

Committee on Natural Resources

Rob Bishop Chairman
Markup Memorandum

September 24, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff – Richie O’Connell (x58331)

Markup: **H.R. 6255 (Rep. Darren Soto, D-FL)**, To amend title 18, United State Code, to establish measures to combat invasive lionfish, and for other purposes.
Wednesday, September 26, 2018, 10:15 AM; 1324 Longworth HOB

H.R. 6255, to amend title 18, United States Code, to establish measures to combat invasive lionfish

Summary of the Bill

H.R. 6255, authored by Rep. Darren Soto (D-FL-09), would add 11 species of lionfish to the list of injurious species, prohibiting their importation and some domestic transportation. The bill would exempt trade in lionfish products from a deceased fish from the prohibitions of the Lacey Act.

Cosponsors

Representative Matt Gaetz (R-FL-01)

Background

The Lacey Act of 1900

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are taken, possessed, transported, or sold in violation of federal, State, tribal or foreign law or treaty.¹ Congress originally enacted this law in response to concerns over the health of native species and competition from nonnative species.² The Act authorized the Secretary of Agriculture to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 illegally in one State and transporting them for sale in States where

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.

similar prohibitions do 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 in the Gulf of Mexico

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



Image 1: Lionfish
Source: Alabama Gulf Seafood

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.

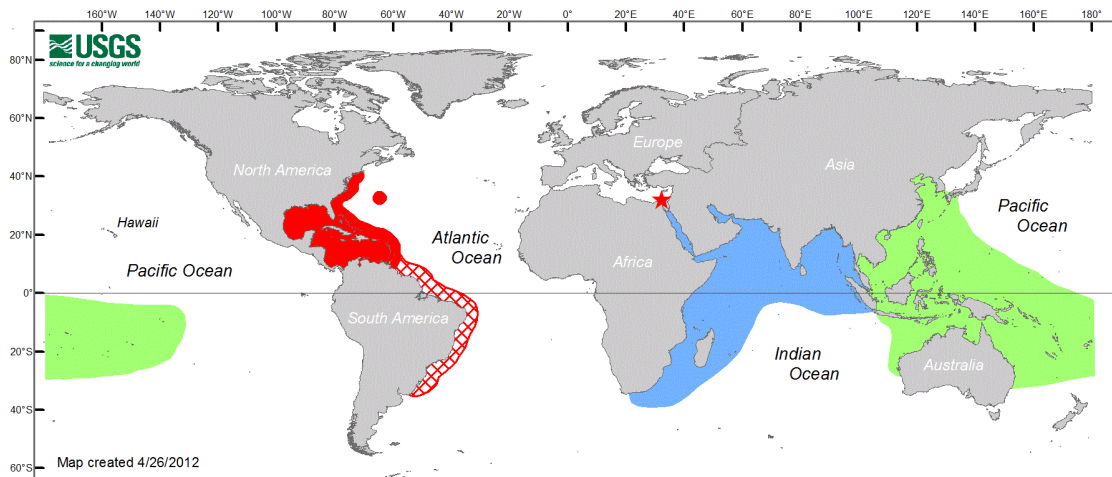
¹¹ [H. Rep. 110-627 at 893.](#)

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.*



Map 1: Global distribution of lionfish, as of 2012, including native (green and blue), nonnative (red) and projected future (patterned red) ranges.

Source: United States Geological Survey

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 Carolina¹⁷; however, there were sightings off Florida as early as the 1980s.¹⁸ In a 2012 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

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 Invade! Lionfish Invade U.S. Waters*, Official Website of the National Ocean Service, https://oceanservice.noaa.gov/education/stories/lionfish/lion02_invade.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 1 http://aquaticcommons.org/2847/1/NCCOS_TM_99.pdf.

¹⁹ Green, 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.

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

²¹ Hackerott, 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.

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

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

H.R. 6255

In response to fears over the further spread of lionfish throughout the U.S. marine environment, Rep. Darren Soto (D-FL-09) 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.

Major Provisions of H.R. 6255

Section 1 adds 11 species of lionfish to the list of injurious species and provides an exemption for lionfish products.

Cost

The Congressional Budget Office has not completed a cost estimate for this legislation.

Administration Position

Unknown.

Anticipated Amendments

No amendments are anticipated at this time.

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

²⁴ Pillion, 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.

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

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

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by H.R. 6255

[text to be added highlighted in yellow]

Title 18, United States Code

§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 auro-punctatus*; 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,¹ 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.