

RHINO AND TIGER PRODUCT LABELING ACT

APRIL 28, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 2807]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2807) to amend the Rhinoceros and Tiger Conservation Act of 1994 to prohibit the sale, importation, and exportation of products labeled as containing substances derived from rhinoceros or tiger, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Rhino and Tiger Product Labeling Act”.

SEC. 2. PROHIBITION ON SALE, IMPORTATION, AND EXPORTATION OF PRODUCTS LABELED AS CONTAINING A SUBSTANCE DERIVED FROM RHINOCEROS OR TIGER.

(a) FINDINGS.—The Congress finds the following:

(1) The populations of several magnificent and unique endangered species of rhinoceros and tigers, such as the Indian rhinoceros, the Javan rhinoceros, the African black rhinoceros, and all of the tiger subspecies, continue to decline.

(2) Growing demand throughout the world for wildlife and wildlife parts and products has created a market in which commercial exploitation has threatened certain rhinoceros and tiger populations.

(3) There are insufficient legal mechanisms enabling the United States Fish and Wildlife Service to forcefully interdict products that are labeled as containing substances derived from rhinoceros or tiger species and prosecute the merchandisers for sale or display of those products.

(4) Although approximately 77,000 import and export shipments occur annually in the United States, the United States Fish and Wildlife Service is able to maintain only 92 wildlife inspectors at 30 ports of entry, including 13 designated ports, to monitor the shipments.

(5) Wildlife inspectors are able to physically inspect only an estimated 5 to 10 percent of all import and export shipments, making the rate of detection of contraband wildlife products extremely low.

(6) Alternatives are available to the traditional medicinal products that contain substances derived from rhinoceros and tiger species.

(7) Public education initiatives directed toward traditional user groups on the endangered status of rhinoceros and tiger species and on the availability of alternative products in traditional medicine have proven useful in reducing the demand for products labeled as containing substances derived from rhinoceros and tiger species, and should be encouraged.

(b) PROHIBITION, PENALTIES, AND ENFORCEMENT.—The Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5301 et seq.) is amended by redesignating section 7 as section 8, and by inserting after section 6 the following:

“SEC. 7. PROHIBITION RELATING TO PRODUCTS CONTAINING OR PURPORTING TO CONTAIN ANY SUBSTANCE DERIVED FROM A RHINOCEROS OR TIGER SPECIES.

“(a) PROHIBITION.—No person shall sell, import, or export, or attempt to sell, import, or export any product, item, or substance intended for human consumption containing or purporting to contain any substance derived from any species of rhinoceros or tiger.

“(b) PENALTIES.—

“(1) CRIMINAL PENALTY.—Any person who knowingly violates subsection (a) shall be fined under title 18, United States Code, imprisoned for not more than 1 year, or both.

“(2) CIVIL PENALTIES.—Any person who knowingly violates, and any person engaged in business as an importer, distributor, or retailer of products, items, or substances purporting to contain substances derived from any species of rhinoceros or tiger who violates subsection (a) may be assessed a civil penalty by the Secretary of not more than \$25,000 for each violation. A civil penalty under this paragraph shall be assessed, and may be collected, in the manner in which a civil penalty under the Endangered Species Act of 1973 may be assessed and collected under section 11(a) of that Act (16 U.S.C. 1540(a)).

“(c) FORFEITURES.—Any product, item, or substance sold, imported, or exported, or attempted to be sold, imported, or exported, contrary to the provisions of this Act or any regulation made pursuant thereto shall be subject to forfeiture to the United States. All equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the selling, exporting, or importing, or an attempt to sell, export, or import, of any product, item, or substance in violation of this Act or any regulation issued pursuant to this Act, shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to subsection (b). All laws relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under this Act, insofar as those laws are applicable and not inconsistent with this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as the Secretary may designate.

“(d) REGULATIONS.—The Secretary, after consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the United States Trade Representative, shall prescribe regulations that are necessary and appropriate to carry out the purposes of this Act.

“(e) ENFORCEMENT.—The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating shall enforce this Act in the same manner such Secretaries carry out enforcement activities under section 11(e) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)).”

(c) DEFINITION OF PERSON.—Section 4 of the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5301 et seq.) is amended by—

(1) striking “and” at the end of paragraph (4);

(2) striking the period at the end of paragraph (5) and inserting “; and”; and

(3) adding at the end the following:

“(6) ‘person’ means—

“(A) an individual, corporation, partnership, trust, association, or other private entity;

“(B) an officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government;

“(C) a State, municipality, or political subdivision of a State; or

“(D) any other entity subject to the jurisdiction of the United States.”.

PURPOSE OF THE BILL

The purpose of H.R. 2807 is to amend the Rhinoceros and Tiger Conservation Act of 1994 to prohibit the sale, importation, and exportation of products labeled or containing substances derived from rhinoceros or tiger.

BACKGROUND AND NEED FOR LEGISLATION

During the 103rd Congress, the Rhinoceros and Tiger Conservation Act was enacted in an effort to help conserve the dwindling populations of rhinos and tigers living in the wild. While these species had once been prolific throughout Asia and Africa, during the past two decades they have suffered a tremendous population decline because of competition for land, human population growth, loss of habitat, and poaching. This occurred despite the fact that all populations of rhinoceros and tiger have been listed as endangered in the United States and by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) since the mid-1970s.

At this time, it is estimated that there are about 11,000 rhinos left in the wild. This is a significant decrease from the 65,000 rhinos in 1970. Of the five species of rhinoceros—black, white, Indian, Javan, and Sumatran—only the population of white rhinos shows any sign that it has stabilized or may be increasing in numbers in Southern Africa.

In 1987, the members of CITES voted to extend its worldwide ban on rhinoceros horn, urged the destruction of any stockpiles, and instructed all countries to stop all trade in rhino products. This international edict has been largely ignored. Rhino horn is still consumed as a pain medication in powdered form in China, Taiwan, and Korea; and it is used as decorative handles for ceremonial daggers in Yemen. As the population of rhinos has declined, the price of rhino horn has skyrocketed. In fact, African rhino horn can be worth as much as \$10,000 per kilogram and the rarer Asian rhino horn up to \$60,000 per kilogram.

In terms of tigers, the likelihood of long-term survival of some populations is even more bleak. In fact, three subspecies—Bali, Caspian, and Javan are already extinct and a fourth subspecies—South China—is on the brink of extinction with a population of only about 20 animals. According to the Cat Specialist Group of the World Conservation Union, there are only about 5,000 tigers living in the wild. This is a dramatic decline from the 100,000 tigers that likely existed at the turn of the century. Nearly 60 percent of the world’s surviving tigers, or about 3,750 animals, live in 21 forest reserves in India. However, despite strict government protection, about one tiger is killed every day in India.

Although agricultural and commercial logging have destroyed large amounts of tiger habitat, illegal hunting or poaching has had the most dramatic immediate impact in most areas where tigers remain. Tigers are killed for their fur and most of their body parts. Tiger bone has been an ingredient in traditional Chinese medicines

since at least 500 A.D. and its use is firmly established in several Asian cultures.

Tiger bone powders, wines, and tablets are used to combat pain, kidney and liver problems, rheumatism, convulsions and heart conditions. In 1991, one-third of the world's Siberian tigers were killed to satisfy the demand for their bones and other parts. According to the World Wildlife Fund (WWF), tiger bones can sell for over \$1,400 per pound.

According to the WWF and the World Conservation Society (WCS), on any given day a consumer can purchase prepackaged medicines that clearly indicate they contain rhino and tiger parts in cities throughout America. While these pharmaceutical products are manufactured in China and Hong Kong, the United States has become a major market for their sale. In fact, a WWF survey, which was just completed, found that nearly 50 percent of the 110 shops they visited in North America offered medicines for sale containing or claiming to contain rhinos and tigers. WWF investigators identified at least 31 different types of rhino and tiger medicines that had been produced for sale by as many as 34 different manufacturers. The cities with the greatest number of shops offering these illegal products included: New York, Vancouver, Seattle, Toronto, Atlanta, San Francisco, and Los Angeles. Furthermore, the study found that the availability of these products has greatly increased over the past five years. In addition, a recent survey by WCS in New York City's Chinatown found 16 different tiger labeled products readily available in nearly 70 percent of the Asian herbal shops visited.

In order to stop this slide toward extinction, it is essential that the market for these products be eliminated and that consumers stop purchasing medicines made from endangered rhinos and tigers.

While U.S. Customs agents have confiscated some of these products prior to importation, the underlying problem is that it is virtually impossible to conclusively prove, even in a laboratory, that a product contains rhinoceros or tiger parts. These products contain many different types of active agents, and it is extremely difficult to distinguish between the bones of various mammals, all of which contain calcium.

While it is true that the Customs Service and the U.S. Fish and Wildlife Service could conduct DNA tests on each of these products, these tests are prohibitively expensive and time consuming. There are literally thousands of products, and neither Customs nor the Fish and Wildlife Service have the resources to even begin to undertake such a job.

The fundamental purpose of the Rhino and Tiger Product Labeling Act is to alleviate this testing problem. Under the terms of this legislation, if a label on a product says that it contains rhinoceros or tiger parts, then it cannot enter the United States because the legal presumption is made that it violates our laws. There is no need for any DNA testing and this legislation sends a clear, unmistakable message to those who traffic in illegal wildlife products that the U.S. market is now closed. By so doing, the Committee hopes that the financial incentives to kill a rhino or tiger will be eliminated.

The Committee also expects that the appropriate legal authorities will take steps to ensure that any existing prepackaged Oriental medicines that have already entered the United States and purport to contain rhinos or tigers are not permitted to be sold after the date of enactment. This action is consistent with various approved CITES resolutions that urge all nations to destroy all stockpiles of these products.

H.R. 2807 is, in essence, truth in labeling for these endangered species. If a manufacturer tries to sell these medicines without a reference to rhinos or tigers, then studies indicate consumers are not likely to purchase them. For nearly 2,000 years, people who practice traditional Chinese medicine have believed rhino and tiger parts will cure their various medical ailments.

What is tragically ironic is that there are synthetic alternatives to these medicines. Unfortunately, they are not well known. In addition, there is a need for a new educational campaign targeted to those who buy these products. Based on the WCS survey, it is clear that the vast majority of people buying these medicines are not aware that they are directly contributing to the demise of highly endangered rhinos and tigers.

COMMITTEE ACTION

H.R. 2807 was introduced by Congressmen Jim Saxton (R-NJ) and George Miller (D-CA) on November 4, 1997, and referred to the Committee on Resources. Within the Committee, the bill was referred to the Subcommittee on Fisheries Conservation, Wildlife and Oceans. The bill has 44 bipartisan cosponsors.

On February 5, 1998, the Subcommittee on Fisheries Conservation, Wildlife and Oceans conducted a hearing on H.R. 2807. Testimony was heard from the Honorable Bruce Babbitt, Secretary, Department of the Interior; Dr. Terry Maple, President and CEO, Zoo Atlanta; Ms. Kathryn Fuller, President, WWF; Dr. Lixing Lao, Assistant Professor, Family Medicine, University of Maryland; Ms. Dorene Bolze, Senior Policy Analyst, WCS; Dr. John Seidensticker, Curator of Mammals, National Zoological Park; Mr. Richard M. Parsons, Director, Department of Wildlife Conservation and Governmental Affairs, Safari Club International; and Dr. Thomas Foose, Program Director, International Rhino Foundation. In his testimony, Secretary Babbitt stated that "passage of H.R. 2807 would complement and enhance our ongoing conservation efforts under the Rhinoceros and Tiger Conservation Act, the Pelly Amendment, CITES, and other domestic and international measures. We believe that the Rhino and Tiger Product Labeling Act will help continue the global leadership role of the United States in rhino and tiger conservation." In his testimony, Dr. Terry Maple, the President-Elect of the American Zoo and Aquarium Association, said that "H.R. 2807 must be enacted into law. Passage of H.R. 2807 combined with increased appropriations for law enforcement will certainly be a bold step by the United States in ending the slaughter of the rhinoceros and tigers in the world." Finally, Ms. Dorene Bolze testified that "this bill offers a valuable tool to expedite law enforcement efforts to reduce the trade in illegal tiger and rhino-based TCM products."

On February 12, 1998, the Subcommittee on Fisheries Conservation, Wildlife and Oceans considered H.R. 2807 in a markup session. At that time, Mr. Saxton offered an amendment in the nature of a substitute that made a number of technical changes in the legislation and worked to ensure that the Department of the Interior had the proper enforcement tools to confiscate these Chinese medicines at our borders. Congressman Sam Farr (D-CA) offered an amendment to the substitute that emphasized the need for an educational campaign to discourage the use of these products. This amendment was adopted by voice vote. The Saxton amendment, as amended, was adopted by voice vote and the bill was favorably reported to the full Committee on Resources by voice vote.

On March 11, 1998, the full Resources Committee met to consider H.R. 2807. No further amendments were offered and the bill was ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on 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 H.R. 2807.

COST OF THE LEGISLATION

Clause 7(a) 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 H.R. 2807. However, clause 7(d) 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 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 2807 does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office, enactment of H.R. 2807 could affect federal revenues and direct spending, but the effect of any such changes would be minimal and largely offsetting.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2807.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI 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 H.R. 2807 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 17, 1998.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget office has prepared the enclosed cost estimate for H.R. 2807, the Rhino and Tiger Product Labeling Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for this estimate are Deborah Reis (for federal costs), Marjorie Miller (for the state and local impact), and Lesley Frymier (for the private-sector impact).

Sincerely,

JAMES L. BLUM,
(For June E. O'Neill, Director).

Enclosure.

H.R. 2807—Rhino and Tiger Product Labeling Act

CBO estimates that implementing H.R. 2807 would have no significant impact on the federal budget. The bill could affect both federal revenues and direct spending; therefore, pay-as-you-go procedures would apply. The effect of any such changes, however, would be minimal and largely offsetting.

H.R. 2807 would prohibit any person from selling, importing, or exporting products containing (or labeled as containing) any substance derived from rhinoceroses or tigers. The bill would establish both criminal and civil penalties to be imposed on anyone who violates the prohibition as well as rules for seizing and disposing of certain assets used by criminal offenders. The bill's fines and asset forfeiture provisions would be similar to those imposed under the Lacey Act, which currently prohibits sales, imports, and other transactions involving endangered species. Finally, H.R. 2807 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 of 1973.

Because the activities prohibited by H.R. 2807 are already unlawful, CBO expects that implementing the bill would not increase the enforcement responsibilities or discretionary expenses of federal agencies. Instead, the bill would facilitate existing enforcement efforts by relieving agencies of the responsibility of proving that products labeled as containing rhinoceros or tiger parts actually contain them.

The bill could affect revenues from civil and criminal fines and from proceeds from sales of forfeited assets. The direction of any change, however, is uncertain. On the one hand, revenues could in-

crease if the sale and export of prohibited (or falsely labeled) items does not change and federal enforcement agencies are able to collect more fines under the broader language of the bill. On the other hand, revenues could fall if the bill induces some sellers and importers to curtail their activities. In either event, CBO estimates that any increases or decreases in revenues would be less than \$500,000 annually. Moreover, such changes would be offset by respective decreases or increases in direct spending from the crime victims fund (where criminal fines are deposited) or the resource management account of the U.S. Fish and Wildlife Service (where civil fines and proceeds from forfeitures are deposited).

H.R. 2807 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 because the bill would impose no new enforceable duties. The bill's prohibition on the sale, import, or export of products containing or purporting to contain substances derived from rhinoceroses or tigers would simply facilitate the enforcement of existing prohibitions on such activities. The bill also would have no impact on the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Deborah Reis (for federal costs), Marjorie Miller (for the state and local impact), and Lesley Frymier (for the private-sector impact). This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 2807 contains no unfunded mandates.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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):

RHINOCEROS AND TIGER CONSERVATION ACT OF 1994

* * * * *

SEC. 4. DEFINITIONS.

In this Act—

(1) * * *

* * * * *

(4) “Secretary” means the Secretary of the Interior; **[and]**

(5) “Administrator” means the Administrator of the Agency for International Development**[.]**; *and*

(6) “person” means—

(A) *an individual, corporation, partnership, trust, association, or other private entity;*

(B) *an officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government;*

(C) a State, municipality, or political subdivision of a State; or

(D) any other entity subject to the jurisdiction of the United States.

* * * * *

SEC. 7. PROHIBITION RELATING TO PRODUCTS CONTAINING OR PURPORTING TO CONTAIN ANY SUBSTANCE DERIVED FROM A RHINOCEROS OR TIGER SPECIES.

(a) *PROHIBITION.*—No person shall sell, import, or export, or attempt to sell, import, or export any product, item, or substance intended for human consumption containing or purporting to contain any substance derived from any species of rhinoceros or tiger.

(b) *PENALTIES.*—

(1) *CRIMINAL PENALTY.*—Any person who knowingly violates subsection (a) shall be fined under title 18, United States Code, imprisoned for not more than 1 year, or both.

(2) *CIVIL PENALTIES.*—Any person who knowingly violates, and any person engaged in business as an importer, distributor, or retailer of products, items, or substances purporting to contain substances derived from any species of rhinoceros or tiger who violates subsection (a) may be assessed a civil penalty by the Secretary of not more than \$25,000 for each violation. A civil penalty under this paragraph shall be assessed, and may be collected, in the manner in which a civil penalty under the Endangered Species Act of 1973 may be assessed and collected under section 11(a) of that Act (16 U.S.C. 1540(a)).

(c) *FORFEITURES.*—Any product, item, or substance sold, imported, or exported, or attempted to be sold, imported, or exported, contrary to the provisions of this Act or any regulation made pursuant thereto shall be subject to forfeiture to the United States. All equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the selling, exporting, or importing, or an attempt to sell, export, or import, of any product, item, or substance in violation of this Act or any regulation issued pursuant to this Act, shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to subsection (b). All laws relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under this Act, insofar as those laws are applicable and not inconsistent with this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as the Secretary may designate.

(d) *REGULATIONS.*—The Secretary, after consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the United States Trade Representative, shall prescribe regulations that are necessary and appropriate to carry out the purposes of this Act.

(e) *ENFORCEMENT.*—The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating shall enforce this Act in the same manner such Secretar-

ies carry out enforcement activities under section 11(e) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)).

SEC. [7.] 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Fund \$10,000,000 for each of fiscal years 1996, 1997, 1998, 1999, and 2000 to carry out this Act, to remain available until expended.

