

CAPTIVE WILDLIFE SAFETY TECHNICAL AMENDMENTS
ACT OF 2008

MARCH 31, 2008.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 4933]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4933) to amend the Lacey Act Amendments of 1981 to protect captive wildlife and to make technical corrections, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 4933 is to amend the Lacey Act Amendments of 1981 to protect captive wildlife and to make technical corrections, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Captive Wildlife Safety Act (Public Law 108-191) amended the Lacey Act Amendments of 1981 to make it unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any prohibited wildlife species. Such prohibited wildlife species include any live species of lion, tiger, leopard, cheetah, jaguar, and cougar. The purpose of the law was to prevent the sale of these species as pets. It was not until the law was enacted that the Fish and Wildlife Service and Department of Justice identified certain specific technical drafting problems that have made implementation and enforcement impossible. H.R. 4933 would make the technical changes to the law needed to allow the original intent of the legislation to be achieved.

COMMITTEE ACTION

H.R. 4933 was introduced on January 3, 2008 by Congresswoman Bordallo (D–GU). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife, and Oceans. On February 13, 2008, the Subcommittee met to mark up the bill. The Subcommittee forwarded the bill to the Full Committee without amendment by unanimous consent. On March 12, 2008, the Full Natural Resources Committee met to consider the bill. The bill was then ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 cites this Act as the “Captive Wildlife Safety Technical Amendments Act of 2008.”

Section 2. Captive Wildlife Safety amendments

Section 2 makes technical amendments to the Lacey Act amendments of 1981 to allow for the full enforcement and implementation of the Captive Wildlife Safety Act of 2003. Specifically, this section clarifies that interstate or foreign commerce of prohibited wildlife species are subject to civil and criminal penalties under the Lacey Act Amendments of 1981 by renumbering and referring to the appropriate subsections.

Section 3. Applicability provision amendment

Section 3 strikes a subsection in the Captive Wildlife Safety Act that refers to a previously struck paragraph.

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.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not

contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. 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 amend the Lacey Act Amendments of 1981 to protect captive wildlife and to make technical corrections.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 4933—Captive Wildlife Safety Technical Amendments Act of 2008

H.R. 4933 would make technical amendments to the Lacey Act, which governs the protection of certain wildlife species. CBO estimates that implementing the bill would not have a significant impact on the budgets of the agencies that enforce that act, primarily the U.S. Fish and Wildlife Service and the Animal and Plant Health Inspection Service.

Because the proposed technical amendments would make it easier to enforce the Lacey Act, enacting the bill could result in higher revenues from civil and criminal penalties. CBO estimates that any additional revenues would total less than \$500,000 a year. Some of those revenues might be available for expenditure without further appropriation; such spending would offset a portion of the additional revenues.

H.R. 4933 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 4933 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

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 italic, existing law in which no change is proposed is shown in roman):

LACEY ACT AMENDMENTS OF 1981

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SEC. 3. PROHIBITED ACTS.

(a) OFFENSES OTHER THAN MARKING OFFENSES.—It is unlawful for any person—

(1) * * *

(2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce—

(A) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law; or

(B) any plant taken, possessed, transported, or sold in violation of any law or regulation of any State; or

[(C) any prohibited wildlife species (subject to subsection (e));]

* * * * *

[(e) NONAPPLICABILITY OF PROHIBITED WILDLIFE SPECIES OFFENSE.—

[(1) IN GENERAL.—Subsection (a)(2)(C)]

(e) CAPTIVE WILDLIFE OFFENSES.—

(1) IN GENERAL.—It is unlawful for any person—

(A) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any live animal of any prohibited wildlife species; or

(B) to attempt to commit any act described in subparagraph (A).

(2) NONAPPLICABILITY.—This subsection does not apply to importation, exportation, transportation, sale, receipt, acquisition, or purchase of an animal of [a] any prohibited wildlife species, by a person that, under regulations prescribed under paragraph [(3)] (4), is described in paragraph [(2)] (3) with respect to that species.

[(2)] (3) PERSONS DESCRIBED.—A person is described in this paragraph, if the person—

(A) * * *

* * * * *

(C) is an accredited wildlife sanctuary that cares for prohibited wildlife species and—

(i) * * *

(ii) does not commercially trade in [animals listed in section 2(g)] prohibited wildlife species, including offspring, parts, and byproducts of such animals;

(iii) does not propagate [animals listed in section 2(g)] prohibited wildlife species; and

(iv) does not allow direct contact between the public and [animals] prohibited wildlife species; or

(D) has custody of [the animal] an animal of any prohibited wildlife species solely for the purpose of expeditiously transporting [the animal] that animal to a person described in this paragraph with respect to the species.

[(3)] (4) REGULATIONS.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in cooperation with the Director of the Animal and Plant Health Inspec-

tion Service, shall promulgate regulations describing the persons described in paragraph **[(2)] (3)**.

[(4)] (5) STATE AUTHORITY.—Nothing in this subsection preempts or supersedes the authority of a State to regulate wildlife species within that State.

[(5)] (6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out **[subsection (a)(2)(C)] this subsection** \$3,000,000 for each of **[fiscal years 2004 through 2008] fiscal years 2009 through 2013**.

(7) APPLICATION.—*This subsection shall apply beginning on the effective date of regulations promulgated under this subsection.*

SEC. 4. PENALTIES AND SANCTIONS.

(a) CIVIL PENALTIES.—

(1) Any person who engages in conduct prohibited by any provision of this Act (other than subsections **[(b) and (d)] (b), (d), and (e)** of section 3) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation: *Provided*, That when the violation involves fish or wildlife or plants with a market value of less than \$350, and involves only the transportation, acquisition, or receipt of fish or wildlife or plants taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty assessed shall not exceed the maximum provided for violation of said law, treaty, or regulation, and any person who knowingly violates **[section 3(d)] subsection (d) or (e) of section 3**, or \$10,000, whichever is less.

* * * * *

(d) CRIMINAL PENALTIES.—

(1) Any person who—

(A) knowingly imports or exports any fish or wildlife or plants in violation of any provision of this Act (other than subsections **[(b) and (d)] (b), (d), and (e) of section 3** of section 3), or

(B) violates any provision of this Act (other than subsections **[(b) and (d)] (b), (d), and (e) of section 3** of section 3) by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of \$350,

knowing that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation, shall be fined not more than \$20,000, or imprisoned for not more than five years, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(2) Any person who knowingly engages in conduct prohibited by any provision of this Act (other than subsections [(b) and (d)] (b), (d), and (e) of section 3 of section 3) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation shall be fined not more than \$10,000, or imprisoned for not more than one year, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(3) Any person who knowingly violates [section 3(d)] subsection (d) or (e) of section 3—

(A) * * *

* * * * *

SECTION 102 OF THE ACT OF NOVEMBER 14, 1988

(Public Law 100-653)

AN ACT To reauthorize and amend certain wildlife laws, and for other purposes.

SEC. 102. PENALTY.

(a) * * *

* * * * *

(c) CONFORMING AMENDMENTS.—Section 4 is amended in subsections (a)(1), (d)(1)(A), (d)(1)(B), and (d)(2) by striking “(other than [section 3(b)] subsection 3(b))” each place those words appear and inserting in lieu thereof “(other than subsections (b) and (d) of section 3)”.

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CAPTIVE WILDLIFE SAFETY ACT

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SEC. 3. PROHIBITED ACTS.

[(a) IN GENERAL.—Section 3] Section 3 of the Lacey Act Amendments of 1981 (16 U.S.C. 3372) is amended—

(1) * * *

* * * * *

[(b) APPLICATION.—Section 3(a)(2)(C) of the Lacey Act Amendments of 1981 (as added by subsection (a)(1)(A)(iii)) shall apply beginning on the effective date of regulations promulgated under section 3(e)(3) of that Act (as added by subsection (a)(2)).]

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