

Calendar No. 519

105TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 105-282

RHINOCEROS AND TIGER CONSERVATION ACT OF 1998

—————
JULY 31, 1998.—Ordered to be printed
—————

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 361]

The Committee on Environment and Public Works, to which was referred the bill (S. 361) to amend the Endangered Species Act of 1973 to prohibit the sale, import, and export of products labeled as containing endangered species, and for other purposes, having considered the same, reports favorably thereon with an amendment and with an amendment to the title, and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

Rhinoceroses and tigers have very little in common. They are classified under different orders in zoological taxonomy, with the tiger in the order of *Carnivora*, and the rhino in the order of *Perissodactyla*. The tiger is a carnivore and a top-level predator, while the rhino is an herbivore, and an ungulate, or hooved animal. Tigers are one of the fastest and most wide roaming land mammals on the planet; rhinos forage within comparatively limited ranges of habitat.

Rhinos and tigers share, however, three vital facts that will have a direct bearing on the likelihood of their survival. They are some of the most critically endangered species on the planet. Fewer than 7,500 tigers survive in the world today, and of the eight subspecies that have been identified, three are extinct. Another subspecies in South China is on the brink of extinction, with a population of about 20 animals. Rhinos number between 11,000 and 13,500, with two species in Africa and three in Asia. Two of the Asian species are on the verge of extinction, with the Javan rhino having less

than 100 individuals, and the Sumatran rhino having less than 500.

The reason for their recent declines, and the primary immediate threat to the survival of each is the same—poaching. Habitat loss is another threat to the survival of both species, although this loss has been ameliorated to some extent by the establishment of reserves for these species in the range countries of both Africa and Asia. An additional threat facing the tiger is the loss of prey species.

Lastly, the primary reason for poaching is also the same: parts of both rhinos and tigers are used in traditional Asian medicines. Tiger bone is used to treat ailments such as rheumatism and arthritis. Rhino horn is used to treat delirium, convulsions and other illnesses. Tigers are poached in addition for their skins, and rhinos are also poached for use of their horn in making dagger handles in Yemen and Oman.

It is in this context that Congress passed the Rhinoceros and Tiger Conservation Act of 1994 (the Act). This Act established a program to provide financial assistance for projects for the conservation of rhinos and tigers in the countries whose activities directly or indirectly affect the species, and for the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Act established a separate account in the General Treasury known as the “Rhinoceros and Tiger Conservation Fund” to receive funds appropriated by Congress. Since its enactment, Congress has appropriated \$1 million for the Act, with \$200,000 in 1996, and \$400,000 in each of 1997 and 1998.

At least once a year, the U.S. Fish and Wildlife Service (the Service) sends a request for proposals to government and non-government organizations around the world that are interested in the conservation of rhinos and tigers. Since 1996, 40 proposals have been funded for projects in 10 range countries in Africa and Asia. Of this total, 7 projects were in Africa and 33 in Asia; 15 projects related to rhinos, 14 projects related to tigers, and 11 projects related to both species. The Service has disbursed or obligated a total of \$756,352, with individual projects averaging just under \$19,000. Some of these projects have provided equipment and training for anti-poaching efforts, including basic necessities such as clothing and radios for communication.

All the witnesses at the hearing on July 7, 1998 before the committee noted that the projects funded under the Act have provided important assistance to rhino and tiger conservation efforts, but emphasized that additional efforts are necessary in order to better protect these species. First, all the witnesses advocated adequate funding for, as well as reauthorization of, the Act. Second, witnesses advocated specific initiatives to address continued poaching of rhinos and tigers, by reducing the supply and availability of rhino and tiger parts from the marketplace.

Despite recent efforts by the Parties to CITES to reduce ongoing trade of traditional Asian medicine containing rhino and tiger parts, several studies by Traffic North America (part of Traffic Network, a joint program of the World Wildlife Fund and the International Union for the Conservation of Nature (IUCN)) have indicated that little progress has been made in actually curbing this

trade, and that demand for these medicines remains high in markets in Asia and the United States. In one study conducted by Traffic North America, 110 shops in the Chinatowns of seven different cities across North America (Atlanta, Los Angeles, New York, San Francisco, Seattle, Toronto, and Vancouver) were surveyed, and 43 percent offered to sell medicine containing or claiming to contain tiger parts, while 15 percent offered to sell medicine containing or claiming to contain rhino parts. Within the shops surveyed, at least 31 different types of medicines containing or claiming to contain rhino or tiger parts, produced by as many as 34 different manufacturers, were found. Furthermore, this study concluded that the availability of these products has increased in the last five years. Another study conducted by the Wildlife Conservation Society found that 67 percent of the Asian herbal shops and supermarkets visited in New York City's Chinese communities sold traditional Asian medicines containing or claiming to contain tiger parts, generally ranging in price from \$2 to \$8.

CITES prohibits the commercial trade of all species of rhino and the tiger, as well as any parts or products of these species. The Endangered Species Act (ESA) lists all species of rhino, except the white rhinoceros population of southern Africa, and the tiger, as endangered, and also prohibits trade in these species. However, these laws do not allow for the interdiction of products that are labeled or advertised as containing substances derived from rhinos or tigers, without evidence that the products in fact contain these substances. Such evidence, at best, would be extremely difficult, expensive, and time-consuming to acquire, and at worst, would be impossible to acquire.

In light of the precarious status of the species, the success of the Act, and the need for further efforts to address poaching and the continuing demand for traditional Asian medicine containing rhino and tiger parts, the bill focuses on three major elements: prohibit the sale, import, or export of products that contain, or are labeled or advertised as containing, rhino and tiger parts, in an effort to reduce the demand for, and supply of, those products in the United States; initiate a public outreach program throughout the United States to complement the prohibitions in this bill; and reauthorize the Act, to bolster support for the Act, and for rhino and tiger conservation generally.

OBJECTIVES OF THE LEGISLATION

S. 361 amends the Rhinoceros and Tiger Conservation Act of 1994 to prohibit the sale, importation, and exportation of products intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger. The bill also establishes an educational outreach program for the conservation of rhinoceros and tiger species, and reauthorizes the Act through fiscal year 2002.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section provides that the bill may be cited as the "Rhinoceros and Tiger Conservation Act of 1998."

Section 2. Findings

This section provides the findings of Congress. The populations of all but one species of rhinoceros, and the tiger, have significantly declined in recent years and continue to decline. Except for the white rhinoceros in southern Africa, all of these species are listed as endangered under the Endangered Species Act, and all rhino and tiger species are listed on Appendix I of CITES. The Parties to CITES have adopted one resolution each relating to tigers and rhinoceros, urging Parties to implement legislation to reduce illegal trade in parts and products of these species. The Parties have also adopted resolutions relating to the trade in readily recognizable parts and products of species, and trade in traditional medicines, recommending that Parties ensure that their legislation controls trade in those parts and derivatives, and in medicines purporting to contain them.

A primary cause of the decline in the populations of tiger and most rhinoceros species is poaching for use of their parts and products in traditional medicines. Currently, there are insufficient legal mechanisms enabling the Service to interdict products that are labeled as containing substances derived from rhinoceros or tiger species and to prosecute the merchandisers for sale or display of those products. Legislation is required to ensure that products containing tiger parts or rhinoceros parts are prohibited from importation into, or exportation from, the United States, and that efforts are made to educate persons regarding alternatives for traditional medicines, the illegality of products containing tiger and rhino parts, and the need to conserve rhino and tiger species.

Section 3. Purposes of the Rhinoceros and Tiger Conservation Act of 1994

This section amends section 3 of the Act, which identifies the purposes of the Act. Specifically the section adds a new purpose to the Act, providing that one purpose of the Act is to prohibit the sale, importation, and exportation of products intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger.

Section 4. Definition of person

This section amends section 4 of the Act, by adding a definition of "person." A person means an individual, corporation, partnership, trust, association, or other private entity; an officer, employee, agent, department, or instrumentality of the Federal government, any State, municipality, or political subdivision of State, or any foreign government; a State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States. This definition is the same as that in the Endangered Species Act.

Section 5. Prohibition on sale, importation, or exportation of products labeled as rhinoceros or tiger products

This section adds a new section 7 to the Act. New section 7(a) states that a person shall not sell, import, or export, or attempt to sell, import, or export, any product, item, or substance intended for

human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger. Products, items, or substances intended for human consumption or application are those that can be ingested internally or applied externally, including pills, drinks, lotions, and ointments.

The prohibition of products, items or substances labeled or advertised as containing rhino or tiger parts was intended to avoid prohibiting products that may attempt to associate themselves with rhinos or tigers as symbols, without representing to actually contain rhino or tiger parts. The tiger in particular holds great symbolism in many cultures, including here in the United States. For example, two major sports teams (the Cincinnati Bengals and the Detroit Tigers), four major universities (Princeton, Clemson, Auburn, and Louisiana State), and more than 250 companies, including Fortune 500 companies such as Exxon and Kellogg, use the tiger as a mascot or marketing symbol. At the same time, the prohibition is intended to reach products that may not necessarily be labeled or marked as containing rhino or tiger parts, but that are represented through advertising, orally or in writing, to an individual or larger group, as containing rhino or tiger parts. This includes includes acts of informing, announcing, apprising or otherwise communicating, by any means whatsoever, including any oral, written, or graphic statement, to an individual or to the general public, that a product, item or substance contains rhino or tiger parts.

New section 7(b) provides both criminal and civil penalties for a violation of the Act. A person engaged in business as an importer, exporter, or distributor that knowingly violates subsection (a) shall be fined under the Title 18 of the U.S. Code, imprisoned not more than six months, or both. A person that knowingly violates subsection (a), and a person engaged in business as an importer, exporter, or distributor that violates subsection (a), may be assessed a civil penalty of not more than \$12,000 for each violation. Civil penalties shall be assessed, and may be collected, in the same manner as under the ESA. "Importers" and "exporters" are terms used in the ESA and are intended to have the same meaning in this Act. The class of persons included in the term "distributor" includes any individual, partnership, association, or other legal relationship that stands between the manufacturer and the retail seller in purchases, or contracts for sale of products, items or substances. This includes wholesalers or other middle-men serving between the suppliers or manufacturers and the retailers and commercial users.

New section 7(c) provides that any product, item, or substance sold, imported, or exported, or attempted to be sold, imported, or exported, in violation of this section, or any regulations issued thereunder, shall be subject to seizure and forfeiture to the United States. New section 7(d) provides that the Secretary shall issue appropriate regulations, after consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the United States Trade Representative. New section 7(e) provides that the Secretary, the Secretary of the Treasury, and the Coast Guard shall enforce this section in the manner in which the Secretaries enforce section 11(e) of the ESA. This provision is intended to apply

to administrative and judicial procedures under this section, including procedures for forfeiture and seizure of products, items and substances pursuant to new section 7(c) of the Act. Under new section 7(f), amounts received as penalties, fines, or forfeiture of property under this section shall be used in accordance with Section 6(d) of the Lacey Act Amendments of 1981. This is intended to allow moneys received to go to the payment of rewards and other authorized uses by the Service.

Section 6. Educational outreach program

This section establishes a new section 8 in the Act, providing that, not later than 180 days after the date of enactment of this bill, the Secretary shall develop and implement an educational outreach program in the United States for the conservation of rhinoceros and tiger species. Guidance must be published in the Federal Register. The program shall provide for the publication and dissemination of information regarding: laws protecting rhinos and tigers, in particular laws prohibiting trade in products containing, or labeled as containing, rhino or tiger parts; the use of traditional medicines that contain rhino and tiger parts, health risks associated with their use, and available alternatives; and the status of rhinos and tigers and the reasons for protecting them. The Secretary is encouraged to use existing administrative initiatives in developing and implementing this program.

Section 7. Authorization of appropriations.

This section reauthorizes the Act through fiscal year 2002, at the current level of \$10 million annually.

HEARINGS

The Committee on the Environment and Public Works held a hearing on S. 361 on July 7, 1998. Testimony was received from Mr. John Rogers, Deputy Director of the U.S. Fish and Wildlife Service; Ms. Ginette Hemley, Vice President for Species Conservation, World Wildlife Fund; Mr. Wayne Pacelle, Senior Vice President, The Humane Society of the United States, and Ms. Kristin Vehrs, Deputy Director, American Zoo and Aquarium Association. Written testimony was submitted by Senator Jeffords.

LEGISLATIVE HISTORY

On February 26, 1997, Senator Jeffords introduced S. 361, which was referred to the Committee on Environment and Public Works. On Wednesday, July 22, 1998, the committee held a business meeting to consider the bill. Senator Chafee offered an amendment in the form of a substitute, and Senator Baucus offered a second degree amendment, both of which were adopted by voice vote. S. 361, as amended, was favorably reported by the committee by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes this evaluation of the regulatory impact of the reported bill. The reported bill will have

no regulatory impact. This bill will not have any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that this bill would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments. The bill prohibits the sale, import and export of products, items, or substances containing, or labeled or advertised as containing, rhino or tiger parts. These prohibitions would facilitate enforcement of prohibitions that already exist under other laws. The bill does not directly impose any private sector mandates for the same reason.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 23, 1998.

Hon. JOHN H. CHAFEE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 361, the Rhinoceros and Tiger Conservation Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis (for Federal costs), who can be reached at 226-2860, and Marjorie Miller (for the State and local impact), who can be reached at 225-3220, and Leslie Frymier (for private-sector impact), who can be reached at 226-2940.

Sincerely,

JUNE E. O'NEILL,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 361, Rhinoceros and Tiger Conservation Act of 1998, as ordered reported by the Senate Committee on Environmental and Public Works on July 22, 1998

Summary

Assuming appropriation of the authorized amounts, CBO estimates that enacting S. 361 would result in additional discretionary spending of \$12 million over the 2001-2003 period. The legislation could affect direct spending and governmental revenues by imposing new civil and criminal penalties; therefore, pay-as-you-go procedures would apply. CBO estimates, however, that any such effects

would be minimal. S. 361 does not contain any intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no impact on the budgets of State, local, or tribal governments.

S. 361 would prohibit any person from selling, importing, or exporting products containing (or labeled as containing) any substance derived from rhinoceroses or tigers. S. 361 would establish both criminal and civil penalties to be imposed on anyone who violates the prohibition. The bill's provisions relating to the use of proceeds from fines and penalties would be similar to those of the Lacey Act, which currently prohibits sales, imports, and other transactions involving endangered species. The bill would direct the Secretaries of the Interior, the Treasury, and Transportation to enforce the legislation in the same manner as they enforce the Endangered Species Act of 1973. Section 6 would direct the United States Fish and Wildlife Service (USFWS) to develop and implement an educational outreach program in the United States for the conservation of rhinoceros and tiger species.

Finally, S. 361 would reauthorize, through fiscal year 2002, annual appropriations to the Rhinoceros and Tiger Conservation Fund at the existing authorization level of up to \$10 million. The current authorizations expire after fiscal year 2000. The Secretary of the Interior uses this fund primarily to help finance research and conservation programs overseas. From its inception in 1994, the fund has received appropriations totaling \$1 million.

Estimated cost to the Federal Government

The authorizations specified by section 6 are the same as the current authorization level but are significantly higher than the \$200,000 to \$400,000 that has been appropriated in each of the last few years. For purposes of this estimate, CBO assumes that the entire amounts authorized by the bill will be appropriated for each fiscal year through 2002. Outlay estimates are based on historical spending patterns for this program. The estimated impact on discretionary spending is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

By Fiscal Year, in Millions of Dollars

	1998	1999	2000	2001	2002	2003
Spending Subject to Appropriation						
Spending Under Current Law:						
Authorization Level ¹	*2	10	10	0	0	0
Estimated Outlays	*2	1	4	6	6	3
Proposed Changes:						
Authorization Level	0	0	0	10	10	10
Estimated Outlays	0	0	0	1	4	7
Spending Under S. 361:						
Authorization Level ¹	*2	10	10	10	10	10
Estimated Outlays	*2	1	4	7	10	10

¹ The 1998 level is the amount appropriated for that year. The 1999 and 2000 levels are the amounts authorized under current law.

² Less than \$500,000.

In addition to the discretionary costs shown in the above table, the bill also could affect governmental receipts (revenues) from civil

and criminal fines. The direction of any change, however, is uncertain. On the one hand, revenues could increase if the sale and export of prohibited (or falsely labeled) items does not change and Federal enforcement agencies are able to collect more fines under the broader language of the bill. On the other hand, revenues could fall if the bill induces some sellers and importers to curtail their activities. In either event, CBO estimates that any increases or decreases in revenues would be less than \$500,000 annually. Moreover, such changes would be offset by decreases or increases in direct spending from the crime victims fund (where criminal fines are deposited) or the resource management account of the USFWS (where civil fines are deposited and spent).

Pay-as-you-go considerations

The Balanced Budget and Emergency Deficit Control Act specifies pay-as-you-go procedures for legislation affecting direct spending or receipts. Although enacting S. 361 would affect both direct spending and receipts, CBO estimates that the amounts involved would be less than \$500,000 annually.

Intergovernmental and private-sector impact

S. 361 contains no intergovernmental or private-sector mandates as defined in UMRA because the bill would impose no new enforceable duties. The bill's prohibition on the sale, import, or export of certain products containing or claiming to contain any substance derived from rhinoceroses or tigers would facilitate the enforcement of existing prohibitions on such activities. The bill also would have no impact on the budgets of State, local, or tribal governments.

Estimate prepared by: Federal Costs: Deborah Reis (226-2860); Impact on State, Local, and Tribal Governments: Marjorie Miller (225-3220); Impact on the Private Sector: Lesley Frymier (226-2940).

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

UNITED STATES CODE

TITLE 16—CONSERVATION

CHAPTER 73—RHINOCEROS AND TIGER CONSERVATION

* * * * *

Sec. 5301. FINDINGS.—The Congress finds the following:

(1) The world's rhinoceros population is declining at an alarming rate, a 90 percent decline since 1970.

(2) All 5 subspecies of tiger are currently threatened with extinction in the wild, with approximately 5,000 to 6,000 tigers remaining worldwide.

(3) All rhinoceros species have been listed on Appendix I of CITES since 1977.

(4) All tiger subspecies have been listed on Appendix I of CITES since 1987.

(5) The tiger and all rhinoceros species, except the southern subspecies of white rhinoceros, are listed as endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(6) In 1987, the parties to CITES adopted a resolution that urged all parties to establish a moratorium on the sale and trade in rhinoceros products (other than legally taken trophies), to destroy government stockpiles of rhinoceros horn, and to exert pressure on countries continuing to allow trade in rhinoceros products.

(7) *PROHIBITION ON SALE, IMPORTATION, OR EXPORTATION OF PRODUCTS LABELED AS RHINOCEROS OR TIGER PRODUCTS.—*

(a) *PROHIBITION.—A person shall not sell, import, or export, or attempt to sell, import, or export, any product, item, or substance intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger.*

(b) *PENALTIES.—*

(1) *CRIMINAL PENALTY.—A person engaged in business as an importer, exporter, or distributor that knowingly violates subsection (a) shall be fined under title 18, United States Code, imprisoned not more than 6 months, or both.*

(2) *CIVIL PENALTIES.—*

(A) *IN GENERAL.—A person that knowingly violates subsection (a), and a person engaged in business as an importer, exporter, or distributor that violates subsection (a), may be assessed a civil penalty by the Secretary of not more than \$12,000 for each violation.*

(B) *MANNER OF ASSESSMENT AND COLLECTION.—A civil penalty under this paragraph shall be assessed, and may be collected, in the manner in which a civil penalty under the Endangered Species Act of 1973 may be assessed and collected under section 11(a) of that Act (16 U.S.C. 1540(a)).*

(c) *PRODUCTS, ITEMS, AND SUBSTANCES.—Any product, item, or substance sold, imported, or exported, or attempted to be sold, imported, or exported, in violation of this section or any regulation issued under this section shall be subject to seizure and forfeiture to the United States.*

(d) *REGULATIONS.—After consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the United States Trade Representative, the Secretary shall issue such regulations as are appropriate to carry out this section.*

(e) ENFORCEMENT.—The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating shall enforce this section in the manner in which the Secretaries carry out enforcement activities under section 11(e) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)).

(f) USE OF PENALTY AMOUNTS.—Amounts received as penalties, fines, or forfeiture of property under this section shall be used in accordance with section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)).

(8) EDUCATIONAL OUTREACH PROGRAM.—

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary shall develop and implement an educational outreach program in the United States for the conservation of rhinoceros and tiger species.

(b) GUIDELINES.—The Secretary shall publish in the Federal Register guidelines for the program.

(c) CONTENTS.—Under the program, the Secretary shall publish and disseminate information regarding—

(1) laws protecting rhinoceros and tiger species, in particular laws prohibiting trade in products containing, or labeled as containing, their parts;

(2) use of traditional medicines that contain parts or products of rhinoceros and tiger species, health risks associated with their use, and available alternatives to the medicines; and

(3) the status of rhinoceros and tiger species and the reasons for protecting the species.

[(7)] (9) On September 7, 1993, under section 1978 of title 22 the Secretary certified that the People’s Republic of China and Taiwan were engaged in trade of rhinoceros parts and tiger parts that diminished the effectiveness of an international conservation program for that endangered species.

* * * * *

Sec. 5306. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Fund \$10,000,000 for each of fiscal years [1996, 1997, 1998, 1999, and 2000] 1996 through 2002 to carry out this chapter, to remain available until expended.

* * * * *

