

SAVING AMERICA'S ENDANGERED SPECIES ACT

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FEBRUARY 15, 2018.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed
—————

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2603]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2603) to amend the Endangered Species Act of 1973 to provide that nonnative species in the United States shall not be treated as endangered species or threatened species for purposes of that Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Saving America's Vulnerable and Endangered Species Act" or the "SAVES Act".

SEC. 2. LIMITATION ON TREATMENT OF NONNATIVE SPECIES IN THE UNITED STATES AS ENDANGERED SPECIES OR THREATENED SPECIES.

(a) **LIMITATION.**—Section 13 of the Endangered Species Act of 1973 (relating to amendments to other laws, which have executed) is amended to read as follows:

"LIMITATION ON TREATMENT OF CERTAIN SPECIES AS ENDANGERED SPECIES OR THREATENED SPECIES

"SEC. 13. (a) LIMITATION.—The species described in subsection (b) shall not be treated or listed as endangered species or threatened species for purposes of this Act.

"(b) COVERED SPECIES.—The species referred to in subsection (a) are species that are not native to the United States."

(b) CONFORMING AMENDMENT.—The table of contents in the first section of such Act is amended by striking the item relating to section 13 and inserting the following:

“Sec. 13. Limitation on treatment of certain species as endangered species or threatened species.”.

PURPOSE OF THE BILL

The purpose of H.R. 2603 is to amend the Endangered Species Act of 1973 to provide that nonnative species in the United States shall not be treated as endangered species or threatened species for purposes of that Act.

BACKGROUND AND NEED FOR LEGISLATION

The Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.) includes protections for nonnative endangered species in an effort to encourage foreign nations to protect jeopardized species and their habitats abroad. Nonnative endangered species are regulated by the U.S. Fish and Wildlife Service (FWS) under the ESA through the captive bred wildlife (CBW) program.

Legal captive breeding of nonnative endangered species is a conservation measure that can create healthy populations of animals to augment recovery of wild populations, decrease illegal wildlife trafficking, and increase educational opportunities relating to the species. While no federal permit is required to own listed nonnative species, those wishing to sell or buy nonnative endangered species across state lines, including zoos and private breeders, must obtain a CBW permit from FWS. This permit applies only to living, exotic wildlife born and held in captivity in the United States and requires that such activities “enhance the propagation or survival of the affected species” (FWS, Captive-bred Wildlife Registration under the ESA, 50 C.F.R. 17.3).

Delays or denials in CBW permit processes can jeopardize the viability of captive breeding operations and compromise the genetic diversity of the involved species. Such delays or denials often present a conservation loss for the species at a financial loss to the owners. Those in the industry have publicly expressed the difficulties they face under the current implementation of the ESA. One such group, the Parrot Fund, stated in a July 7, 2017, letter to Congressman Louie Gohmert that “it is nearly impossible to maintain viable populations of non-native species in captivity because of the time consuming, costly and often conflicting regulations that owners must contend with.”

Many zoos, animal breeders, and private owners that participate in captive breeding efforts have expressed concerns about the onerous permit and permit maintenance procedures required by FWS and have expressed support for this measure. For example, the owner of the Zoo of Acadiana, stated in a July 7, 2017, letter to Congress that his zoo’s access to genetic diversity has been hampered by the listing of nonnative species as endangered and that managed breeding programs such as theirs “are truly stifled by ESA listings as interstate movement is largely prohibited and the licenses to allow this, called CBW permits, are becoming difficult to renew”. Stakeholders also are concerned that the CBW program does not consider their species expertise in CBW permit or programmatic decisions. According to the President of the National Aquaculture Program in a July 7, 2017, letter to Congress, there

is currently little flexibility within the ESA to allow for recognition of the expertise that exists within the aquaculture community, which could help further conservation and recovery of at-risk species.

H.R. 2603 would effectively eliminate the duplicative requirement for CBW permits for nonnative endangered species in the United States and held in captivity. Ease of transfer across State lines would enhance conservation and welfare of the species by allowing owners, breeders, and conservators of the species to ensure robust, and genetically diverse populations continue to exist in the United States.

This bill would not increase the likelihood of international wildlife trafficking because such matters are regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, an international agreement between 183 member nations that protects endangered nonnative species from the perils of international wildlife trafficking.

SECTION-BY-SECTION ANALYSIS OF TEXT ORDERED REPORTED

Section 1. Short title

The Act may be referred to as the Saving America's Vulnerable Endangered Species Act or the SAVES Act.

Section 2. Limitation on treatment of nonnative species in the United States as endangered species or threatened species

Subsection (a) amends Section 13 of the ESA to restrict species not native to the United States from being treated as endangered or threatened for purposes of this Act.

Subsection (b) amends the ESA table of contents to reflect the limitation contained in this Act.

COMMITTEE ACTION

H.R. 2603 was introduced on May 23, 2017, by Congressman Louie Gohmert (R-TX). The bill was referred to the Committee on Natural Resources. On July 19, 2017, the Committee held a hearing on the bill. On October 3, 2017, the Natural Resources Committee met to consider the bill. Congressman Louie Gohmert offered an amendment designated #1; it was adopted by voice vote. No further amendments were offered and the bill, as amended, was ordered favorably reported to the House of Representatives on October 4, 2017, by a roll call vote of 23 ayes and 16 noes, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 10-04-17

Recorded Vote #: 4

Meeting on / Amendment on: FC Mark Up on **Favorably Reporting** H.R. 2603 (Rep. Louie Gohmert), To amend the Endangered Species Act of 1973 to provide that nonnative species in the United States shall not be treated as endangered species or threatened species for purposes of that Act. "Saving America's Endangered Species Act" or the "SAVES Act";

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>		X	
Mr. Young, AK, Chairman Emeritus	X			Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Gohmert, TX, Vice Chairman	X			Mr. Graves, LA	X		
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. Brown, MD</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>		X		<i>Mr. Clay, MO</i>		X	
Mr. Wittman, VA	X			Mrs. Radewagen, AS	X		
<i>Mr. Sablan, CNMI</i>				<i>Mr. Gomez, CA</i>		X	
Mr. McClintock, CA	X			Mr. LaHood, IL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL	X		
Mr. Pearce, NM				Mr. Bergman, MI	X		
<i>Mr. Huffman, CA</i>		X		Ms. Cheney, WY	X		
Mr. Thompson, PA	X			Mr. Johnson, LA	X		
<i>Mr. Lowenthal, CA</i>		X		Ms. González-Colón, PR	X		
Mr. Gosar, AZ	X			Mr. Gianforte, MT	X		
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID	X						
<i>Mrs. Torres, CA</i>		X					
Mr. Tipton, CO	X						
<i>Mr. Gallego, AZ</i>							
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>		X					
Mr. Denham, CA							
<i>Ms. Barragán, CA</i>		X		TOTAL:	23	16	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 13, 2017.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2603, the SAVES Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2603—SAVES Act

H.R. 2603 would prevent the U.S. Fish and Wildlife Service (USFWS) from treating nonnative species as threatened or endangered under the Endangered Species Act (ESA). That change would eliminate certain permitting requirements under the ESA related to the handling of those species. Based on an analysis of information provided by USFWS, CBO estimates that implementing the bill would have no significant effect on the federal budget.

Enacting H.R. 2603 would reduce offsetting receipts, which are treated as reductions in direct spending, from fees for permits issued under the ESA related to the handling of non-native species; those fees can be subsequently spent without appropriation action. Because enacting the bill would affect direct spending, pay-as-you-go procedures apply. However, CBO estimates that the net effect on direct spending would be negligible. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 2603 would not increase net direct spending or on-budget deficits by more than \$2.5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2603 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, is to provide that nonnative species in the United States shall not be treated as endangered species or threatened species for purposes of that Act.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 italics, and existing law in which no change is proposed is shown in roman):

ENDANGERED SPECIES ACT OF 1973

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 Act of 1973".

TABLE OF CONTENTS

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[Sec. 13. Conforming amendments.]
Sec. 13. Limitation on treatment of certain species as endangered species or threatened species.

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【CONFORMING AMENDMENTS

【SEC. 13. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 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 and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system.”

【(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)), are each amended by Striking out “threatened with extinction,” and inserting in lieu thereof the following: “listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species.”

【(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601—9(a) (1)) is amended by striking out:

【“THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction.”

and inserting in lieu thereof the following:

【“ENDANGERED SPECIES AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5 (a) of the Endangered Species Act of 1973, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants.”

【(d) The first sentence of section 2 of the Act of September 28, 1962, as amended (76 Stat. 653, 16 U.S.C. 460k-1), is amended to read as follow:

“The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

【“(1) incidental fish and wildlife-oriented recreational development,

【“(2) the protection of natural resources,

【“(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

【“(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps.

【(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) is amended—

【(1) by striking out “Endangered Species Conservation Act of 1969” in section 3(1)(B) thereof and inserting in lieu thereof the following: “Endangered Species Act of 1973”;

【(2) by striking out “pursuant to the Endangered Species Conservation Act of 1969” in section 101(a)(3)(B) thereof and

inserting in lieu thereof the following: “or threatened species pursuant to the Endangered Species Act of 1973”;

【(3) by striking out “endangered under the Endangered Species Conservation Act of 1969” in section 102(b)(3) thereof and inserting in lieu thereof the following: “an endangered species or threatened species pursuant to the Endangered Species Act of 1973”; and

【(4) by striking out “of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969,” in section 202(a)(6) thereof and inserting in lieu thereof the following: “such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973”.

【(f) Section 2(l) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92–516) is amended by striking out the words “by the Secretary of the Interior under Public Law 91–135” and inserting in lieu thereof the words “or threatened by the Secretary pursuant to the Endangered Species Act of 1973”. 】

LIMITATION ON TREATMENT OF CERTAIN SPECIES AS ENDANGERED SPECIES OR THREATENED SPECIES

SEC. 13. (a) LIMITATION.—The species described in subsection (b) shall not be treated or listed as endangered species or threatened species for purposes of this Act.

(b) COVERED SPECIES.—The species referred to in subsection (a) are species that are not native to the United States.

* * * * *

DISSENTING VIEWS

H.R. 2603 would eliminate Endangered Species Act (ESA) permitting requirements for breeding and transporting exotic animals in the United States, even if those species are on the brink of extinction. The Majority argued at markup that the bill would help captive breeding efforts that recover species, but the Association of Zoos and Aquariums—the highly respected authority on captive breeding of endangered wildlife—disagrees and opposes the bill.

In reality, the bill's aim is to make it easier for roadside zoos that lack meaningful standards for animal care to mistreat and commercialize imperiled species, and to facilitate breeding and hunting of three species of African antelope that have been established at game ranches in Texas.

The bill would also overturn regulations put in place by the U.S. Fish and Wildlife Service in 2016 to restrict domestic sales of African elephant ivory, and would create a major loophole for wildlife traffickers, as non-native threatened and endangered species would no longer be treated as such once imported into the United States. These species could then be traded or re-exported without an ESA permit. This would be true not only for live specimens but also for parts and products.

H.R. 2603 would undermine decades of progress toward fighting wildlife trafficking and associated organized crime syndicates and terrorist groups. The involvement of Chinese triads in the rhino horn trade has been well documented, as has the link between poached elephant ivory and organizations like Joseph Kony's Lord's Resistance Army and the al-Qaeda affiliate al-Shabaab. Central and South American drug cartels have also been implicated in wildlife trafficking. Doing our part to protect foreign endangered species is important to public safety and regional stability, in addition to being good conservation policy.

The Majority's argument that species would still be protected under the Convention on International Trade in Endangered Species (CITES) shows a fundamental misunderstanding of the law. Not every species listed under CITES has the same protections as species listed under the ESA, and not every species listed under the ESA is listed under CITES. For these reasons, we oppose the bill as reported.

RAÚL M. GRIJALVA,
*Ranking Member, Committee
on Natural Resources.*

DARREN SOTO.
DONALD S. BEYER, JR.
A. DONALD MCEACHIN.
ALAN LOWENTHAL.

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JARED HUFFMAN.
GRACE F. NAPOLITANO.
COLLEEN HANABUSA.
NANETTE DIAZ BARRAGÁN.

