

Committee on Natural Resources

Rob Bishop, Chairman
Hearing Memorandum

July 17, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff — Megan Olmstead
Subcommittee on Oversight and Investigations (x5-7107)

Hearing: Legislative hearing on **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.
July 19, 2017 at 10:00 a.m. in 1324 Longworth House Office Building.

H.R. 2603 (Rep. Louie Gohmert), “*Saving America’s Endangered Species Act*”

Summary of the Bill

H.R. 2603, introduced by Rep. Louie Gohmert (R-TX-01) on May 23, 2017, is a bipartisan bill that amends the Endangered Species Act to remove from listing all nonnative species. The bill will be reviewed along with four other bills at this hearing.

Cosponsors

Rep. Ralph Lee Abraham (R-LA), Rep. Brian Babin (R-TX), Rep. Michael Burgess (R-TX), Rep. Tom Cole (R-OK), Rep. Eric Crawford (R-AR), Rep. Blake Farenthold (R-TX), Rep. Paul Gosar (R-AZ), Rep. Duncan Hunter (R-CA), Rep. Mike Johnson (R-LA), Rep. Steve King (R-IA), Rep. Roger Marshall (R-KS), Rep. Collin Peterson (D-MN), Rep. Pete Sessions (R-TX), Rep. Scott Tipton (R-CO), Rep. Bruce Westerman (R-AR), Rep. Steve Womack (R-AR).

Invited Witnesses

Panel I

The Honorable Louie Gohmert
Member of Congress
Texas’ 1st Congressional District

Panel II (*in alphabetical order*)

Mr. Jeff Corwin
Biologist
Host of ABC’s *Ocean Treks with Jeff Corwin*
Marshfield, MA

The Honorable Glenn Hegar
Comptroller of Public Accounts
State of Texas
Austin, Texas

Mr. Kent Holsinger
Manager
Holsinger Law, LLC
Denver, Colorado

Mr. Greg Sheehan
Deputy Director
U.S. Fish and Wildlife Service
Washington, DC

Mr. David Willms
Policy Advisor for Governor Matt Mead
Cheyenne, Wyoming

Background

The Endangered Species Act of 1973 includes protections for nonnative endangered species in an effort to encourage foreign nations to protect jeopardized species and their habitats abroad.¹ Nonnative endangered species are regulated by the U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act through the captive bred wildlife (CBW) program.²

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.³ While no federal permit is required to own listed nonnative species, those wishing to sell or buy

¹ Endangered Species Act of 1973, 16 U.S.C. § 1531 (1973).

² See, 50 C.F.R. 17.3. U.S. DEP'T. OF THE INTERIOR, U.S. FISH AND WILDLIFE SERVICE, CAPTIVE-BRED WILDLIFE REGISTRATION UNDER THE U.S. ENDANGERED SPECIES ACT (Jan. 2012), <https://www.fws.gov/international/pdf/factsheet-captive-bred-wildlife-and-endangered-species-act-2012.pdf>.

³ See, Letter from John Seyjagat, Executive Director, Zoological Association of America, to Rep. Louie Gohmert, Member, U.S. House of Representatives (July 6, 2017) (on file with the Office of Rep. Gohmert) (“The Zoological Association of America promotes responsible ownership, management, conservation and propagation of animals Additionally, through maintenance of robust captive populations of endangered species, ZAA institutions create a conservation safety net for wild populations.”). See also, Press Release, Commission for Environmental Cooperation, CEC Launches Plan to Support Sustainable Trade of Parrots, Sharks, Tarantulas, Timber, and Turtles and Tortoises in North America (May 17, 2017) (<http://www.cec.org/news-and-outreach/press-releases/cec-launches-plan-support-sustainable-trade-parrots-sharks-tarantulas-timber-and-turtles-and-tortoises-north-america>) (“The captive breeding of the Central American river turtle (*Dermatemys mawii*) in Mexico offers the potential for sustainable and economically valuable turtle production that also benefits conservation. The action plan calls for increased research on captive husbandry of *D. mawii* for commercial purpose, improved policy and procedures that also promote recovery of wild populations, and increased enforcement and protection capacity.”). See also, Letter from Doug Kemper, Executive Director, Medicine Park Aquarium and Natural Sciences Center, to Rep. Louie Gohmert, Member, U.S. House of Representatives (July 3, 2017) (on file with the office of Rep. Gohmert) (“The duplicative listing of nonnative species under the Endangered Species Act (ESA) has crippled our ability to maintain robust captive populations to serve as a form of insurance against loss of these animals in the wild.”).

nonnative endangered species across state lines, including zoos and private breeders, must obtain a CBW permit from FWS.⁴ 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.”⁵

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.⁶ 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.⁷ Stakeholders also are concerned that the CBW program does not consider their species expertise in CBW permit or programmatic decisions.⁸

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 as such matters are regulated under the Convention on International Trade in Endangered Species of

⁴ See, 50 C.F.R. 17.3. U.S. DEP’T. OF THE INTERIOR, U.S. FISH AND WILDLIFE SERVICE, CAPTIVE-BRED WILDLIFE REGISTRATION UNDER THE U.S. ENDANGERED SPECIES ACT (Jan. 2012), <https://www.fws.gov/international/pdf/factsheet-captive-bred-wildlife-and-endangered-species-act-2012.pdf>

⁵ *Id.*

⁶ See, Letter from Janice Boyd, President, the Parrot Fund, to Rep. Louie Gohmert, Member, U.S. House of Representatives (July 4, 2017) (on file with the Office of Rep. Gohmert) (“The present implementation of the ESA makes it 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. Yet there is no concomitant benefit to those species in their native countries. Interstate exchanges of individuals for breeding purposes are hindered by the permitting requirements and expenses, and surplus animals (and presumably plants) cannot be sold but must be maintained by the breeder, given away, or destroyed.”). See also, Letter from Carol Stanley, President, Avicultural Society of America to Rep. Louie Gohmert, Member, U.S. House of Representatives (July 3, 2017) (on file with the office of Rep. Gohmert) (“Duplicate listing of nonnative species under the ESA has crippled our members’ efforts at conservation through development of robust captive populations—either for intended reintroduction to the wild or as a type of insurance against stochastic events in [the species] native lands. By stifling movement of birds between collections through prohibitive regulation, the genetic diversity of our captive flocks has been hampered.”).

⁷ See, Letter from Matt Oldenburg, owner, Zoo of the Acadiana, to Rep. Louie Gohmert, Member, U.S. House of Representatives (July 7, 2017) (on file with the Office of Rep. Gohmert) (“We strongly support HR 2603 Our zoo provides daily care and maintenance for more than 1,000 animals, representing 125+ species, many of which are endangered. We . . . have a long history of successfully reproducing many of these endangered species. However, our access to genetic diversity for these animals is severely hampered by their listing in the ESA. Managed breeding programs 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.”).

⁸ See, Letter from Jim Parsons, President, National Aquaculture Association, to Rep. Louie Gohmert, Member, U.S. House of Representatives (July 7, 2017) (on file with the Office of Rep. Gohmert) (“Within the aquaculture community there is significant experience, knowledge, and applied science that has been cultivated over generations and could be leveraged to assist in the recovery of at-risk species. Unfortunately, the history of species listings indicates that there is little flexibility within the Endangered Species Act that would recognize this conservation benefit and allow farms to continue to operate successfully. As a consequence, these invaluable resources are lost. Quite frankly, the listing of nonnative species on the ESA is not beneficial to conservation, commerce or aquaculture.”).

Wild Fauna and Flora (CITES)—an international agreement between 183 member nations that protects endangered nonnative species from the perils of international wildlife trafficking.⁹

Cost

No CBO cost estimate is available at this time.

Administration Position

No Administration position is available at this time.

Section-by-Section Analysis of H.R. 2603

Section 1. *Short Title.* The bill may be referred to as the Saving America’s 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) Limitation. 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) Conforming Amendment. Subsection (b) amends the table of contents to reflect the limitation contained in this Act.

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by H.R. 2603

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Section 13 of the Endangered Species Act of 1973 (relating to amendments to other laws, which have executed)

[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."

⁹ See, THE U.S. FISH AND WILDLIFE SERVICE, *What is CITES* (last visited July 11, 2017), <https://www.fws.gov/international/cites/what-is-cites.html>. See also, Convention on International Trade in Endangered Species of Wild Fauna and Flora, *How CITES Works* (last visited July 11, 2017), <https://www.cites.org/eng/disc/how.php>.

(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 follows:

"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(1) 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 as endangered species or threatened species for purposes of this Act.

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

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