearings have not been printed as yet, in anticipation of possible further hearings.

During the first session of the 92nd Congress, over a dozen bills to modify the existing predatory animal control programs were introduced. The following digests are representative of the legislative proposals which were offered:

H.R. 689. Mr. Dingell, et al.; 1/22/71
Merchant Marine and Fisheries.

Establishes a national policy of conservation and control of wild predatory mammals. Establishes the position of extension mammal control agent in each regional office of the Bureau of Sport Fisheries and Wildlife, who shall provide advice and demonstrations on methods of preventing depredations by wild predatory mammals on domestic livestock.

Authorizes appropriations of \$105,000 for fiscal year 1974 and for each fiscal year thereafter through fiscal year 1978.

S. 2083. Mr. Bayh; 6/17/71. Commerce

Antipoisoning Act - Prohibits the use of poisons and substances which, when injected, cause animals to become sterile, for purposes of killing or controlling animals and birds on the public lands of the United States. Permits exceptions in special instances where either the Secretary of the Interior or the Secretary of Agriculture believes that unusual and extraordinary circumstances makes it imperative to use poisons for animal control.

Sets penalties for violations of this Act, to include those by officials, employees and agents of the United States or any State.

Establishes the position of extension mammal control agent in each regional office of the Bureau of Sport Fisheries and Wildlife of the Department of the Interior. Provides that such extension mammal control agent shall, upon request, provide advice and demonstrations to State-employed specialists in methods of instructing farmers and ranchers in techniques of predator-control utilizing methods other than those prohibited by this Act.

S. 2821. Mr. Moss; 11/8/71. Commerce

Predator Control Study Act - Authorizes the Secretary of the Interior to make a full and complete study to determine the need for predator control programs on the public lands of the United States. Lists matters which the Secretary shall consider in conducting such a study.

Authorizes the Secretary to appoint an Advisory Committee composed of not more than five members which shall aid and advise the Secretary in conducting the study. Provides that the Secretary shall submit to the President and the Congress, within two years after the date of enactment of this Act, a report containing the results of the study together with appropriate recommendations.

Authorizes to be appropriated such sums as may be necessary to carry out the provisions of this Act.

On March 13, 1972, Senator Magnuson introduced the Nixon administration proposal, S. 3334, which was referred to the Committee on Commerce.

In submitting the bill to the Congress, Interior Secretary Rogers Morton wrote:

In brief, this draft bill would (1) authorize an expanded Federal program of research concerning the control and conservation of predatory animals; (2) prohibit on Federal lands the field use of chemical toxicants for the purpose of killing predatory animals and of chemical toxicants which cause secondary poisoning effects for the purpose of killing mammals, birds or reptiles, except where such use is essential in emergency situations to the preservation of human health or safety, protection of endangered wildlife species, or prevention of substantial damage to natural resources; (3) authorize Federal grants-in-aid to States for implementation of predator control programs; and (4) repeal in its entirety the Act of March 2, 1931 (7 U.S.C. 426-426 (b)), pertaining to the eradication and control of predatory animals.

On July 9, 1971 Interior Secretary Morton, speaking to a wildlife conservation meeting, announced the formation of a blue ribbon Task Force which would study predatory control programs throughout the country. The Task Force, sponsored jointly by Interior and the Council on Environmental Quality, was to be composed entirely of wildlife management experts from various universities.

Subsequently, appointed were: Dr. Stanley Cain, Chairman, University of Michigan; Dr. Fred Wagner of Utah State University; Dr. John Kadlec,

University of Michigan; Dr. Richard Cooley of the University of California, Santa Cruz; Dr. Maurice Hornecker, University of Idaho; Dr. Durwood Allen of Purdue University and Dr. A. Starker Leopold of the University of California, Berkeley.

The 200 page report of the Advisory Committee, Predator Control--1971, was issued in January, 1972. The group made 15 recommendations, including the following:

1. We recommend that federal-state cooperation in predator control be continued, and that all funds in its support come from appropriations by Congress and by the legislatures.
2. We recommend that immediate Congressional action be sought to remove all existing toxic chemicals from registration and use for operational predator control. We further recommend that these restrictions extend to those toxicants used in field rodent control whose action is characterized by the secondary poisoning of scavengers. Pending, and in addition to, such Congressional action, we recommend that the Secretary of the Interior disallow use of the aforementioned chemicals in the federal operational program of predator and rodent control, and that this ruling be made a standard in cooperative agreements with the states. Moreover, we recommend that the individual states pass legislation to ban the use of toxicants in predator control.
3. We recommend that the field force of the Division of Wildlife Services be professionalized to emphasize employment of qualified wildlife biologists capable of administering and demonstrating a broadly-based program of predator management.
4. We recommend that in all states a cooperative trapper-trainer extension program be established as a means of aiding land-owners in the minimum necessary control of predators on private land.
5. We recommend that Congress provide some means of alleviating the economic burden of livestock producers who experience heavy losses by predators.
6. We recommend that grazing permits and leases, written by federal land management agencies provide for possible suspension or revocation of grazing privileges if regulations governing predator control are violated.

7. We recommend that all methods of predator control be prohibited on statutory Wilderness Areas.

President Nixon, in his Environmental Message of February 8, 1972, included an announcement of action on predator control, he said:

PREDATOR CONTROL

Americans today set high value on the preservation of wildlife. The old notion that "the only good predator is a dead one" is no longer acceptable as we understand that even the animals and birds which sometimes prey on domesticated animals have their own value in maintaining the balance of nature.

The widespread use of highly toxic poisons to kill coyotes and other predatory animals and birds is a practice which has been a source of increasing concern to the American public and to the federal officials responsible for the public lands.

Last year the Council on Environmental Quality and the Department of the Interior appointed an Advisory Committee on Predator Control to study the entire question of predator and related animal control activities. The Committee found that persistent poisons have been applied to range and forest lands without adequate knowledge of their effects on the ecology or their utility in preventing losses to livestock. The large-scale use of poisons for control of predators and field rodents has resulted in unintended losses of other animals and in other harmful effects on natural ecosystems. The Committee concluded that necessary control of coyotes and other predators can be accomplished by methods other than poisons.

Certainly, predators can represent a threat to sheep and some other domesticated animals. But we must use more selective methods of control that will preserve ecological values while continuing to protect livestock.

—I am today issuing an Executive Order barring the use of poisons for predator control on all public lands. (Exceptions will be made only for emergency situations.) I also propose legislation to shift the emphasis of the current direct Federal predator control program to one of research and technical and financial assistance to the States to help them control predator populations by means other than poisons. *

*Executive Order 11643.

The subsequent submission of draft legislation (S. 3334) to the Congress completed the administration package on predator control.

International Moratorium on Whaling

There are several pending proposals to authorize the Secretary of State to call for a ten year international moratorium on whaling. In June, 1971, the Senate passed S. J. Res. 115, requesting the Secretary of State to call for such a moratorium.

In July, 1971, a House Foreign Affairs Subcommittee held hearings on a concurrent resolution and two joint resolutions calling for similar action by the Secretary of State. The Subcommittee subsequently reported H. Con. Res. 387, which was passed by the House in November. This measure exempted the small subsistence kills by Eskimos and the accidental killing of porpoises by tuna fishermen. The word "cetacean" was included to make clear that the measure also applied to dolphins and porpoises.

Management Practices

Several bills were introduced in 1971 to modify regulations concerning fish and wildlife management. H.R. 10384, which passed the House in December, would relax the restrictions on the federal acquisition of recreational areas adjacent to units of the National Wildlife Refuge System, so as to expand such development. This bill would amend the act of September 28, 1962 (16 U.S.C. 460k.)

H.R. 697 and H.R. 9754 would provide for comprehensive planning of fish and wildlife management practices on various public lands similar to present programs for hunting and fishing on military lands. The executive agencies concerned commented unfavorably on these bills, arguing that they already have such authority.

S. 2885 would expand the program of turning surplus lands over to States or to the Department of the Interior for wildlife conservation.

PRINTED HEARINGS RELATING TO WILDLIFE AND FISHERIES

(1971-72)

Committee	Subject(s)	Bill(s)	Date(s)
House Merchant Marine and Fisheries	Fish and Wildlife Legislation Part I Fishing Vessel Insurance	H.R. 121, H.R. 153, H.R. 3826 H.R. 4580	May 6
	Tuna Fisheries Duck Stamps/Bow and Arrows	H.R. 4380, H.R. 8966 H.R. 701/H.R. 761	June 16 July 19
	Fish and Wildlife Legislation Part II Game Management and Recreational Development Hawks, Owls, and Eagles	H.R. 697, H.R. 9754, H.R. 10384	Sept. 10, 24
		H.R. 3616, H.R. 5812, H.R. 7233 H.R. 8099, H.R. 8258, H.R. 8507 H.R. 8508, H.R. 9235, H.R. 10095 H.R. 10450, H.R. 10482, H.R. 10629	Sept. 20, 24
	Fish and Wildlife Legislation Part III San Francisco Bay National Wildlife Refuge/Tinicum Environmental Center Fish Farming	H.R. 111/H.R. 7088	Oct. 29
		H.R. 9161, H.R. 9401, H.R. 9402	Nov. 5
	Shooting Animals from Aircraft	H.R. 2631, H.R. 3510, H.R. 5060 H.R. 5673, H.R. 5779	March 23
	Migratory Waterfowl Regulations	-----	July 30
	Marine Mammals	H.R. 6558, H.R. 10420 and Related Bills	Sept. 9, 13, 17, 23
	Merchant Marine Miscellaneous Part II - Including Liberty Ships for Artificial Reefs	H.R. 650, H.R. 1676, H.R. 3274 H.R. 3553, H.R. 5741	June 8

Committee	Subject(s)	Bill(s)	Date(s)
House Foreign Affairs	International Moratorium of Ten Years on the Killing of all Species of Whales	H.J. Res. 706 H.Con. Res. 375	July 26
Senate Appropriations	Predator Control and Related Problems	-----	June 2
House Interior and Insular Affairs	Protection of Wild Horses on Public Lands	H.R. 795, H.R. 5375 and Related Bills	April 19, 20
Senate Commerce	Migratory Bird Hunting Stamp Act	H.R. 701	Nov. 24
Senate Interior and Insular Affairs	Protection of Wild Horses and Burros on Public Lands	S. 862, S. 1116, S. 1090, and S. 1119	April 20