

Calendar No. 366

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-181

TO AMEND SECTION 42 OF TITLE 18, UNITED STATES
CODE, TO PROHIBIT THE IMPORTATION AND SHIPMENT
OF CERTAIN SPECIES OF CARP

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

[To accompany S. 1421]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1421) to amend section 42 of title 18, United States Code to prohibit the importation and shipment of certain species of carp, having considered the same, reports favorably thereon without amendment and recommends that the bill, do pass.

GENERAL STATEMENT AND BACKGROUND

S. 1421 was introduced by Sen. Carl Levin on July 9, 2009 and has seven co-sponsors. This bill would amend the Lacey Act to add the bighead carp of the species *Hypophthalmichthys nobilis* to the list of injurious species, found in 18 U.S.C. § 42(a)1.

Asian carp, including the bighead carp, were introduced to control algae in aquaculture ponds. The fish is now established in the Ohio, Mississippi and Missouri Rivers, likely as a result of escape from aquaculture facilities. Since the Mississippi River is connected to the Great Lakes by canal, bighead carp threaten to infest the Great Lakes. Currently, the U.S. Army Corps of Engineers operates an electric dispersal barrier to prevent these invasive fish from moving between the Mississippi and the Great Lakes.

In November of 2009, the researchers from the Corps of Engineers and the University of Notre Dame found DNA samples of the Asian carp in the Great Lakes vicinity, suggesting movement of the

species past the barrier. State officials fear that the presence of the species could lead to rapid establishment in the Great Lakes waterways and to significant impacts on the Great Lakes sport and commercial fishing industries.

The bighead carp is extremely prolific and can exceed 4 feet in length and 100 pounds. They consume significant amounts of plankton daily, starving out smaller and less aggressive competitors and threatening species prized by anglers and commercial fishers. Given the probability of the establishment of the species in United States waterways, the United States Fish and Wildlife Service has called for the inclusion of the Asian carp to the list of injurious animals prohibited from being traded in interstate commerce or imported into the United States.

OBJECTIVES OF THE LEGISLATION

Amends the Lacey Act to include the bighead carp of the species *Hypophthalmichthys nobilis* 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. Short title

Section 1 provides that this Act may be cited as the “Asian Carp Prevention and Control Act.”

Section 2. Addition of species of carp to the list of injurious species that are prohibited from being imported or shipped

Section 2 amends the Lacey Act to add the bighead carp of the species *Hypophthalmichthys nobilis* to the list of injurious species that are prohibited from being traded in interstate commerce or imported into the United States.

LEGISLATIVE HISTORY

S. 1421 was introduced on July 9, 2009 by Senator Carl Levin (D-MI). The bill was referred to the Committee on Environment and Public Works. On December 10, 2009, the full Environment and Public Works Committee met to consider the bill. The bill was ordered reported favorably without amendment by voice vote.

HEARINGS

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. 1421. The Deputy Director of the U.S. Fish and Wildlife Service as well as representatives of the Association of Fish and Wildlife Agencies and The Nature Conservancy testified in support of the legislation.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 1421 on December 10, 2009. The bill was ordered favorably reported by voice.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 1421 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 has found, “the costs of the mandates would fall well below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$70 million and \$141 million, respectively, in 2010, adjusted annually for inflation).”

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JANUARY 4, 2010.

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

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1421, the Asian Carp Prevention and Control Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1421—Asian Carp Prevention and Control Act

S. 1421 would make it a federal crime to import or ship bighead carp (a type of Asian carp), unless the importer has obtained permission from the U.S. Fish and Wildlife Service (USFWS) to import the fish for scientific, medical, educational, or zoological reasons. CBO estimates that implementing S. 1421 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.

Because the bill would establish a new offense, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that S. 1421 would apply to a relatively small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant and would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under S. 1421 could be subject to criminal fines, the federal government might collect additional revenues 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.

By prohibiting the importation and interstate transport of bighead carp without a permit, the bill would impose intergovern-

mental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The cost to public and private entities, such as zoos or research centers, would be the expense of obtaining permits. USFWS regulations prohibit the agency from charging permit fees to state, local, or tribal entities, so the cost to intergovernmental entities would be solely administrative. The fee for a private entity would be \$25 or \$100, depending on the activity being authorized. The cost of the mandate to those ineligible for a permit, including private importers, fish farmers, retailers, shippers, and owners of those fish, would be the forgone net income from no longer being able to sell or transport the fish across state lines.

Based on information from USFWS and industry experts about permits and the value of shipments, sales, and imports of such fish, CBO estimates that the costs of the mandates would fall well below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$70 million and \$141 million, respectively, in 2010, adjusted annually for inflation).

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs), Melissa Merrell (for intergovernmental impacts), and Amy Petz (for private-sector impacts). The estimate was approved by Theresa Gullo, 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:

* * * * *

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

* * * * *

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 the bighead carp of the species *Hypophthalmichthys nobilis*; 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.

* * * * *

