

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

September 29, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff—Melissa Beaumont
Subcommittee on Oversight & Investigations (x5-7107)

Mark-Up: **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.
October 3 & 4, 2017; 1334 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. Abraham, Ralph Lee (R-LA), Rep. Babin, Brian (R-TX), Rep. Burgess, Michael C. (R-TX), Rep. Cole, Tom (R-OK), Rep. Crawford, Eric A. "Rick" (R-AR), Rep. Duncan, Jeff (R-SC), Rep. Farenthold, Blake (R-TX), Rep. Gianforte, Greg (R-MT), Rep. Gosar, Paul A. (R-AZ), Rep. Hunter, Duncan D. (R-CA), Rep. Johnson, Mike (R-LA), Rep. King, Steve (R-IA), Rep. LaMalfa, Doug (R-CA), Rep. Lamborn, Doug (R-CO), Rep. Marshall, Roger W. (R-KS), Rep. Olson, Pete (R-TX), Rep. Peterson, Collin C. (D-MN), Rep. Sessions, Pete (R-TX), Rep. Tipton, Scott R. (R-CO), Rep. Westerman, Bruce (R-AR), Rep. Womack, Steve (R-AR), Rep. Aderholt, Robert (R-AL), Rep. Franks, Trent (R-AZ), Rep. Higgins, Clay (R-LA), Rep. Yoho, Ted (R-FL)

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 (ESA) through the captive bred wildlife (CBW) program.²

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>.

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 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 Those in the industry have publicly expressed these difficulties they face under the current implementation of ESA. One such group, the Parrot Fund, has stated that “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.”⁷

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.⁸ For example, the owner of the Zoo of Acadiana, has stated that his zoo’s access to genetic diversity has been hampered by the listing of nonnative species as endangered and that managed breeding programs such as theirs “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.”⁹ Stakeholders also are concerned that the CBW program does not consider their species expertise in CBW permit or programmatic decisions.¹⁰ According to the President of the National Aquaculture Program, there is currently little flexibility within the ESA to allow for recognition of the expertise that exists within the aquaculture community, which could help further conservation and recovery of at-risk species.¹¹

³See, Letter from John Seyjagat, Executive Director, Zoological Association of America, to Rep. Louie Gohmert, Member, U.S. House of Representatives (July 6, 2017) *available at* https://naturalresources.house.gov/uploadedfiles/gohmert_zaa_to_gohmert_re_hr_2603.pdf.

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) *available at* https://naturalresources.house.gov/UploadedFiles/Gohmert_Parrot_Fund_to_Gohmert_re_HR_2603.pdf.

⁷ *Id.*

⁸ See, Letter from Matt Oldenburg, owner, Zoo of the Acadiana, to Rep. Louie Gohmert, Member, U.S. House of Representatives (July 7, 2017) *available at* https://naturalresources.house.gov/uploadedfiles/gohmert_zoosiana_to_gohmert_re_hr_2603.pdf.

⁹ *Id.*

¹⁰ See, Letter from Jim Parsons, President, National Aquaculture Association, to Rep. Louie Gohmert, Member, U.S. House of Representatives (July 7, 2017) *available at* https://naturalresources.house.gov/uploadedfiles/gohmert_naa_to_gohmert_re_hr_2603.pdf.

¹¹ *Id.*

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 Wild Fauna and Flora (CITES), an international agreement between 183 member nations that protects endangered nonnative species from the perils of international wildlife trafficking.¹²

Previous Committee Activity

On July 19, 2017, the Committee held a hearing that examined ESA reform legislation, including H.R. 2603.¹³ The legislation considered would make various reforms to the ESA to improve implementation of the Act and aid in achieving the original intent of the ESA to improve outcomes for species.¹⁴ During the hearing, 20 letters of support were entered into the record expressing support for H.R. 2603, which describe how the legislation would alleviate the regulatory burden many legal breeders currently face when moving species across state lines.¹⁵ One such letter from the Zoological Association of America discussed its reliance on the ability to move individual nonnative species in order to maintain robust, captive populations for successful breeding and conservation of nonnative endangered species.¹⁶ The association writes that the current “onerous and prohibitive regulation of captive-bred, nonnative species under the ESA is counter-productive to conservation efforts”.¹⁷ The passage of H.R. 2603 would help remove some of these barriers to conservation and recovery of nonnative species through legal, captive breeding programs within the U.S.

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.*

¹² 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>.

¹³ Legislative Hearing of the Committee on Natural Resources on H.R. 424, H.R. 717, H.R. 1274, H.R. 2603, and H.R. 3131, July 19, 2017, 115th Cong. (2017).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Letter from John Seyjagat, Executive Director, Zoological Association of America, to Rep. Louie Gohmert, Member, U.S. House of Representatives (July 6, 2017) available at https://naturalresources.house.gov/uploadedfiles/gohmert_zaa_to_gohmert_re_hr_2603.pdf.

¹⁷ *Id.*

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.

Cost

No CBO cost estimate is available at this time.

Administration Position

In written testimony prepared for a July 19, 2017 legislative hearing on five ESA reform bills, FWS Deputy Director Greg Sheehan stated that the Service supports the overall goals of these pieces of legislation, which included H.R. 2603, to improve implementation of ESA and species recovery.¹⁸

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."

(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:

¹⁸Legislative Hearing of the Committee on Natural Resources on H.R. 424, H.R. 717, H.R. 1274, H.R. 2603, and H.R. 3131, July 19, 2017, 115th Cong. (2017) (Statement of Greg Sheehan, Deputy Director, FWS).

"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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