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SENATE

{ REPORT
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A BILL TO AMEND TITLE 18, UNITED STATES CODE, TO
INCLUDE CONSTRICTOR SNAKES OF THE SPECIES
PYTHON GENERA AS AN INJURIOUS ANIMAL

MAY 5, 2010.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public
Works, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany S. 373]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 373) to amend section 42 of title 18, United States Code, to include constrictor snakes of the species *Python molurus* (including *Python bivittatus* (also known as “*Python molurus bivittatus*”), *Broghammerus reticulatus* (also known as “*Python reticulatus*”), *Python sebae*, *Python natalensis* (also known as “*Python sebae natalensis*”), *Boa constrictor*, *Eunectes notaeus*, *Eunectes deschauenseei*, *Eunectes murinus*, or *Eunectes beniensis* after “*polymorpha*” as injurious animals, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

GENERAL STATEMENT AND BACKGROUND

This bill, as introduced, would amend the Lacey Act to add constrictor snakes of the species Python genera to the list of injurious species, found in 18 U.S.C. §42(a)(1). This action would halt the importation and interstate trade of the listed species.

Thousands of Burmese Pythons are now breeding in the Florida Everglades, and threaten many imperiled species and other wild-

life. In addition other species of large snakes are or may be breeding in the Everglades including the Boa Constrictors and Northern African Pythons. Addressing the threat of invasive species is a key component of protecting and restoring the rich biological diversity of the Everglades ecosystem.

In June 2006, the U.S. Fish and Wildlife Service (USFWS) received a request from the South Florida Water Management District to list Burmese Pythons as an injurious species under the Lacey Act. At the time the petition was submitted, no scientific information had been compiled on Burmese Pythons that would enable a rigorous assessment of risk and potential impacts to the Everglades and other ecosystems. As a result, in 2007, USFWS partnered with the National Park Service to jointly provide funds to the U.S. Geological Survey (USGS) towards completion of a risk assessment of nine non-native boa, anaconda, and python species considered invasive or potentially invasive in the United States. USGS finalized the risk assessment report entitled: *Giant Constrictors: Biological and Management Profiles and an Establishment Risk Assessment for Nine Large Species of Pythons, Anacondas, and the Boa Constrictor* on October 13, 2009. The assessment considered what effects these species could have on the ecology of the United States if they became established in the wild.

According to the assessment, of the nine large constrictor snakes that were evaluated, five were shown to pose a high risk to the health of the ecosystem, including the Burmese Python, Northern African Python, Southern African Python, Yellow Anaconda, and Boa Constrictor. The remaining four large constrictors—the Reticulated Python, Green Anaconda, Beni or Bolivian Anaconda, and Deschauensee's Anaconda—were shown to pose a medium risk. None of the large constrictors that were assessed was classified as low risk. As compared to many other vertebrates, giant constrictors pose a relatively high risk as potential invasive species, especially in terms of risk to stability of native ecosystems. There are currently no tools available that appear adequate for eradication of an established population of giant snakes once they have spread over a large area.

The introduced version of S. 373 proposed listing species of the entire *Python* genus as injurious. During a hearing of the Committee on Environment and Public Works Subcommittee on Water and Wildlife on December 3, 2009, USFWS testified that some of the species in the genus *Python* are not considered large constrictors and may not pose a threat. The USFWS recommended that S. 373 be amended to specifically include the nine species of large constrictor snakes that USGS evaluated in its risk assessment. In a letter dated December 7, 2009, to Senator Bill Nelson, the bill's sponsor, Secretary of the Interior, Ken Salazar, also recommended that S. 373 be amended to include only the nine species of giant constrictor snakes included in the USGS risk assessment. The full committee considered the bill and adopted an amendment in the nature of a substitute to list only the nine species of constrictor snakes addressed in the October 13, 2009, USGS risk assessment as injurious species.

OBJECTIVES OF THE LEGISLATION

Amends the Lacey Act to include nine species of giant constrictor snakes to the list of injurious species that are prohibited from being traded in interstate commerce or imported into the United States.

SECTION-BY-SECTION ANALYSIS

Section 1. Importation of shipment of injurious species

Section 1 amends the Lacey Act to add the following non-native constrictor snakes to the list of injurious species that are prohibited from being traded in interstate commerce or imported into the United States: Burmese Python (*Python molurus* including *Python bivittatus* (also known as “*Python molurus bivittatus*”), Reticulated Python (*Broghammerus reticulatus* (also known as “*Python reticulatus*”), Northern African Python (*Python sebae*), Southern African Python (*Python natalensis* (also known as “*Python sebae natalensis*”), Boa Constrictor (*Boa constrictor*), Yellow Anaconda (*Eunectes notaeus*), DeSchauensee’s Anaconda (*Eunectes deschauenseei*), Green Anaconda (*Eunectes murinus*), and Beni or Bolivian Anaconda (*Eunectes beniensis*).

Parenthetical references for species names were included in the amended text to reference the Convention on International Trade in Endangered Species (CITES) taxonomy and thereby minimize confusion for enforcement and prosecution of violations of the Act. It is the Committee’s intent that the USFWS amend its regulations, as necessary, to reflect any future taxonomic re-designations of the included species.

LEGISLATIVE HISTORY

On February 3, 2009, Senator Bill Nelson (FL–D) introduced legislation to amend section 42 of title 18, United States Code, to list all species of the entire *Python* genus as injurious. The bill was received, read twice, and referred to the Senate Committee on Environment and Public Works. A companion bill was introduced in the House of Representatives on June 10, 2009, by Representative Meek (D–FL–17).

The Water and Wildlife Subcommittee of the Environment and Public Works Committee held a legislative hearing on December 3, 2009, entitled “Threats to Native Wildlife Species,” to consider a number of wildlife bills, including S. 373.

On December 10, 2009, the full Environment and Public Works Committee met to consider the bill and adopted an amendment in the nature of a substitute to add the nine species of constrictor snakes addressed in the October 13, 2009, USGS risk assessment. S. 373 as amended was reported favorably by voice vote with Senator Inhofe recorded as voting no.

HEARINGS

On July 8, 2009, the Senate Committee Environment and Public Works, Subcommittee on Water and Wildlife and Subcommittee on Oversight held a joint oversight hearing entitled “Threats to Native Wildlife Species.” This hearing examined threats to native wildlife species from disease and from invasive species. Senator Bill Nelson

testified at this hearing on his bill and the dangers Burmese Pythons pose to Florida's ecosystems and to human safety.

On December 3, 2009, the Water and Wildlife Subcommittee of the Senate Environment and Public Works Committee held a legislative hearing on multiple wildlife and invasive species bills, including S. 373. The Deputy Director of the USFWS as well as a representative of The Nature Conservancy testified in support of the legislation provided it was limited to the nine species of non-native constrictor snakes evaluated by the USGS.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 373 on December 10, 2009. The bill was ordered to be reported favorably with an amendment in the nature of a substitute by voice vote with Senator Inhofe recorded as voting no.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 373 does not create any additional regulatory burdens, nor will it cause 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 noted that the Congressional Budget Office (CBO) has found, "the direct costs of the mandates would fall below the annual thresholds established in UMRA [Unfunded Mandates Reform Act] for intergovernmental and private-sector mandates (\$70 million and \$141 million in 2010, respectively, adjusted annually for inflation)."

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JANUARY 21, 2010.

Hon. BARBARA BOXER,
Chairman, Committee on the Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 373, a bill to amend title 18, United States Code, to include constrictor snakes of the species Python genera as an injurious animal.

If you wish further details on this estimate, I will be pleased to provide them.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 373—A bill to amend title 18, United States Code, to include constrictor snakes of the species Python genera as an injurious animal

CBO estimates that implementing S. 373 would have no significant cost to the federal government. Enacting the bill could affect direct spending and revenues, but CBO estimates that any such effects would not be significant.

S. 373 would make it a federal crime to import or ship certain snakes into the United States. Because the bill would establish a new offense, the government would be able to pursue cases that it otherwise would not be able to prosecute. We expect that S. 373 would apply to a relatively small number of offenders, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under S. 373 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

Under S. 373, entities such as zoos would need permits to import or transport the affected species of snakes. Based on information provided by the U.S. Fish and Wildlife Service (USFWS), which issues permits for such activities, CBO estimates that enacting the bill could result in an increase in offsetting collections (for permits) and associated spending. We estimate that such increases would be minimal, however, and would offset each other in most years, resulting in no significant net cost.

By prohibiting the importation and interstate transport of several species of python, anaconda, and boa constrictor without a permit from USFWS, the bill would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act, UMRA. USFWS is authorized to issue permits for scientific, medical, educational, or zoological reasons.

The cost to public and private entities that are eligible for permits, such as zoos or research centers, would be the expense of obtaining those permits. Fees for private entities would be \$25 or \$100 depending on the activity being authorized. (USFWS regulations prohibit the agency from charging permit fees to state, local, or tribal entities.) The cost of the mandate to those ineligible for a permit, including private importers, breeders, retailers, shippers, and owners of those snakes, would be the forgone net income from the inability to sell or transport the animals across state lines. According to the USFWS, exporting those species of snakes would be allowed, however, only from ports designated by the USFWS.

Based on information about the cost of permits from the USFWS and information gathered from individuals in the industry about the value of shipments, sales, and imports of species covered by the legislation, CBO estimates that the direct costs of the mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$70 million and \$141 million in 2010, respectively, adjusted annually for inflation).

On October 9, 2009, CBO transmitted a cost estimate for H.R. 2811, a bill to amend title 18, United States Code, to include constrictor snakes of the species Python genera as an injurious animal, as ordered reported by the House Committee on the Judiciary on July 29, 2009. The two bills are similar, and the CBO cost estimates are the same.

MINORITY VIEWS OF SENATOR INHOFE

BACKGROUND

In 2009, the Committee on Environment and Public Works held a series of hearings on S. 373, along with several other bills that addressed the possible threats posed by particular non-native species to the environment. In the context of S. 373, I believe we must be cautious about new laws that interfere with the Fish and Wildlife Service's management practices, as they could impose changes to environmental laws with little or no input from stakeholders, industry and other federal agencies. As we chart a course of action to address harmful species, we must be careful to avoid subverting or overturning established processes within the Department of Interior for determining the threat a particular species may have on the environment.

Any policy that Congress considers for invasive species should include a reasonable "risk analysis" process with input from states and industry. Unfortunately, S. 373 takes a different and less effective approach and was reported out of Committee on December 10, 2009 despite my opposition.

PROPOSED RULE FOR LISTING GIANT CONSTRICTOR SNAKES AS INJURIOUS WILDLIFE

On March 11, 2010, the United States Fish and Wildlife service announced that it would move forward with the official administrative process of banning the importation, export and interstate transport of 9 species of constrictor snakes. I believe this is the appropriate way to proceed in assessing the threats posed by various constrictor snake species. Unlike S. 373, this rule-making process will ensure that all stakeholder views and sound peer-reviewed science are given fair consideration.

This bill circumvents the established process for listing a species as "injurious" under the Lacey Act and sets a dangerous precedent for future instances of legislative fiat as it pertains to scientific determinations of species and their habitats. I would oppose moving forward with this bill, in light of the Fish and Wildlife Service's ongoing rule making process to address the potential threats constrictor snakes may pose to human health and the environment.

JAMES M. INHOFE.

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:

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TITLE 18—CRIMES AND CRIMINAL PROCEDURE

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SEC. 42. Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums; regulations.

(a)(1) The importation into the United States, any territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, of the mongoose of the species *Herpestes auro-punctatus*; of the species of so-called "flying foxes" or fruit bats of the genus *Pteropus*; of the zebra mussel of the species *Dreissena polymorpha*; of any existing or subsequently discovered member of the species *Python molurus* (including *Python bivittatus* (also known as "*Python molurus bivittatus*")), *Broghammerus reticulatus* (also known as "*Python reticulatus*"), *Python sebae*, *Python natalensis* (also known as "*Python sebae natalensis*"), *Boa constrictor*, *Eunectes notaeus*, *Eunectes deschauensei*, *Eunectes murinus*, or *Eunectes beniensis* and such other species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, brown tree snakes, or the offspring or eggs of any of the foregoing which the Secretary of the Interior may prescribe by regulation to be injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States, is hereby prohibited. All such prohibited mammals, birds, fish (including mollusks and crustacea), amphibians, and reptiles, and the eggs or offspring therefrom, shall be promptly exported or destroyed at the expense of the importer or consignee. Nothing in this section shall be construed to repeal or modify any provision of the Public Health Service Act or Federal Food, Drug, and Cosmetic Act. Also, this section shall not authorize any action with respect to the importation of

any plant pest as defined in the Federal Plant Pest Act, insofar as such importation is subject to regulation under that Act.

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