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BEAR PROTECTION ACT

OCTOBER 4 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

Mr. SMITH of New Hampshire, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1109]

together with

MINORITY VIEWS

The Committee on Environment and Public Works, to which was referred a bill (S. 1109) to conserve global bear populations by prohibiting the importation, exportation, and interstate trade of bear viscera and items, products, or substances containing, or labeled or advertised as containing, bear viscera, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

GENERAL STATEMENT AND BACKGROUND

Eight species of bears the Asian black bear, American black bear, brown bear, polar bear, spectacled bear, sun bear, sloth bear, and giant panda are found on four continents. Two species are found in Europe, three in North America, six in Asia, and one in South America. Many populations of the species have experienced significant declines in this century. Asian bears, in particular, have suffered the greatest losses. In contrast, populations of the American black bear are increasing in many States. Of the eight species of bears, six are Appendix I of the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES). Only the American black bear and the polar bear are listed on Appendix II,

with the American black bear listed based on its similarity of appearance with other species on Appendix I.

The population of the brown bear, the most widespread species, is estimated at 180,000 to 200,000. The population of polar bear is estimated to be between 20,000 and 30,000, and the population of the sloth bear is estimated to be approximately 20,000. Fewer than 50,000 Asian black bears are believed to exist. The spectacled bear and sun bear are the most endangered species, with populations believed to be less than 4,000 and 10,000 respectively. In comparison, according to Traffic North America, part of Traffic Network, a joint program of the World Wildlife Foundation and the International Union for the Conservation of Nature (IUCN), in 1997, the North American population of black bears was estimated at 600,000 to 800,000, of which approximately 325,000 to 448,000 reside in the United States.

Habitat loss has been a major cause of the general decline of bear populations, but over-harvest is responsible for the precipitous decline of some populations in Asia. Over-harvest, including poaching, has been associated with the commercial trade in bear parts. Bear gallbladders and bile, in particular, are popular for their use in traditional Asian medicine. Bear gall has been used in Asian Medicine since the seventh century to treat high fever and convulsions, inflammation, burns, hemorrhoids, swelling and pain. Only the giant panda and the polar bear are not harvested for their gallbladders. Gallbladders of pigs, which are similar in appearance to those of bears, are sometimes sold as bear gallbladders. Therefore, buyers frequently request verification to ensure that they are obtaining bear gallbladders. Bears are also taken for their paws and meat, which are considered delicacies in some societies.

While there is evidence of commercial trade in bear viscera, there is little information regarding the extent of this trade. With respect to imports, there is evidence that bear parts, in the form of traditional Asian medicine, are imported into the United States. A Study published by Traffic North America in January 1998 surveyed 110 shops in the Chinatowns of seven cities across North America (Atlanta, Los Angeles, New York, San Francisco, Seattle, Toronto and Vancouver). Eight percent were found to sell medicine containing or claiming to contain bear parts. In New York City and Seattle, the figure was as high as 17 percent. Enforcement statistics from the Fish and Wildlife Service also indicate significant illegal activity at the border. In 1997, for example, 95 shipments containing bears or bear parts were denied entry or exit. With respect to exports, reports prepared by Traffic North America and the Humane Society of the United States indicate that the commercial value of bear parts on the international market remains high, suggesting that these parts, particularly viscera, are still prized, with the potential for demand to rise.

Enforcement statistics from the Federal Government also indicate that some poaching and illegal trading is occurring within the States. According to the U.S. Fish and Wildlife Service, in 2000, the Service brought 4 civil or criminal cases with a total of $4,606 in penalties; in 1999, the service resolved 11 civil or criminal cases and collected $900 in penalties. In 1998, there were 17 cases with $18,995 in penalties. Although information from the States and the

Fish and Wildlife Service also suggests that bear populations in the United States are increasing, there is a possibility that these populations could be at risk in the future if bear populations in Asia were to continue to decline. Bears already endangered worldwide would face immediate risks if demand rose. These risks warrant continued vigilance in the protection of bears.

Bears are protected in the United States under both Federal and State laws. In general, States are responsible for managing black bear populations, and the regulation of trade in bear parts. At present, 14 States explicitly allow the sale of bear parts; 35 States prohibit the sale of bear parts; and 2 States are silent on the issue. Of the 14 States that allow the sale of bear parts, 6 allow the sale from bears taken legally in that State, and 8 allow the sale of bears parts from bears taken legally in another State. The two States without regulations do not have bear populations. Violations of State laws may be enforced by the States or by the Federal Government under the Lacey Act. In addition to State laws, the Federal Endangered Species Act (ESA) also protects certain species of bears. The brown bear, or grizzly, is listed as a threatened species under the ESA in the lower 48 States, but not in Alaska. The polar bear, found in Alaska and Canada, is protected under the Marine Mammal Protection Act. The American black bear population is considered to be healthy, with the exception of the Louisiana black bear, which is listed as threatened under the ESA. CITES imposes restrictions on the international transportation and sale of bears and bear parts.

In June 1997, the Parties to CITES adopted a resolution urging all Parties to take immediate action in order to demonstrably reduce the illegal trade in bear parts and derivatives. The resolution first noted that the continued trade in bear parts undermines the effectiveness of CITES, and that if actions are not taken to eliminate this trade, poaching may cause declines of wild bears that could lead to the extirpation of certain populations or species. The resolution specifically urged Parties to confirm, adopt, or improve their national legislation to strengthen measures to control illegal exports and imports of bear parts and derivatives, ensuring that the penalties for violations are sufficient to deter illegal trade. The resolution further recommended that Parties and non-Party States encourage a dialog between government agencies, industry, consumer groups and conservation organizations to ensure that legal trade does not provide a conduit for illegal trade in parts and derivatives of bears listed in Appendix I.

In order to address concerns about the potential threats to bear populations in the United States due to the trade of bear parts, and to carry out the CITES resolution, this bill adopts a two-part strategy to reduce and eliminate the trade in bear viscera. First, the bill prohibits the import into, or export from, the United States of all bear viscera or products containing, or labeled as containing, bear viscera. Second, the bill prohibits the sale or transport in interstate commerce of any bear viscera or products containing, or labeled as containing, bear viscera.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Section 1 sets forth the short title of this bill as the "Bear Protection Act of 1999."

Sec. 2. Findings

Section 2 contains the findings of Congress. They include the following: all eight extant species of bears are listed on either Appendix I or II of CITES; Parties to CITES may adopt stricter domestic measures regarding trade of bear parts; Asian bear populations have declined; undercover enforcement actions have revealed that bears have been poached in the United States for their viscera; commercial trade in bear viscera could encourage poaching; and prohibitions on international and domestic trade in bear viscera will assist in ensuring that the United States does not contribute to the decline of any bear population.

Sec. 3. Purposes

Section 3 states that the purpose of the bill is to ensure the long-term viability of the world's eight bear species.

Sec. 4. Definitions

Section 4 sets forth definitions of key terms in the bill. The term "bear viscera" is defined as the body fluids or internal organs of the bear, including its gallbladder and its contents, but not its blood or brains. The terms "import," "person," "State," and "transport" are also defined.

Sec. 5. Prohibited Acts

Section 5 enumerates the actions prohibited by the bill. A person may not import into the United State, or export from the United States, bear viscera or any product, item, or substance containing, or labeled or advertised as containing, bear viscera. This section also makes it illegal to sell or barter, or offer to sell or barter, purchase, possess, transport, deliver or receive, in interstate or foreign commerce, bear viscera or any product, item or substance containing, or labeled or advertised as containing, bear viscera.

The prohibition on imports is intended to reinforce existing laws with similar prohibitions. This is expected to reduce the demand for these items in the United States, and relieve pressures for poaching in Asia and elsewhere, where bear populations are most endangered. The prohibition on exports would eliminate a path from the United States to foreign markets that are known to trade in bear viscera and products containing bear viscera, thereby reducing incentives to illegal hunting in the United States to supply those markets. The prohibition on interstate commerce is intended to ensure that there is consistency among the States with respect to the laws governing the trade of bear viscera. Currently, bear parts taken illegally in one State may be transported to another State, where hunting and trade may be legal, and sold for commercial use. This provision would prohibit such activities.

Sec. 6. Penalties and Enforcement

Section 6 provides for fines, penalties and enforcement. A person that knowingly violates Section 5 shall be fined under title 18 of the United States Code, imprisoned not more than 1 year, or both. A person that knowingly violates Section 5 may be assessed a civil penalty by the Secretary of not more than $25,000 for each violation. A civil penalty under this section must be assessed, and may be collected, in the manner in which a civil penalty is assessed or collected under section 11(a) of the Endangered Species Act (16 U.S.C. 1540(a)). Any bear viscera, or any product, item, or substance sold, imported, or exported, or attempted to be sold, imported, or exported, in violation of this section shall be seized and forfeited to the United States. Amounts received as penalties or fines under this section must be used in accordance with section 6(d) of the Lacey Act.

Sec. 7. Discussions Concerning Trade Practices

Section 7 provides that the Secretary of Interior and the Secretary of State shall discuss issues involving trade in bear viscera with the appropriate representatives of countries trading with the United States that are determined by the Secretary and the United States Trade Representative to be the leading importers, exporters, or consumers of bear viscera, and attempt to establish coordinated efforts with the countries to protect bears.

Sec. 8. Report

Section 8 provides that, not later than 1 year after enactment, the Secretary of Interior, in cooperation with appropriate State agencies, must submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives detailing the progress of efforts to end the illegal trade in bear viscera.

HEARINGS

No hearings were held on this bill in the Committee on Environment and Public Works.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes 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 S. 1109 would impose no Federal intergovernmental unfunded mandates on State, local, or Tribal governments. All of its governmental directives are imposed on Federal agencies. The bill does not directly impose any private sector mandates.

LEGISLATIVE HISTORY

S. 1109 was introduced on May 24, 1999, by Senator McConnell. No hearings were held on this bill. On Wednesday, July 26, 2000, the Committee on Environment and Public Works held a business meeting to consider this bill. No amendments were offered. The bill was adopted by voice vote with Senators Thomas, Crapo and Baucus recorded in opposition.

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, September 29, 2000.

Hon. ROBERT C. SMITH, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

The Congressional Budget Office has prepared the enclosed cost estimate for S. 1109, the Bear Protection Act of 1999.

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, Marjorie Miller (for the State and local impact), who can be reached at 225–3220, and Lauren Marks (for the private-sector impact), who can be reached at 226–2940.

Sincerely,

DAN L. CRIPPEN.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1109 Bear Protection Act of 1999, as ordered reported by the Senate Committee on Environment and Public Works on July 26, 2000

Summary

Assuming appropriation of the necessary amount, CBO estimates that implementing S. 1109 would cost the Federal Government about $200,000 in fiscal year 2001 to prepare a required report to the Congress. Carrying out other provisions, most of which are related to enforcement activities, would have no significant impact on the Federal budget. S. 1109 could affect both direct spending and receipts; therefore, pay-as-you-go procedures would apply. The effect of any such changes, however, would be minimal and largely offsetting.

S. 1109 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but this mandate would impose no significant costs on State, local, or tribal governments. Therefore, the threshold established in UMRA ($55 million per

year in 2000, adjusted annually for inflation) would not be exceeded. The bill would have no other significant impact on the budgets of those governments.

S. 1109 also would impose private-sector mandates as defined by UMRA, but CBO estimates that the direct costs of those mandates would not exceed the annual threshold established in UMRA ($109 million in 2000, adjusted annually for inflation).

Major Provisions

S. 1109 would prohibit any person from selling, importing, exporting, possessing, or transporting products containing (or labeled as containing) any substance derived from bear parts. The bill would establish both criminal fines and civil penalties to be imposed on anyone who violates the prohibition. In addition, it would require that products found in the possession of violators be seized and forfeited to the United States. The bill's fines and product forfeiture provisions are similar to those imposed under the Lacey Act, which prohibits sales, imports, and other transactions involving endangered species. S. 1109 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 (ESA) of 1973. Section 8 would require the U.S. Fish and Wildlife Service (USFWS) to submit a report, within 1 year of enactment, on the effort to end the illegal trade in bear parts.

Estimated Cost to the Federal Government

Assuming appropriation of the necessary amount, CBO estimates that the USFWS would incur costs of about $200,000 to prepare the report required by section 8.

CBO expects that implementing S. 1109 would not increase the enforcement responsibilities of Federal agencies because they would carry out the legislation in conjunction with a number of other very similar laws, such as the ESA. No additional enforcement efforts would be necessary except for the initial promulgation of regulations by the USFWS in consultation with other agencies, such as the Department of Health and Human Services.

S. 1109 could affect revenues from civil and criminal fines. CBO estimates, however, that any increase in revenues would be less than $500,000 annually. Moreover, such changes would be offset by 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 used for rewards to informers and other program costs).

Pay-As-You-Go Considerations

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Because S. 1109 could affect both direct spending and receipts, pay-as-you-go procedures would apply, but CBO estimates that any such effects would not be significant.

Estimated Impact on State, Local, and Tribal Governments

S. 1109 contains an intergovernmental mandate as defined in UMRA, because the bill's prohibitions on trade in bear parts apply

to State and local governments. This mandate would impose no significant costs on these governments, however, because they do not usually engage in the prohibited activities. The bill would have no other significant impact on the budgets of State, local, or tribal governments.

Estimated Impact on the Private Sector

S. 1109 would impose new private-sector mandates as defined in UMRA, but CBO estimates that the direct costs of those mandates would not exceed the annual threshold established in UMRA ($109 million in 2000, adjusted annually for inflation). The bill would prohibit the importation, exportation, and interstate trade of bear viscera or any product containing such bear parts. Under current law, anyone that wishes to import or export bear viscera or products containing bear viscera must obtain a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Under S. 1109, CITES permits would no longer be allowed for the United States. Few of the CITES permits granted for the United States in the last several years have been for commercial trade. Based on information provided by wildlife preservation groups, the value of interstate trade in bear parts is small. CBO therefore concludes that the direct costs of mandates included within this bill would fall well below the threshold established in UMRA.

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: Lauren Marks (226–2940).

Estimate approved by: Peter H. Fontaine Deputy Assistant Director for Budget Analysis.

MINORITY VIEWS OF SENATORS CRAPO AND THOMAS

The general intent of this legislation is to prevent declines in world bear populations, particularly in the United States and Asia, by prohibiting the trade of certain bear products because it is perceived to encourage the illegal taking of bears. The foreign trade of bear viscera, as a result of poaching, has clearly had a negative effect on Asian bear populations. Reductions in habitat have exacerbated the declining viability of bears in Asia. Although the trade of bear parts is regulated under CITES (Convention on International Trade of Endangered Species of Wild Fauna and Flora) by requiring permits for commercial exports, CITES has not proved adequate in curbing poaching outside of the United States. There is an obvious need to prohibit international trade of bear viscera.

At this time, there is no substantiated need for the domestic application of this Act. The U.S. Fish and Wildlife Service's Division of Law Enforcement has determined that the poaching of American black bears for their gallbladders and other parts to supply the demands of the Asian medicinal market for these products is not a significant problem and does not occur on any large scale. Furthermore, while there is some evidence of poaching and commercial trade in bear parts in the U.S., American bear populations are generally stable or increasing, with the exception of the grizzly bear, which is protected by the Endangered Species Act.

What this Act will do is supercede State law and will result in further incremental Federalization of wildlife conservation efforts, which are within the primary authority of the States. Most States have already addressed this issue by explicitly allowing or prohibiting the sale of bear parts. Additionally, the Lacey Act allows the Federal Government to enforce violations of State laws, thereby ensuring that wildlife taken illegally in one State may not be transported across State lines to another.

In 1998, the Environment and Public Works Committee held a hearing on the Bear Protection Act and subsequently reported out a bill with an amendment that removed the domestic prohibition of trade in bear parts. During consideration of the bill, the committee agreed that there was a problem with international trade in bear parts, and that there was not enough information to apply prohibitions to domestic trade. As a result, the bill prohibited import and export of bear parts and required a study or illegal trade in the United States. There is no more evidence today than there was in 1998 that suggests the need to ban domestic trade of bear parts.

The inclusion of the domestic trade provision is the reason we oppose this bill. While the prohibition on international trade of bear parts is justifiable, the facts simply do not support the need to override State laws by banning domestic trade of bear viscera.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate, provides that reports to the Senate should show changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.

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