H.R. REP. 93-958, H.R. Rep. No. 958, 93TH Cong., 2ND Sess. 1974, 1974 U.S.C.C.A.N. 3021, 1974 WL 11462 (Leg.Hist.)

**\*3021** P.L. 93-280, BUREAU OF SPORT FISHERIES AND WILDLIFE-- PERSONNEL-- EQUIPMENT

House Report (Merchant Marine and Fisheries Committee) No. 93-958,

Mar. 27, 1974 (To accompany H.R. 8101)

Cong. Record Vol. 120 (1974)

DATES OF CONSIDERATION AND PASSAGE

House April 2, 30, 1974

Senate April 11, 1974

No Senate Report was submitted with this legislation.

The House Report is set out.

                                                                                  (CONSULT NOTE FOLLOWING TEXT FOR INFORMATION ABOUT OMITTED MATERIAL.  EACH     COMMITTEE REPORT IS A SEPARATE DOCUMENT ON WESTLAW.)

HOUSE REPORT NO. 93-958

Mar. 27, 1974

THE Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 8101) to authorize the Secretary of Transportation and the Secretary of Defense to detail certain personnel and equipment to the Fish and Wildlife Service, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to provide additional assistance to the Bureau of Sport Fisheries and Wildlife to enable it to more effectively carry out its functions and responsibilities to manage and protect fish and wildlife resources.

In accomplishing this purpose, the legislation would authorize the Department in which the Coast Guard is operating, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Atomic Energy Commission, and the National Aeronautics and Space Administration to detail personnel and loan equipment from time to time to the Director, Bureau of Sport Fisheries and Wildlife.

LEGISLATIVE BACKGROUND

H.R. 8101 was introduced on May 23, 1973, by Mr. Waldie.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on the legislation on February 15 and 22, 1974.

The Department of the Interior, in its report on the legislation, recommended enactment of the bill. In its report on the legislation, the Department of Transportation (DOT) advised that it had no objection to the passage of the bill. The Department of the Navy, on behalf of the Department of Defense (DOD), deferred to the views of the Department of the Interior as to the merits of the bill.

**\*3022** Although DOD and DOT advised that in the past they had detailed men and loaned equipment to the Bureau of Sport Fisheries and Wildlife under existing authority, which they felt was sufficient, they had no objection to the passage of this particular piece of legislation.

H.R. 8101, as introduced, would authorize the Secretaries of Transportation and Defense to detail certain personnel and equipment to the Director, Bureau of Sport Fisheries and Wildlife. After giving careful consideration to the evidence presented at the hearings and the departmental reports, on March 18, 1974, the Subcommittee ordered reported to the Full Committee H.R. 8101, with amendments. This was accomplished by striking out all after the enacting clause and substituting new language. The title of the bill was also amended as reported by the Subcommittee.

The amendments to the bill would have the effect of providing the same authority to the Atomic Energy Commission (AEC) and the National Aeronautics and Space Administration (NASA) as the bill, as introduced, would provide to DOT and DOD.

On March 19, 1974, your Committee unanimously ordered reported to the House by voice vote H.R. 8101, with amendments, which is identical to the bill as it was ordered reported by the Subcommittee.

BACKGROUND AND NEED FOR THE LEGISLATION

Under present law (14 U.S.C. 141), the Coast Guard is authorized, when so requested by proper authority, to utilize its personnel and facilities to assist any Federal agency to perform any activity for which such personnel and facilities are especially qualified.

Also, under present law (16 U.S.C. 743), the Secretary of Transportation is authorized to detail from time to time for duty under the Director of the Fish and Wildlife Service any officers and men of the Coast Guard whose services can be spared for such duty.

It is to be noted that under 16 U.S.C. 743, no reference is made to equipment; it only authorizes the detailing of officers and men. It is to be further noted that under 14 U.S.C. 141, the Coast Guard is authorized to utilize its personnel and facilities to assist other Federal agencies, but only when requested to do so by proper authority. In view of the foregoing, the Department of the Interior witness at the Subcommittee hearings stated that ‘ . . . some Base Commanders have told us that although they had the equipment and personnel available and were perfectly willing to help us, they were reluctant to do so because they felt they lacked authority. This frequently occurs despite a clear relationship between Bureau operations and Coast Guard or Defense training programs.‘

Although the DOD witness stated that the purposes of the legislation could be carried out under present law and practice, no specific statutory authority with respect to the Department of the Interior or its constituent agencies was cited. In fact, the Department of the Interior witness at the hearings admitted under questioning that in certain areas and in certain situations, the DOD had a policy not to loan equipment if such equipment was readily available in the private commercial market.

**\*3023** The need for this legislation can best be explained by a portion of the testimony of the witness of the Department of the Interior presented at the Subcommittee hearings, as follows:

According to regulations of the Department of Defense and the Coast Guard, a certain amount of time is allocated to practice and training, as opposed maneuvers.

In many cases, practice and training objectives can easily be met while providing invaluable assistance to the Bureau of Sport Fisheries and Wildlife.

Under the Rivers and Harbors Act, the Army Corps of Engineers annually considers over 15,000 applications for permits to conduct dredging or construction projects in navigable waters. The Bureau of Sport Fisheries and Wildlife, pursuant to the Fish and Wildlife Coordination Act, assesses the potential environmental impact of these permits and makes appropriate recommendations.

The Bureau also assesses the potential environmental impact of over 500 U.S. Coast Guard permit applications for the alignment and construction of causeways and bridges. We also have a coastal surveillance program to detect violations of the Rivers and Harbors Act.

Over 88,500 miles of tidal shoreline are covered by 50 biologists-- one biologist per 1,700 miles. In addition, we conduct surveys of waterfowl populations, inventories of fish and wildlife habitat in conjunction with proposed projects of the Corps of Engineers, Soil Conservation Service and the Bureau of Reclamation, and investigations related to power plant siting, land use planning, and the like.

Many of these operations could easily be coordinated with the routine practice flights of military aircraft. Valuable information on waterfowl populations and wildlife habitat could be recorded during some of these flights. Surveillance flights could check for illegal dredge and fill activities which destroy thousands of acres of fish and wildlife habitat each year. This could be accomplished at little or no additional cost to the taxpayer.

At the same time the Government would be maximizing the return from the consumption of now scarce aviation fuel. We think this is good business. Many times pilots have told our personnel that they would be glad to help us because they had to put in practice flying time in the area anyway, and yet Base Commanders were hesitant solely because no explicit authorization exists. H.R. 8101 would remove this impediment to a more efficient use of Government resources.

The following portion of the testimony of the Coast Guard witness presented at the Subcommittee hearings further illustrates the need for this legislation:

For example, in the mid-Atlantic States, the Third Coast Guard District, based at Norfolk, also furnished aircraft to view heron rookeries for seven flight hours in 1973 **\*3024** and eight sorties of aircraft for transportation for bird count in 1971 through 1973.

In the Second Coast Guard District, which is our Central Region of the United States, the rivers area, there has been a cooperative effort to educate the public on a continuing basis.

Office space was furnished for a migratory bird study for 1.8 years.

In the Gulf area, there has been assistance in location of cyanide drums along the Gulf Coast in 1973.

There has been air transportation into remote areas to check on compliance with hunting regulations for migratory species.

There was a photo flight for dredging near Padre Island to determine impact on waterfowl in 1972.

There was assistance in apprehending alligator skin smugglers in Lake Charles in 1972.

There has been liaison during oil spills in the vicinity of game preserves, which has assisted in timely rescue of various bird life.

There has been a relocation of migratory bird nests found on aids to navigation structures.

Out in the Great Lakes area, 5.5 flight hours were furnished in 1971 and 1972 for waterfowl surveys.

Out on the West Coast there has been transportation to regulate areas, 11 sorties in 1971 through 1973.

There has been photographic surveillance in 1971.

Out in the Hawaiian area, the 14th Coast Guard District, the Coast Guard and the Bureau of Sport Fisheries and Wildlife jointly administer French Frigate Shoals, and on that very isolated station, which is a very small island, the Coast Guard only inhabits there with a Loran transmitting station.

Then in addition to that, the Sport Fisheries and Wildlife personnel accompany Coast Guard buoy tenders when they operate in areas of mutual interest on routine missions. Areas covered in this manner include the Leeward Islands Bird Sanctuary enroute Midway, Johnston Island, Howland Island, and sometimes American Samoa.

In these cases the assistance rendered has very little effect on our scheduled operations.

Up on the 12th Alaskan area, a BSF&W agent was on board a Cutter on a routine mission to conduct bird counts for eight days in ALPAT in 1972, and 21 days in Arctic West in 1973.‘

The Subcommittee hearings brought out the fact that the legislation is silent as to whether there would be any reimbursement to the loaning agency for assistance rendered to the Bureau of Sport Fisheries and Wildlife. The Department of the Interior witness indicated in response to questioning that he felt it would complicate things considerably if the legislation provided for no reimbursement. He further indicated he could envision circumstances in which reimbursement would be most appropriate and that the Bureau would like the opportunity to use that device particularly if the loaning agency had a **\*3025** policy of making a reasonable charge for such assistance. Your committee agreed with this concept and therefore the bill, as ordered reported, would leave it to the discretion of the loaning agency as to whether to require reimbursement for any services rendered.

WHAT THE BILL DOES: SECTION-BY-SECTION ANALYSIS

As indicated in the legislative background of this report, your Committee ordered reported to the House H.R. 8101, with amendments, which was accomplished by striking out all after the enacting clause and substituting new language. The title of the bill was also amended.

There follows a section-by-section summary of H.R. 8101, accompanied by discussion where appropriate.

As previously indicated in this report, under present law (16 U.S.C. 743), the Secretary of Transportation is authorized to detail from time to time, for duty under the Director of the Fish and Wildlife Service, any officers and men of the Coast Guard whose services can be spared for such duty.

H.R. 8101 would rewrite this law to authorize equipment to be loaned, in addition to the detailing of personnel. Also, it would authorize certain other Federal agencies to detail personnel and loan equipment to the Director.

Briefly explained, H.R. 8101 would authorize the Chief Executive Officer of the following agencies to detail personnel and loan equipment to the Director, Bureau of Sport Fisheries and Wildlife:

(1) The Department in which the Coast Guard is operating;

(2) The Department of the Army;

(3) The Department of the Navy;

(4) The Department of the Air Force;

(5) The Atomic Energy Commission; and

(6) The National Aeronautics and Space Administration.

It is to be noted that the detailing of personnel is conditioned upon such personnel being able to be spared for such duty and the loaning of equipment is conditioned upon such loan being consonant with the operational needs of the agency making such loan. The legislation is clear in that the authority to detail personnel or loan equipment is permissive and not mandatory.

Before ordering H.R. 8101 reported by your Committee to the House, your Committee staff consulted with the staff of the AEC and NASA in an unofficial capacity as to the feasibility of extending the coverage of the legislation to such agencies.

The staff of the AEC indicated that they did not see any problem with the legislation in that most of the equipment utilized by the Commission that would probably be of use to the Director is handled on a contract basis. Therefore, if the Director desired to use such equipment from time to time, it would appear that the language of the legislation would permit the utilization of such equipment provided a charge for the use of such equipment was made.

The staff of NASA indicated that they did not see any problems with the legislation and that the legislation would appear to technically permit NASA to detail personnel and loan equipment to the Director provided a decision is made by the Chief Executive Officer of NASA to do so.

**\*3026** Your Committee would like to point out that the enactment of this legislation would be in keeping with national policy. The Endangered Species Act of 1973 directs all Federal agencies to utilize their authorities in furtherance of the purposes of that Act. The National Environmental Policy Act of 1969 commits the Federal Government to using all ‘practicable means and measures‘ to coordinate Federal functions in order to protect the environment.

In furtherance of national policy and the purposes of this legislation, your Committee would like to make it clear that it expects all Federal agencies, but in particular the Federal agencies covered by this legislation, to assist the Director, Bureau of Sport Fisheries and Wildlife, in carrying out his functions and responsibilities whenever such assistance can be rendered without unreasonable interferring with the operational needs of such agencies.

COST OF THE LEGISLATION

In the event this legislation is enacted into law, it is anticipated by the Department of the Interior that there would be little, if any, increase in funding for the agencies involved in carrying out the purposes of the legislation.

After reviewing the estimate of costs made by the Department of the Interior with respect to this legislation, your Committee has concluded that the estimate is reasonable and that any costs incurred in carrying out this legislation would be consistent with that estimate.

DEPARTMENTAL REPORTS

The departmental reports received on H.R. 8101 follow herewith:

U.S. DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY,

Washington, D.C., February 14, 1974

Hon. LEONOR K. SULLIVAN,

Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Your Committee has requested the views of this Department on H.R. 8101, a bill ‘To authorize the Secretary of Transportation and the Secretary of Defense to detail certain personnel and equipment to the Fish and Wildlife Service.‘

We recommend the enactment of this bill.

H.R. 8101 would amend Section 743 of Title 16 of the United States Code to authorize the Secretary of Transportation to detail men, officers, and equipment of the Coast Guard, and authorize the Secretary of Defense to detail the same from the Armed Services for duty under the Director of the Bureau of Sport Fisheries and Wildlife of this Department. The existing statute authorizes only the detailing of Coast Guard personnel for such duty.

In our judgment there are advantages to be gained by increasing the opportunity for use of military personnel and equipment in occasional duty with the Bureau of Sport Fisheries and Wildlife. Similarly, the assistance of men and equipment from the Coast Guard and Armed Services could also aid in ascertaining and suppressing violations of fish and wildlife and in conducting special fish and wildlife **\*3027** inventories involving species threatened with extinction, where specialized equipment is needed for short periods. This assistance would require little or no increase in funding for the agencies involved and would contribute substantially to more efficient and effective management and production of fish and wildlife resources.

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

Sincerely yours,

JACK HORTON,

Assistant Secretary of the Interior.

OFFICE OF THE SECRETARY OF TRANSPORTATION,

Washington, D.C., February 15, 1974.

Hon. LEONOR K. SULLIVAN,

Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Reference is made to your request for the views of the Department of Transportation concerning H.R. 8101, a bill To authorize the Secretary of Transportation and the Secretary of Defense to detail certain personnel and equipment to the Fish and Wildlife Service.

The bill would amend the Act of March 3, 1885 (16 U.S.C. 743) to broaden the current authority of the Secretary of Transportation to detail Coast Guard officers and men for duty under the Director of the Bureau of Sport Fisheries and Wildlife to include the detail of Coast Guard equipment; and would authorize the Secretary of Defense to similarly detail officers, men, and equipment.

The bill would also make editorial changes in the wording of the section, including one to reflect the transfer of the Coast Guard from the Department of the Treasury to the Department of Transportation. We assume that the deletion of the words ‘whose service can be spared‘ is editorial in nature, and not intended to limit the Secretary's full discretion in the exercise of his authority under section 743.

The Department of Transportation has no objection to enactment of the bill H.R. 8101. Insofar as the amendment would affect the Coast Guard, the only change of substance from current law is the addition of equipment to the permissive detail authority contained in the statute. This is similar to authority in section 141, title 14, United States Code, which authorizes the Coast Guard to utilize its personnel and facilities to assist any Federal agency when requested by proper authority. The Department supports the concept of efficient utilization of our resources reflected in these laws.

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

Sincerely,

RODNEY E. EYSTER,

General Counsel.

**\*3028** DEPARTMENT OF THE NAVY,

OFFICE OF LEGISLATIVE AFFAIRS,

Washington, D.C., February 14, 1974.

Hon. LEONOR K. SULLIVAN,

Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Your request for comment on H.R. 8101 a bill ‘To authorize the Secretary of Transportation and the Secretary of Defense to detail certain personnel and equipment to the Fish and Wildlife Service,‘ has been assigned to this Department by the Secretary of Defense for the preparation of a report expressing the views of the Department of Defense.

The bill would update existing law which presently authorizes the Secretary of the Treasury to detail officers and men of the Coast Guard, whose services can be spared, for duty with the Fish and Wildlife Service. Under the provisions of the bill, the Secretary of Transportation would be authorized to detail officers and men, as well as equipment, of the Coast Guard for duty with the Bureau of Sports Fisheries and Wildlife. In addition, the Secretary of Defense would be authorized to detail officers, men and equipment of the Armed Services to such duty. The words ‘whose services can be spared for such duty ‘ do not appear in the language of the bill.

As a general rule, it is the policy of the Department of Defense not to assign military personnel to other government agencies unless such assignment is related to our national security mission. This policy is necessary because the strength of the armed services, as recommended by the President and authorized by Congress, is predicated on the force structure required to carry out this mission. The force structure is maintained as a minimum size and is manned austerely. In consequence, assignment of military personnel to non-defense agencies must be primarily to serve a national defense function.

The Department of the Navy, on behalf of the Department of Defense defers to the views of the Department of Interior on the merits of the bill. However, it should be noted that in reducing the 1974 Defense budget, the Congress made a specific cut because of the number of Department of Defense personnel assigned to activities outside of the Department. Any detail of personnel or equipment outside of the Department of Defense under the provisions of H.R. 8101 would have to be considered in light of this Congressional intent.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on H.R. 8101 for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely yours,

E. H. WILLETT,

Captain, U.S. Navy, Deputy Chief.

                                                                                  (Note:  1.  PORTIONS OF THE SENATE, HOUSE AND CONFERENCE REPORTS, WHICH ARE     DUPLICATIVE OR ARE DEEMED TO BE UNNECESSARY TO THE INTERPRETATION OF THE LAWS, ARE OMITTED.  OMITTED MATERIAL IS INDICATED BY FIVE ASTERISKS:  \*\*\*\*\*.                  2.  TO RETRIEVE REPORTS ON A PUBLIC LAW, RUN A TOPIC FIELD SEARCH       USING THE PUBLIC LAW NUMBER, e.g., TO(99-495))

H.R. REP. 93-958, H.R. Rep. No. 958, 93TH Cong., 2ND Sess. 1974, 1974 U.S.C.C.A.N. 3021, 1974 WL 11462 (Leg.Hist.)

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