

MEASURES TO COMBAT INVASIVE LIONFISH

DECEMBER 20, 2018.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 6255]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6255) to amend title 18, United States Code, to establish measures to combat invasive lionfish, 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. 6255 is to amend title 18, United States Code, to establish measures to combat invasive lionfish.

BACKGROUND AND NEED FOR LEGISLATION

The Lacey Act (16 U.S.C. 3371 et seq.; also 18 U.S.C. 42) makes it unlawful to import, export, sell, acquire, or purchase fish, wildlife or plants that are taken, possessed, transported, or sold in violation of federal, State, tribal or foreign law or treaty.¹ Congress originally enacted this law in response to concerns over the health of native species and competition from nonnative species.² The Act authorized the Secretary of Agriculture to reintroduce or bolster native “game, song, and insectivorous birds” to the benefit of U.S. agriculture.³ The Act also authorized the Secretary of Agriculture to prevent the introduction of foreign wildlife.⁴ Finally, the Act sought to supplement State laws for the protection of game and birds, by preventing wildlife traffickers from harvesting species ille-

¹ <https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html>.

² Act of May 25, 1900, 1, 31 Stat. 188.

³ H. Rep. No. 56–474, at 1 (1900).

⁴ *Id.* at 2.

gally in one State and transporting them for sale in States where similar prohibitions did not exist.⁵ A statutory list of injurious species banned from being imported and from certain types of interstate transportation is found at 18 U.S.C. 42.

Congress approved significant amendments to the Lacey Act in 1969, 1981, 1988 and 2008, among numerous smaller amendments made since the law's enactment.⁶ The 1969 amendments expanded the Act to include amphibians, reptiles, mollusks and crustaceans.⁷ The 1981 amendments were more comprehensive in nature and focused on increasing civil and criminal penalties while lowering the threshold for an individual's knowledge of wrongdoing required for convictions under the Act.⁸ The 1988 amendment made prohibitions on wildlife sold in violation of federal, tribal, State or foreign laws uniform throughout the law.⁹ This amendment further strengthened prohibitions and penalties on mislabeling shipments of fish, wildlife, and plants.¹⁰ The 2008 amendment extended the Act's prohibitions to cover nonnative plants and violations of foreign law. This significant expansion imposed broad compliance requirements for importers covering virtually all global plant species, in the name of curbing international illegal logging.¹¹ The Departments of the Interior, Commerce, and Agriculture, acting through the U.S. Fish and Wildlife Service, National Marine Fisheries Service and Animal and Plant Health Inspection Service, respectively, enforce the Lacey Act in its current form.¹²

Lionfish is a type of carnivorous fish native to the South Pacific and Indian Oceans.¹³ Lionfish thrive in warm waters of the tropics and in a variety of habitats. According to the National Oceanic and Atmospheric Administration (NOAA), lionfish were spread to the Atlantic via the aquarium trade and were likely released into the wild voluntarily.¹⁴ Lionfish are voracious and reproduce year-round in high volumes; as such lionfish have come to dominate many ecosystems across the South Atlantic, Gulf of Mexico and the Caribbean.¹⁵

Invasive species cost the U.S. economy an estimated \$137 billion annually.¹⁶ According to NOAA, the first evidence of established lionfish populations in the Atlantic came in 2002 from a specimen retrieved by divers off the coast of North Carolina;¹⁷ however, there were sightings off Florida as early as the 1980s.¹⁸ In a 2012

⁵ *Id.*

⁶ <https://www.animallaw.info/article/overview-lacey-act-16-usc-ss-3371-3378>.

⁷ S. Rep. No. 91-526, at 1(1969).

⁸ Anderson, R.S. (1995), *The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking* (16 Pub. Land L. Rev. 27), at 50.

⁹ *Id.* at 52.

¹⁰ *Id.* at 52-53.

¹¹ H. Rep. 110-627 at 893.

¹² Anderson, R.S. (1995), *The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking* (16 Pub. Land L. Rev. 27), at 54.

¹³ NOAA, *What is a lionfish?*, Official website of the National Ocean Service, <https://oceanservice.noaa.gov/facts/lionfish-facts.html>.

¹⁴ NOAA, *Lionfish Invasion! Lionfish Invade U.S. Waters*, Official website of the National Ocean Service, https://oceanservice.noaa.gov/education/stories/lionfish/lion02_inva.html.

¹⁵ *Id.*

¹⁶ Morris, J.A., Jr., and P.E. Whitfield. 2009. *Biology, Ecology, Control and Management of the Invasive Indo-Pacific Lionfish: An Updated Integrated Assessment*. NOAA Technical Memorandum NOS NCCOS 99.57 at 1 http://aquaticcommons.org/2847/1/NCCOS_TM_99.pdf.

¹⁷ NOAA, *Lionfish Invasion! Lionfish Invade U.S. Waters*, Official Website of the National Ocean Service, https://oceanservice.noaa.gov/education/stories/lionfish/lion02_inva.html.

¹⁸ Morris, J.A., Jr., and P.E. Whitfield. 2009. *Biology, Ecology, Control and Management of the Invasive Indo-Pacific Lionfish: An Updated Integrated Assessment*. NOAA Technical Memorandum NOS NCCOS 99. 57 pp, at i http://aquaticcommons.org/2847/1/NCCOS_TM_99.pdf.

study, researchers found that, as of 2010, lionfish represented approximately 40% of the total predator biomass throughout their survey range in reefs off the coast of the Bahamas.¹⁹ In Atlantic waters, lionfish have almost no natural predators, but feed on a variety of fish and crustaceans, including commercially valuable species such as snapper and grouper.²⁰ It is unclear to what degree lionfish abundance adversely impacts abundance of native prey species.²¹ Lionfish can also have indirect ecological impacts: they prey on herbivorous parrotfish which, if unchecked, can increase nuisance vegetation in reefs.²²

Gulf States have taken the lead on lionfish control. Florida organizes an annual competition where the State rewards participants for harvesting certain amounts of lionfish with increasing rewards for more.²³ In 2014, Florida became the first State to ban the importation of live lionfish while simultaneously loosening fishing restrictions.²⁴ Creating and boosting demand for lionfish as food is the centerpiece and most promising of the control efforts.²⁵

In response to fears over the further spread of lionfish throughout the U.S. marine environment, Congressman Darren Soto introduced H.R. 6255, which would add several species of lionfish to the injurious species list codified at 18 U.S.C. 42.²⁶ In an effort to preserve control efforts focused on markets for lionfish products, this legislation provides an exemption with respect to importation and exportation permits for certain lionfish seafood products.

H.R. 6255 would have the United States follow the example of Florida and ban the importation and some domestic transportation of lionfish. The conservation benefits of enacting this legislation are unclear, and there may be unintended consequences this bill would have on efforts to create markets for lionfish products. Potential unintended consequences notwithstanding, this legislation is a good-faith attempt to address a serious challenge for coastal communities in Florida and across the Gulf of Mexico and South Atlantic.

COMMITTEE ACTION

H.R. 6255 was introduced on June 27, 2018, by Congressman Darren Soto (D–FL). The bill was referred primarily to the Committee on the Judiciary and additionally to the Committee on Natural Resources. Within the Natural Resources Committee, the bill was referred to the Subcommittee on Water, Power and Oceans. On September 26, 2018, the Natural Resources Committee met to con-

¹⁹Green, S. J., Akins, J. L., Maljković, A., & Côté, I. M. (2012). Invasive Lionfish Drive Atlantic Coral Reef Fish Declines. *PLoS ONE*, 7(3). doi:10.1371/journal.pone.0032596.

²⁰NOAA, *What is a turkeyfish?*, Official website of the National Ocean Service, <https://oceanservice.noaa.gov/facts/turkeyfish.html>.

²¹Hackerott, S., Valdivia, A., Cox, C. E., Silbiger, N. J., & Bruno, J. F. (2017). Invasive lionfish had no measurable effect on prey fish community structure across the Belizean Barrier Reef. *PeerJ*, 5. doi:10.7717/peerj.3270.

²²NOAA, *What is a lionfish?*, Official website of the National Ocean Service, <https://oceanservice.noaa.gov/facts/lionfish-facts.html>.

²³Florida Fish and Wildlife Conservation Commission, *Lionfish Challenge 2018*, Official Website of Florida FWCC, <http://myfwc.com/fishing/saltwater/recreational/lionfish/challenge/>.

²⁴Pillion, D. (2014, June 18). Florida bans importing live lionfish in aquarium trade, allows more spearfishing to combat invasive species. Retrieved from https://www.al.com/news/beaches/index.ssf/2014/06/florida_bans_importing_live_li.html.

²⁵Shemkus, S. (2016, April 11). Eat an Invasive Species for Dinner. Retrieved from <https://www.theatlantic.com/science/archive/2016/04/invasive-lionfish/477570/>.

²⁶H.R. 6255, 115th Cong. (2018), available at <https://www.congress.gov/bill/115th-congress/house-bill/6255>.

sider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

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, December 19, 2018.

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. 6255, a bill to amend title 18, United States Code, to establish measures to combat invasive lionfish, and for other purposes.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 6255—A bill to amend title 18, United States Code, to establish measures to combat invasive lionfish, and for other purposes

H.R. 6255 would amend the Lacey Act to prohibit the importation of 11 species of live lionfish. The bill also would restrict domestic transportation of those species. Using information from the National Oceanic and Atmospheric Administration, CBO estimates that the cost of implementing H.R. 6255 would not be significant in any year.

Because people convicted of importing lionfish under H.R. 6255 could be subject to criminal fines, the federal government might collect additional fines under the bill. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation action. CBO expects that any additional revenues and direct spending would not be significant because the bill would probably affect only a small number of cases.

Because enacting H.R. 6255 could affect direct spending and revenues, pay-as-you-go procedures apply. However, CBO estimates that the bill's net effect on the deficit would be negligible.

CBO estimates that enacting H.R. 6255 would not significantly increase net direct spending and would not increase on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 6255 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting live lionfish from being imported into and transported within the United States. The bill would primarily affect vendors who sell live lionfish as pets across state lines. CBO estimates that the loss of income to those vendors resulting from the bill's prohibitions would be small and fall below the annual threshold established in UMRA for private-sector mandates (\$160 million in 2018, adjusted annually for inflation).

The bill contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Zachary Byrum (for mandates). The estimate was reviewed 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 amend title 18, United States Code, to establish measures to combat invasive lionfish.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

PART I—CRIMES

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CHAPTER 3—ANIMALS, BIRDS, FISH, AND PLANTS

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§ 42. Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums; regulations

(a)(1) The importation into the United States, any territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, of the mongoose of the species *Herpestes auropunctatus*; of the species of so-called “flying foxes” or fruit bats of the genus *Pteropus*; of the zebra mussel of the species *Dreissena polymorpha*; of the red lionfish of the species *Pterois volitans*; of the devil lionfish of the species *Pterois miles*; of the Hawaiian turkeyfish of the species *Pterois sphex*; of the soldier lionfish of the species *Pterois russelii*; of the clearfin lionfish of the species *Pterois radiata*; of the species *Pterois paucispinula*; of the frillfin turkeyfish of the species *Pterois mombasae*; of the luna lionfish of the species *Pterois lunalata*; of the mandritsa of the species *Pterois brevipectoralis*; of the spotfin lionfish of the species *Pterois antennata*; of the scorpionfish of the species *Pterois andover*; of the bighead carp of the species *Hypophthalmichthys nobilis*; and such other species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, brown tree snakes, or the offspring or eggs of any of the foregoing which the Secretary of the Interior may prescribe by regulation to be injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States, is hereby prohibited. All such prohibited mammals, birds, fish (including mollusks and crustacea), amphibians, and reptiles, and the eggs or offspring therefrom, shall be promptly exported or destroyed at the expense of the importer or consignee. Nothing in this section shall be construed to repeal or modify any provision of the Public Health Service Act or Federal Food, Drug, and Cosmetic Act. Also, this section shall not authorize any action with respect to the importation of any plant pest as defined in the Federal Plant Pest Act, insofar as such importation is subject to regulation under that Act.

(2) As used in this subsection, the term “wild” relates to any creatures that, whether or not raised in captivity, normally are found in a wild state; and the terms “wildlife” and “wildlife resources” include those resources that comprise wild mammals, wild birds, fish (including mollusks and crustacea), and all other classes of wild creatures whatsoever, and all types of aquatic and land vegetation upon which such wildlife resources are dependent.

(3) Notwithstanding the foregoing, the Secretary of the Interior, when he finds that there has been a proper showing of responsibility and continued protection of the public interest and health, shall permit the importation for zoological, educational, medical, and scientific purposes of any mammals, birds, fish, (including mollusks and crustacea), amphibia, and reptiles, or the offspring or eggs thereof, where such importation would be prohibited otherwise by or pursuant to this Act, and this Act shall not restrict importations by Federal agencies for their own use.

(4) Nothing in this subsection shall restrict the importation of dead natural-history specimens for museums or for scientific collections, or the importation of domesticated canaries, parrots (including all other species of psittacine birds), or such other cage birds as the Secretary of the Interior may designate.

(5) The Secretary of the Treasury and the Secretary of the Interior shall enforce the provisions of this subsection, including any regulations issued hereunder, and, if requested by the Secretary of the Interior, the Secretary of the Treasury may require the furnishing of an appropriate bond when desirable to insure compliance with such provisions.

(b) Whoever violates this section, or any regulation issued pursuant thereto, shall be fined under this title or imprisoned not more than six months, or both.

(c) The Secretary of the Interior within one hundred and eighty days of the enactment of the Lacey Act Amendments of 1981 shall prescribe such requirements and issue such permits as he may deem necessary for the transportation of wild animals and birds under humane and healthful conditions, and it shall be unlawful for any person, including any importer, knowingly to cause or permit any wild animal or bird to be transported to the United States, or any Territory or district thereof, under inhumane or unhealthful conditions or in violation of such requirements. In any criminal prosecution for violation of this subsection and in any administrative proceeding for the suspension of the issuance of further permits—

(1) the condition of any vessel or conveyance, or the enclosures in which wild animals or birds are confined therein, upon its arrival in the United States, or any Territory or district thereof, shall constitute relevant evidence in determining whether the provisions of this subsection have been violated; and

(2) the presence in such vessel or conveyance at such time of a substantial ratio of dead, crippled, diseased, or starving

wild animals or birds shall be deemed prima facie evidence of the violation of the provisions of this subsection.

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