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{ REPORT  
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### FISH AND WILDLIFE REVENUE ENHANCEMENT ACT OF 1998

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JULY 31, 1998.—Ordered to be printed

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

### REPORT

[To accompany S. 2094]

The Committee on Environment and Public Works, to which was referred the bill (S. 2094), to amend the Fish and Wildlife Improvement Act of 1978 to enable the Secretary of the Interior to more effectively use the proceeds of sales of certain items, having considered the same, reports favorably with amendments and recommends that the bill, as amended, do pass.

#### GENERAL STATEMENT AND BACKGROUND

The U.S. Fish and Wildlife Service (the Service), in conjunction with other Federal and State agencies, implements and enforces the Federal laws relating to fish, wildlife and plants in the United States. In enforcing these laws, the Service may obtain forfeited or abandoned items derived from fish, wildlife and plants. These items include, for example, boots, belts, wallets, and jackets, made from skins and furs. The large majority of items are derived from python, monitor lizard and caiman. After being acquired by the Service, almost all of these items are shipped to the National Wildlife Property Repository in Commerce City, Colorado. The Repository serves as a central location for storage and disposal of wildlife and related property items, and currently houses approximately 450,000 items, with another 50,000 items in possession by the Service but stored elsewhere.

The Fish and Wildlife Improvement Act (16 U.S.C. 7421 et seq.) gives the Secretary of the Interior and the Secretary of Commerce broad authority to dispose of the forfeited or abandoned property

in any manner that the Secretary deems appropriate, including donation, loan, sale, or destruction. Other laws, such as the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 et seq.), and the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 701 et seq.), prohibit the sale of items derived from endangered or threatened species, marine mammals, and migratory birds.

With respect to the sale of property, forfeited and abandoned property receive disparate treatment under existing law. While both forfeited and abandoned items may be sold, only revenues generated from the sale of forfeited items go to the Service. Revenues generated from the sale of abandoned items go to the General Treasury. This difference arises from provisions in the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)) and the ESA (16 U.S.C. 1540(d)), which provide that sums received from penalties, fines, or forfeiture of property may be used to pay rewards and costs for temporary care of fish, wildlife, or plants pending disposition of civil or criminal proceedings.

One manner in which the Service disposes of items derived from fish, wildlife or plants is to loan them to scientific and educational institutions, such as schools, universities, museums and zoos, as well as other conservation agencies, for educational and research purposes. The Service currently runs two programs for this purpose: Cargo for Conservation, for schools, and Suitcase for Survival, for scientific and higher educational institutions. The Service pays all shipping and handling costs, approximately \$50 per education kit. The programs are relatively small: of the almost 150,000 items received by the Repository between July 1, 1995 and December 31, 1997, the Service distributed only 7,200 items in 383 education kits to various organizations.

Under the Bald and Golden Eagle Protection Act (16 U.S.C. 668a et seq.), the Service also loans eagle carcasses and their parts to Native Americans for religious and ceremonial purposes. The Service has established the National Eagle Repository, also located at Commerce City, Colorado, to receive, process, and distribute these items. In 1997, the National Eagle Repository filled 1,459 requests from Native Americans for eagles (984 requests), eagle feathers (229 requests) and other raptors (246 requests). The Service covers all expenses associated with shipping and processing the eagles.

Apart from these programs, the items remain in storage at the National Wildlife Property Repository. The volume of items received at the Repository far exceeds the amount of material needed for scientific, educational, and related programs. The Repository currently has more than 200,000 forfeited and abandoned wildlife items that are surplus to the needs for educational or scientific use and that can legally be sold. This excludes wildlife or related property for which the sale is prohibited by any other Federal law, such as threatened or endangered species, marine mammals, and migratory birds.

However, abandoned items constitute approximately 90 percent of the inventory of the Repository, so that any revenue generated from a sale of these items would go to the General Treasury, rather than to the Service. Consequently, the Service has no funds to sell the items, which slowly deteriorate in storage. In fiscal year 1997,

the Service received \$310,000 in appropriated funds to operate and maintain the National Wildlife Property Repository and the National Eagle Repository. After salaries and benefits, \$61,000 remained for operations, and of this, only \$30,000 was available for the Cargo for Conservation and Suitcase for Survival programs and loans to Native Americans.

If the Service were to hold a sale through a public auction, it would expect to sell the 200,000 items currently available for sale. This represents a ten year backlog of items, and the Service has estimated that proceeds of a sale of these items through an auction would exceed \$1 million. Proceeds and frequency of subsequent sales will depend on future inventories and market prices of items.

#### OBJECTIVES OF THE LEGISLATION

S. 2094 would amend the Fish and Wildlife Improvement Act of 1978 to make proceeds from the disposal of abandoned fish, wildlife, plants, and other property available to the Secretaries of the Interior and Commerce. In addition, it would expand the use of funds received pursuant to the Lacey Act, the ESA, and the Fish and Wildlife Improvement Act to pay costs associated with appraisal, sale, storing, and shipping of forfeited and abandoned items, as well as for rewards under the Lacey Act and the ESA.

The purpose of this bill is only to redirect proceeds from actions already authorized under existing law, in order to make it financially viable for the Service to sell items derived from fish, wildlife and plants. In deciding which of these items should be sold, the Secretary should remain cognizant of the purposes of fish and wildlife conservation laws. For example, a majority of the items in the Repository that can be sold legally are derived from species that are listed on Appendix II of the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES). These species, while not necessarily threatened with extinction, may become so in the future unless trade is subject to strict regulation. Other species may be legally sold even though they may be rare or declining species, or species that are likely to become endangered or threatened in the future, such as candidates for listing as endangered or threatened.

The Secretary should develop guidance for determining what items should be sold. The guidance should ensure that no items are sold that may undermine species conservation efforts domestically or overseas. It is likely that these determinations will most appropriately be made by relevant biologists within the Service, such as the CITES scientific authority. In addition, the list of items to be sold should be made available to the public prior to the date of sale.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short Title*

This section provides that the Act may be cited as the “Fish and Wildlife Revenue Enhancement Act of 1998.”

*Section 2. Findings and purposes*

This section contains the findings and purposes of the bill. Congress finds that the Service is responsible for storage and disposal of items derived from fish, wildlife, and plants that have become the property of the United States, and distributes many of these items for educational and scientific uses, and for religious purposes of Native Americans. Unless otherwise prohibited by law, the Service may dispose of some of those items by sale. Congress also finds that the revenue from the sale of abandoned items is not available to the Service, and in making such revenue available, the Service will be able to cover costs incurred in shipping, storing, and disposing of these items, and to make more extensive distributions of these items for educational, scientific, and Native American religious purposes. The purposes of the bill are to make proceeds from sales of abandoned items derived from fish, wildlife, and plants available to the Service and to authorize the use of those proceeds to cover costs incurred in shipping, storing, and disposing of them.

*Section 3. Use of proceeds of certain sales*

This section amends section 3(c) of the Fish and Wildlife Improvement Act of 1978 by providing that the Secretary of the Interior and the Secretary of Commerce may each expend any revenues received from the disposal of fish, wildlife, plants or other items abandoned or forfeited to the United States under any laws administered by either Secretary relating to fish, wildlife, or plants, as well as all sums referred to in the first sentence of section 11(d) of the Endangered Species Act and the first sentence of section 6(d) of the Lacey Act Amendments of 1981 for certain uses. These uses are: (1) to make payments in accordance with those sections; and (2) to pay costs associated with: shipping those items to and from the place of storage, sale, or temporary or final disposal; storage of those items; appraisal of those items; sale or other disposal of those items in accordance with applicable law; payment of any valid liens or other encumbrances on those items; and, in the case of the Secretary of the Interior, processing and shipping of eagles and other migratory birds for Native American religious purposes.

The bill provides six broad categories for which funds may be utilized. Shipping includes the cost of shipping, packaging material, and related supplies. Storage includes species identification, property appraisals, inventories and security. Presently, items are manually shelved and stored on open warehouse shelving, making them susceptible to rapid deterioration, rodents and insects. It is expected that proceeds would be used to improve current storage facilities and operations. Appraisal includes costs associated with appraisals, either by the Service or a contractor, in preparation for a sale. Sale or disposal includes costs associated with various means of disposing of the items, such as auctioneer commissions or landfill fees. Payment of valid liens and other encumbrances includes Federal payment of any outstanding balance of a lien, in order to declare the item property of the United States and avoid returning it to either the lien holder or the defendant.

This section also amends section 3(c) of the Fish and Wildlife Improvement Act of 1978 to explicitly prohibit the sale of any species of fish, wildlife, or plant, or derivative thereof, if the sale is prohib-

ited by another law. As previously noted, the ESA, the MMPA, and the MBTA prohibit the sale of endangered and threatened species, marine mammals, and migratory birds, respectively. However, the Fish and Wildlife Improvement Act does not explicitly refer to these laws, and indeed, provides that all fish, wildlife, and plants or other items abandoned or forfeited shall be disposed of by the Secretary in such a manner as he deems appropriate, notwithstanding any other provision of law. This new paragraph is intended to ensure that this broad authority does not supersede other Federal laws protecting fish, wildlife, and plants.

The bill does not delete the phrase “notwithstanding any other provision of law.” The committee refrained from deleting this phrase because there are other Federal laws that might inappropriately interfere with the implementation of the Fish and Wildlife Improvement Act of 1978. Significant examples are laws relating to Government properties generally codified in title 40 of the United States Code, and laws relating to customs laws generally codified in title 19 of the United States Code.

#### HEARINGS

The committee held a hearing on S. 2094 on July 7, 1998. Testimony was received from Mr. John Rogers, Deputy Director of the U.S. Fish and Wildlife Service; 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.

#### LEGISLATIVE HISTORY

S. 2094 was introduced by Senator Allard on May 20, 1998, co-sponsored by Senator Chafee, and was referred to the Committee on Environment and Public Works. On July 22, 1998, the committee held a business meeting to consider this bill. Senator Allard offered an amendment to prohibit the sale of items derived from any species of fish, wildlife or plants, or derivative thereof, whose sale is prohibited by another Federal law. The amendment was adopted by voice vote, and the bill, as amended, was favorably reported 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 does not create any additional regulatory burdens, and will not have any effect 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 no Federal intergovernmental unfunded mandates on State, local, or tribal governments. All of its governmental directives are

imposed on Federal agencies. The bill does not directly impose any private sector mandates.

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. 2094, the Fish and Wildlife Revenue Enhancement Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis (for Federal costs), who can be reached at 226-2860.

Sincerely,

JUNE E. O'NEILL,  
*Director.*

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CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*S. 2094, Fish and Wildlife Revenue Enhancement Act of 1998, as ordered reported by the Senate Committee on Environment and Public Works on July 22, 1998*

CBO estimates that enacting S. 2094 would increase offsetting receipts and direct spending (of such receipts) by about \$1 million in fiscal year 1999 and less than \$100,000 annually thereafter. Because the bill would affect direct spending, pay-as-you-go procedures would apply, but the net impact on the federal budget would be minimal because both offsetting receipts and spending from such collections would increase by similar amounts each year. S. 2094 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

S. 2094 would allow the Secretaries of Commerce and the Interior to spend, without further appropriation, any offsetting receipts earned from the sale of certain items forfeited or abandoned to the United States under laws such as the Endangered Species Act and the Lacey Act. The agencies that administer these laws—the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) could use the new receipts to pay for costs of storing forfeited and abandoned goods, shipping them to and from storage facilities, appraising their value, selling or otherwise disposing of them, and other related activities.

Under current law, the USFWS and the NMFS may already sell both forfeited and abandoned items. The agencies may only retain

and spend the receipts from forfeited goods, however; receipts derived from abandoned goods are deposited into the general fund of the Treasury from which they must be appropriated to be spent. As a consequence, the agencies rarely sell abandoned items. By allowing the agencies to retain and spend the proceeds from sales of both types of items, S. 2094 would provide the incentive and means to auction off both the existing inventory of goods and those collected in the future. Based on information provided by the USFWS, CBO estimates that that agency would raise additional offsetting receipts of about \$1 million in 1999 from selling the existing inventory of abandoned goods. We estimate that future sales (once the existing backlog has been disposed of) would bring in about one-tenth of this amount annually. Information provided by the NMFS indicates that the effect on its receipts and spending would be much smaller because that agency does not generally seize or keep the types of abandoned goods that could be sold under the bill's authority.

The CBO staff contact is Deborah Reis, who can be reached at 226-2860. This estimate was 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 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:

#### UNITED STATES CODE

#### TITLE 16—CONSERVATION

#### CHAPTER 9—FISH AND WILDLIFE SERVICE

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Sec. 742l. ENFORCEMENT AUTHORITY FOR THE PROTECTION OF FISH AND WILDLIFE RESOURCES.—

(a) LAW ENFORCEMENT TRAINING PROGRAMS.—(1) In order to provide for and encourage training, research, and development for the purpose of improving fish and wildlife law enforcement and developing new methods for the prevention, detection, and reduction of violation of fish and wildlife laws, and the apprehension of violators of such laws, the Secretary of the Interior and the Secretary of Commerce may each—

(A) establish and conduct national training programs to provide, at the request of any State, training for State fish and wildlife law enforcement personnel;

(B) develop new or improved approaches, techniques, systems, equipment, and service to improve and strengthen fish and wildlife law enforcement; and

(C) assist in conducting, at the request of any appropriate State official, local or regional training programs for the training of State fish and wildlife law enforcement personnel. Such training programs shall be conducted to the

maximum extent practicable through established programs.

(2) There are authorized to be appropriated beginning with fiscal year 1980 such funds as may be necessary to carry out the purposes of subsection (b) of this section, and the Secretary of the Interior and the Secretary of Commerce may each require reimbursement from the States for expenditures made pursuant to subsections (b)(1)(A) and (C) of this section.

(b) LAW ENFORCEMENT COOPERATIVE AGREEMENT.—Notwithstanding any other provision of law, the Secretary of the Interior and the Secretary of Commerce may each utilize by agreement, with or without reimbursement, the personnel, services and facilities of any other Federal or State agency to the extent he deems it necessary and appropriate for effective enforcement of any Federal or State laws on lands, waters, or interests therein under his jurisdiction which are administered or managed for fish and wildlife purposes and for enforcement of any laws administered by him relating to fish and wildlife. Persons so designated by either Secretary, who are not employees of another Federal agency—

(1) shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, competitive examination, rates of compensation, and Federal employee benefits, but may be considered eligible for compensation for work injuries under subchapter III of chapter 81 of title 5;

(2) shall be considered to be investigative or law enforcement officers of the United States for the purposes of the tort claim provisions of title 28;

(3) may, to the extent specified by either Secretary, search, seize, arrest, and exercise any other law enforcement functions or authorities under Federal laws relating to fish and wildlife, where such authorities are made applicable by this or any other law to employees, officers, or other persons designated or employed by either Secretary; and

(4) shall be considered to be officers or employees of the Department of the Interior or the Department of Commerce, as the case may be, within the meaning of sections 111 and 1114 of title 18.

(c) DISPOSAL OF ABANDONED OR FORFEITED PROPERTY.—[Notwithstanding] (1) *IN GENERAL.*—Subject to paragraph (2), notwithstanding any other provision of law, all fish, wildlife, plants, or any other items abandoned or forfeited to the United States under any laws administered by the Secretary of the Interior or the Secretary of Commerce relating to fish, wildlife, or plants, shall be disposed of by either Secretary in such a manner as he deems appropriate (including, but not limited to, loan, gift, sale, or destruction).

(2) *PROHIBITION ON SALE OF CERTAIN ITEMS.*—In carrying out paragraph (1), the Secretary of the Interior and the Secretary of Commerce may not sell any species of fish, wildlife, or plant, or derivative thereof, for which the sale is prohibited by another Federal law.

(3) *USE OF REVENUES.*—The Secretary of the Interior and the Secretary of Commerce may each expend any revenues received from the disposal of items under paragraph (1), and all

*sums referred to in the first sentence of section 11(d) of the Endangered Species Act of 1973 (16 U.S.C. 1540(d)) and the first sentence of section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))—*

*(A) to make payments in accordance with those sections; and*

*(B) to pay costs associated with—*

*(i) shipping items referred to in paragraph (1) to and from the place of storage, sale, or temporary or final disposal, including temporary or permanent loan;*

*(ii) storage of the items, including inventory of, and security for, the items;*

*(iii) appraisal of the items;*

*(iv) sale or other disposal of the items in accordance with applicable law, including auctioneer commissions and related expenses;*

*(v) payment of any valid liens or other encumbrances on the items and payment for other measures required to clear title to the items; and*

*(vi) in the case of the Secretary of the Interior only, processing and shipping of eagles and other migratory birds, and parts of migratory birds, for Native American religious purposes.*

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