Calendar No. 518

105TH CONGRESS, 2d Session | SENATE | REPORT 105–281

BEAR PROTECTION ACT OF 1998

JULY 31, 1998.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 263]

The Committee on Environment and Public Works, to which was referred the bill (S. 263) to prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera or products that contain or claim to contain bear viscera, and for other purposes, having considered the same, reports favorably thereon, with an amendment and an amendment to the title, and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

Eight species of bears—the Asian black bear, American black bear, brown bear, polar bear, spectacled bear, sun bear, sloth bear, and giant panda—are found on four continents. Two are found in Europe, three in North America, six in Asia, and one in South America. Many populations of the species have experienced significant declines in this century. Asian bears in particular have suffered the greatest losses in recent years. Of the eight species of bear, six are on Appendix I of the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES). Only the polar bear and the American black bear are listed on Appendix II, with the American black bear listed based on its similarity of appearance with other species on Appendix I.

The population of the brown bear, the most widespread species, is estimated at 180,000 to 200,000. The population of the polar bear is estimated to be between 20,000 and 30,000, and the population of the sloth bear is estimated to be 20,000. Less than 50,000 Asian black bears are believed to exist. The spectacled bear and

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sun bear are the most endangered species, with populations believed to be less than 4,000 and 10,000 respectively. In comparison, according to Traffic North America, part of Traffic Network, a joint program of the World Wildlife Fund and the International Union for the Conservation of Nature (IUCN), in 1997 the North American population of black bears was estimated at 600,000 to 800,000, of which approximately 325,000 to 448,000 reside in the United States.

Habitat loss has been a major reason for these general declines, but overharvest is responsible for the precipitous drop of some populations in Asia. Overharvest, including poaching, has been associated with the commercial trade in bear parts, particularly gallbladders and bile used for traditional Asian medicine. This use of bear gallbladder dates as far back as the seventh century, to treat high fever and convulsions, inflammation, burns, hemorrhoids, swelling and pain. Only the giant panda, a near relative of both bears and raccoons, and the polar bear, are not sought for their gallbladders. Gallbladders of pigs, which are similar in appearance to those of bears, are sometimes proffered as bear gallbladders, and buyers frequently request verification to ensure that they are obtaining bear gallbladders. Bears are also taken for their paws and meat, which are considered delicacies in some societies.

While there is evidence of commercial trade in bear viscera, there is little information regarding the extent of this trade. Indeed, one recent analysis by Traffic North America indicates that the consumer market for bear parts may have declined in the last several years. In addition, bear "farms" in China and South Korea support the market for bear bile, which has alleviated some of the pressure for overhunting of wild bears, although these "farms" can have a detrimental impact on bear populations if they acquire bears from the wild. Even with the reported decline in demand, the commercial value on the international market of bear parts, particularly viscera, remain high, indicating that these parts are still prized, with the potential for demand to rise. Bears already endangered would face immediate risks if demand rose, and if bear populations in Asia continued to decline, there is a possibility that bears elsewhere, such as in the United States, would face future risks. These risks warrant continued vigilance in the protection of bears, through monitoring and precautionary actions.

In June 1997, the Parties to CITES, adopted a resolution urging all Parties to take immediate action in order to demonstrably reduce the illegal trade in bear parts and derivatives. The resolution first noted that the continued illegal trade in bear parts undermines the effectiveness of CITES, and that if actions are not taken to eliminate this trade, poaching may cause declines of wild bears that could lead to the extirpation of certain populations or species. The resolution specifically urged Parties to confirm, adopt or improve their national legislation to control the import and export of bear parts and derivatives, ensuring that the penalties for violations are sufficient to deter illegal trade, and to strengthen measures to control illegal export as well as import of bear parts and derivatives. The resolution further recommended that Parties and non-party states strengthen the dialogue between government agencies, industry, consumer groups and conservation organiza-

tions to ensure that legal trade does not provide a conduit for illegal trade in parts and derivatives of bears listed on Appendix I.

The protection of bears in the United States takes the form of both Federal and State legislation. The brown bear, or grizzly, is listed as threatened under the Endangered Species Act (ESA) in the lower 48 states, but not in Alaska or Canada. The polar bear, found in Alaska and Canada, is protected under the Marine Mammal Protection Act. The status of the American black bear is considered healthy, save for the Louisiana black bear, which is listed as threatened under the ESA. In general, States are responsible for the management of black bear populations, and the regulation of trade in bear parts. According to Traffic USA, at present, 16 States explicitly allow the sale of bear parts; 29 States prohibit the sale; and 5 States are silent on the issue. Of the 16 States allowing sale, 6 States allow the sale from bears legally taken in that State, and 11 States allow the sale from bears legally taken in other States. Two of the five States without regulations do not have bear populations. Violations of State laws may be enforced by the Federal Government pursuant to the Lacey Act.

While there is anecdotal evidence that poaching and commercial trade in bear parts occur in the United States, there is little, if any, formal or comprehensive analysis on this issue. Nor is there any indication that the poaching or commercial trade in the United States is having a detrimental effect on U.S. black bear populations. These populations are generally stable or increasing. Prosecutions by the Federal Government for illegal poaching or trading in bears or bear parts indicate two facts: first, some poaching and illegal trade do occur; and second, the U.S. Fish and Wildlife Service (the Service) maintains a regular enforcement presence with respect to illegal shipments of bears and bear parts. According to the Service, statistics for recent years are as follows: in 1997, there were 19 criminal cases, and $9,998 in fines; in 1996, they were 21 criminal cases, a total of $12,534 in fines, and 1,696 days of jail time imposed; in 1995, there were 23 criminal cases, a total of $21,547 in fines, and 495 days of jail time imposed; in 1994, there were 46 criminal cases, a total of $25,485 in fines, and 169 days of jail time imposed.

With respect to imports, there is evidence that bear parts, in the form of traditional Asian medicine, are imported into the United States. A study published by Traffic North America in January 1998 surveyed 110 shops in the Chinatowns of seven different cities across North America (Atlanta, Los Angeles, New York, San Francisco, Seattle, Toronto, and Vancouver). Eight percent were found to sell medicine containing or claiming to contain bear parts. In New York City and Seattle, the figure was as high as 17 percent. Enforcement statistics from the Service also indicate significant illegal activity at the border: in 1993, 65 shipments containing bears or bear parts were denied entry or exit; in 1996, this number increased to 77; and in 1997, it increased to 95. These statistics, coupled with the study, indicate that despite existing enforcement efforts, illegal products are still reaching markets within the United States. In contrast, only 19 export permits under CITES were issued by the Service between 1991 and 1998, and all but two permits were for forensic evidence or research.

In light of the CITES resolution adopted by the Parties in June 1997, the status of bear populations in Asia and the United States, and the current level of information relating to domestic and international trade, the bill adopts a two-part strategy for the protection of bears. First, the bill provides for immediate prohibitions on imports into the United States, exports from the United States, and foreign trade, of bear viscera and products containing bear viscera, and provides for multilateral discussions to address this trade. Second, a study is required to gather and assess additional information on the illegal trade of bear viscera and products containing bear viscera, and to recommend legislation and other actions based on this information.

OBJECTIVES OF THE LEGISLATION

The purpose of the bill is to ensure the long-term viability of the world's eight bear species by: (1) prohibiting international trade in bear viscera and products containing bear viscera; (2) promoting bilateral and multilateral efforts to eliminate trade in such items; and (3) ensuring that adequate Federal legislation exists with respect to domestic trade in such items.

SECTION-BY-SECTION ANALYSIS

Section 1. Title

This section cites the title of this bill as the "Bear Protection Act of 1998".

Section 2. Findings

This section contains the findings of Congress. All eight extant species of bear—Asian black bear, brown bear, polar bear, American black bear, spectacled bear, giant panda, sun bear, and sloth bear—are listed on Appendix I or II of the CITES. Article XIV of CITES provides that Parties to CITES may adopt stricter domestic measures regarding the conditions for trade, taking, possession, or transport of species on Appendix I or II, and the Parties to CITES adopted a resolution (Conf. 10.8) urging Parties to take immediate action to demonstrably reduce the illegal trade in bear parts and derivatives.

The Asian bear populations have declined significantly in recent years, as a result of habitat loss and poaching due to a strong demand for bear viscera used in traditional medicines and cosmetics. While most American black bear populations are generally stable or increasing, commercial trade could stimulate poaching and threaten certain populations if the demand for bear viscera increases. Prohibitions against the importation into the United States and exportation from the United States of bear viscera and products containing bear viscera will assist in ensuring that the United States does not contribute to the commercial trade in bear viscera.

Section 3. Purposes

This section states that the purpose of the bill is to ensure the long-term viability of the world's eight bear species by: prohibiting international trade in bear viscera and products containing bear

viscera; encouraging bilateral and multilateral efforts to eliminate such trade; and ensuring that adequate Federal legislation exists with respect to domestic trade in bear viscera and products containing bear viscera.

Section 4. Definitions

This section sets forth definitions of terms in the bill. The term "bear viscera" is defined as the body fluids or internal organs, including the gallbladder and its contents but not including blood, of a species of bear. In addition to the gallbladder, internal organs or fluids comprising "viscera" are those found in the abdominal cavity, such as the entrails, guts or intestines. The terms "import," "person," "Secretary," "State," and "transport" are also defined.

Section 5. Prohibited Acts

This section enumerates actions prohibited by the bill. A person shall not import into the United States, or export from the United States, bear viscera or any product, item, or substance derived from bear viscera. It is also prohibited, in foreign commerce, to sell or barter, offer to sell or barter, purchase, possess, transport, deliver, or receive, bear viscera or any product, item, or substance derived from bear viscera. This prohibition does not apply to interstate or intrastate commerce.

The prohibition on imports is intended to reinforce existing laws with similar prohibitions, in an effort to reduce the demand for these items in the United States, and reduce pressures for poaching in Asia and elsewhere, where the bear populations are most endangered. The prohibition on exports would eliminate a path from the United States to foreign markets that are known to trade in bear viscera and products containing bear viscera, which is intended to avoid pressures for poaching in the United States to supply those markets.

Section 6. Penalties and Enforcement

This section provides for fines, penalties and enforcement. A person that knowingly violates section 5 shall be fined under title 18 of the United States Code, imprisoned not more than one year, or both. A person that knowingly violates section 5 may be assessed a civil penalty by the Secretary of not more than $25,000 for each violation. A civil penalty under this subsection shall be also assessed, and may be collected, in the manner in which a civil penalty under the ESA may be assessed and collected under section 11(a) of the ESA (16 U.S.C. 1540(a)). Any bear viscera, or any product, item, or substance sold, imported, or exported, or attempted to be sold, imported, or exported, in violation of this section (including any regulation issued under this section) shall be seized and forfeited to the United States.

After consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the United States Trade Representative, the Secretary shall issue such regulations as are necessary to carry out this section. The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating shall enforce this section in the manner

in which the Secretaries carry out enforcement activities under section 11(e) of the ESA (16 U.S.C. 1540(e)).

Amounts received as penalties, fines, or forfeiture of property under this section shall be used in accordance with section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)).

Section 7. Discussions Concerning Trade Practices

This section provides that the Secretary and the Secretary of State shall discuss issues involving trade in bear viscera with the appropriate representatives of countries trading with the United States that are determined by the Secretary and the United States Trade Representative to be the leading importers, exporters, or consumers of bear viscera, and attempt to establish coordinated efforts with the countries to protect bears.

Section 8. Report

This section requires that, not later than one year after the date of enactment of this bill, the Secretary, in cooperation with appropriate State agencies, shall submit a report to the Senate Committee on Environment and Public Works and the House Committee on Resources. The report shall provide the following: information relating to illegal trade in bear viscera and products containing bear viscera within the United States, and between the United States and foreign countries; an assessment of whether any such trade is affecting, or may affect, any bear populations in the United States or in foreign countries; an assessment of State and Federal law enforcement efforts regarding any such trade; recommendations on additional legislation to address interstate trade in illegally taken bear viscera; and recommendations of additional actions to protect native bears in foreign countries. The bill authorizes $400,000 to be appropriated in fiscal year 1999 to carry out this section.

HEARINGS

The Committee on Environment and Public Works held a hearing on S. 263 on July 7, 1998. Testimony was received from Mr. John Rogers, Deputy Director, U.S. Fish and Wildlife Service; Mr. Gary J. Taylor, Legislative Director, International Association of Fish and Wildlife Agencies; Ms. Ginette Hemley, Vice President for Species Conservation, World Wildlife Fund; Mr. Wayne Pacelle, Senior Vice President, The Humane Society of the United States, and Ms. Kristin Vehrs, Deputy Director, American Zoo and Aquarium Association. Written testimony was submitted by Senator McConnell.

LEGISLATIVE HISTORY

On February 5, 1997, Senator McConnell introduced S. 263, which was referred to the Committee on Environment and Public Works. On Wednesday, July 22, 1998, the committee held a business meeting to consider this bill. Senator Chafee offered an amendment during the full committee business meeting in the form of a substitute, which was adopted by voice vote. S. 263, as amended, was favorably reported by the committee by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of the bill. The bill will have a minor regulatory impact as a result of prohibitions against imports, exports, and foreign commerce in, bear viscera and products containing bear viscera. Under current law, all imports and exports of bear viscera and products containing bear viscera require permits under CITES: for species on Appendix I, commercial trade is prohibited; for species on Appendix II, commercial trade is allowed, but only 19 permits between 1991 and 1998 have been issued by the U.S. Fish and Wildlife Service for exports, all but two for non-commercial purposes. Consequently, the regulatory impact of this bill is expected to be minor. This bill will not have any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that this bill would impose a Federal intergovernmental unfunded mandate on State, local, and tribal governments. Specifically, the prohibition on imports, exports and foreign trade in bear viscera applies to these governments. However, the mandate would impose no significant costs, because these governments do not engage in the actions that would be prohibited by this bill. Additional requirements to conduct a study and engage in multilateral discussions are imposed on Federal agencies. The bill would also impose a new mandate on the private sector, although the direct cost of this mandate would not exceed the annual threshold established under the Unfunded Mandates Reform Act of 1995.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 24, 1998.

Hon. JOHN H. CHAFEE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 263, the Bear Protection Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis (for Federal costs), who can be reached at 226–2860, and Marjorie Miller (for the State and local impact), who can be reached at 225–3220,

and Patrice Gordon (for private-sector impact), who can be reached at 226–2940.

Sincerely,

JUNE E. O'NEILL,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 263, Bear Protection Act of 1998, as ordered reported by the Senate Committee on Environment and Public Works on July 22, 1998

Summary

Assuming appropriation of the authorized amount, CBO estimates that implementing S. 263 would cost the Federal government $400,000 in fiscal year 1999 to prepare a required report to the Congress. Carrying out other provisions, most of which are related to enforcement activities, would have no significant impact on the Federal budget. S. 263 could affect both direct spending and receipts; therefore, pay-as-you-go procedures would apply. The effect of any such changes, however, would be minimal and largely offsetting.

S. 263 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but this mandate would impose no significant costs on State, local, or tribal governments. Therefore, the threshold established in UMRA ($50 million per year in 1996, adjusted annually for inflation) would not be exceeded. The bill would have no other significant impact on the budgets of those governments.

S. 263 also would impose private-sector mandates as defined by UMRA, but CBO estimates that the direct costs of those mandates would not exceed the annual threshold established in UREA ($ 100 million in 1996, adjusted annually for inflation).

Description of the bill's major provisions

S. 263 would prohibit any person from selling, importing, exporting, possessing, or transporting products containing any substance derived from bear parts. The bill would establish both criminal fines and civil penalties to be imposed on anyone who violates the prohibition. In addition, it would require that products found in the possession of violators be seized and forfeited to the United States. The bill's fines and product forfeiture provisions are similar to those imposed under the Lacey Act, which prohibits sales, imports, and other transactions involving endangered species. S. 263 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 (ESA). Section 8 would require the U.S. Fish and Wildlife Service (USFWS) to submit a report, within one year of enactment, assessing the effects of illegal trade in bear parts. The bill would authorize the appropriation of $400,000 to prepare the report.

Estimated cost to the Federal Government

Assuming appropriation of the authorized amount, the USFWS would incur costs of $400,000 to prepare the report required by section 8.

CBO expects that implementing S. 263 would not increase the enforcement responsibilities of Federal agencies because they would carry out the legislation in conjunction with a number of other very similar laws, such as the ESA. No additional enforcement efforts would be necessary except for the initial promulgation of regulations by the USFWS in consultation with other agencies, such as the Department of Health and Human Services.

S. 263 could affect revenues from civil and criminal fines. CBO estimates, however, that any increase in revenues would be less than $500,000 annually. Moreover, such changes would be offset by increases in direct spending from the crime victims fund (where criminal fines are deposited) or the resource management account of the USFWS (where civil fines are deposited and used for rewards to informers and other program costs).

Pay-as-you-go procedures

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation offsetting direct spending or receipts. Because S. 263 could affect both direct spending and receipts, pay-as-you-go procedures would apply, but CBO estimates that any such effects would not be significant.

Estimated impact on State, local, and tribal governments

S. 263 contains an intergovernmental mandate as defined in UMRA, because the bill's prohibitions on trade in bear parts apply to State and local governments. This mandate would impose no significant costs on these governments, however, because they do not usually engage in the prohibited activities. The bill would have no other significant impact on the budgets of State, local, or tribal governments.

Estimated impact on the private sector

S. 263 would impose new private-sector mandates as defined by UMRA, but CBO estimates that the direct costs of those mandates would not exceed the annual threshold established in UMRA. Under current law, anyone that wishes to import or export bear viscera or products containing bear viscera must obtain a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Under S. 263, CITES permits would no longer be allowed for the United States. Because most of the CITES permits granted for the United States in the last several years have not been for commercial trade, CBO concludes that the amount of trade affected by S. 263 would be small. Thus, the mandates in this bill would not impose significant costs on the private sector.

Estimate prepared by: Federal Costs: Deborah Reis (226–2860); Impact on State, Local, and Tribal Governments: Marjorie Miller (225–3220); Impact on the Private Sector: Patrice Gordon (226–2940).

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are to be shown. This bill does not change existing law.

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