

**TESTIMONY OF BENITO A. PEREZ, CHIEF, LAW ENFORCEMENT
U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE
HOUSE NATURAL RESOURCES SUBCOMMITTEE ON FISHERIES, WILDLIFE and
OCEANS, REGARDING H.R. 5534, THE “BEAR PROTECTION ACT OF 2008,” and H.R.
2964, THE “CAPTIVE PRIMATE SAFETY ACT.”**

March 11, 2008

Madam Chairwoman and Members of the Subcommittee, I am Benito Perez, Chief of the U.S. Fish and Wildlife Service’s (Service) Office of Law Enforcement. I am pleased to be here today to discuss H.R. 5534, the “Bear Protection Act of 2008” and H.R. 2964, the “Captive Primate Safety Act.”

The Service is the lead Federal agency for wildlife law enforcement, including the enforcement of U.S. laws and treaties that regulate domestic and international wildlife trade. As such, the Service works to curb illegal wildlife trade through inspection activities, investigations, and international liaison and capacity building. The strategic goals and objectives of our Law Enforcement Program include “preventing the unlawful import/export and interstate commerce of foreign fish, wildlife and plants” and “protecting the Nation’s fish, wildlife and plants from unlawful exploitation.”

H.R. 5534, the Bear Protection Act of 2008

The Administration has reviewed H.R.5534, the “Bear Protection Act of 2008,” which would amend the Lacey Act Amendments of 1981 to prohibit the trade of bear viscera and bear viscera products in both interstate and international trade. The Administration appreciates the Subcommittee’s interest in ensuring the protection of these important animals. The Administration does not support passage of the legislation as it is largely duplicative of already existing legal authority.

Under existing laws and treaties, illegal international trade in bear parts and products is prohibited by both the Endangered Species Act (ESA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which regulates commerce in species listed in its appendices and is implemented through the ESA. In the United States, the Lacey Act prohibits the interstate transport of bear parts and products when taken in violation of state, tribal, and foreign laws. State laws and regulations currently prohibit the sale of black bear viscera throughout nearly the entire range of the species, making the Lacey Act in its current form an effective tool for dealing with illegal trade in bear parts.

The Administration has worked consistently under these authorities to ensure that activities in the United States are not contributing to the decline of bear populations nationwide or on a global scale. While American black bear populations are generally stable or increasing throughout most of the natural range of the species, there is one subspecies with small population numbers, the Louisiana Black Bear, that is listed as a threatened species under the Endangered Species Act. Additionally, four states (LA, FL, MS, and TX) have listed the species as rare, threatened, or endangered under state law. The primary threat to these species has been habitat destruction, not poaching for bear viscera. State programs have generally maintained healthy bear populations here in the United States for some time and for this reason, the Administration has long deferred to state management programs, and agrees with the states that no further measures are needed at this time.

H.R. 2964, the Captive Primate Safety Act

H.R. 2964 would amend the Lacey Act to add non-human primates to the definition of “prohibited wildlife species” contained within 16 U.S.C. § 3371(g), expanding upon the Captive Wildlife Safety Act, Public Law No. 108-191, passed by Congress in 2003, which modified the Lacey Act to include any live lion, tiger, leopard, cheetah, jaguar, or cougar species, or any hybrid of such species in the definition of “prohibited wildlife species.” The Administration does not support this change, and cannot support H.R. 2964. This position is consistent with our response to similar legislation, H.R. 1329, introduced in the 109th Congress.

The Administration’s primary concern is the Service’s ability to meet the extended enforcement mandate created by this provision. As noted above, the Service currently enforces the Nation’s wildlife laws and treaties that protect endangered species, marine mammals, and migratory birds. Given the scope of the agency’s conservation mission, the limited manpower available, and the need to focus on highest priority needs, the Service currently concentrates its enforcement efforts on preventing illegal activities that jeopardize the conservation of wild populations of such protected species. H.R. 2964 would, instead, emphasize and expand Service enforcement responsibilities into an area that has historically been a responsibility of state agencies and which we do not consider to be a wildlife conservation issue. By including all non-human primates in the list of prohibited wildlife species, this bill would also extend the Service’s enforcement mandate to policing currently legal activities involving interstate and foreign commerce of captive non-human primates. Many of these species may be lawfully used for research and other purposes under the Animal Welfare Act (AWA). However, private pet ownership is not regulated under the AWA.

In addition, the mechanism created by this bill appears to provide, at least in some instances, coverage that is duplicative of existing law. The ESA already prohibits the interstate sale and international trade of many listed non-human primate species that have been determined to need a high level of protection. While H.R. 2964 would extend such prohibitions to unregulated species of primates, it would not ban private ownership or intrastate sale of the prohibited species. The bill only addresses the interstate and foreign commerce of non-human

primates, and does not address public safety and the humane treatment of these animals. In addition, section 3372(e) of the Lacey Act exempts a number of groups and individuals from its prohibitions, further limiting the effectiveness of the legislation.

Prohibiting the interstate transport of legally owned non-human primates would also have several negative consequences. Some individuals with disabilities currently use trained non-human primates as service animals. H.R. 2964 would prohibit these individuals from traveling out of state with their service animals. Additionally, should individuals who legally own non-human primates as pets move out of state, they would be required to leave the animals behind, potentially increasing the number of non-human primates being set free, needing to be placed in appropriate homes, or ending up in the custody of humane shelters and sanctuaries. In our view, a better approach would be for Congress to work with the Department of Agriculture to identify a suitable way to address any public safety and humane treatment concerns associated with possessing AWA regulated non-human primates through a more suitable legislative vehicle. Private pet ownership concerns may be best addressed through state laws that currently address these issues.

In addition, section 3 of H.R. 2964 would correct a technical defect discovered by the Service during development of implementing regulations for the Captive Wildlife Safety Act. As presently written, the Captive Wildlife Safety Act provisions are a one-step offense within a section of the Lacey Act that presumes two-step violations, making violations of the Captive Wildlife Safety Act provision very difficult to enforce in a court of law. Section 3 of H.R. 2964 addresses this problem by making it unlawful for a person to sell or purchase a live animal of any prohibited wildlife species in interstate or foreign commerce and includes provisions for civil and criminal penalties for violations of the requirements of this Act. While the Administration generally supports this change, for the reasons outlined above we do not support the legislation in its current form.

Conclusion

The Service is committed to its role in the conservation of wildlife, not only in this country but throughout the world. The Service has a long history of proactively addressing international wildlife species conservation, and works with private citizens, local communities, state and Federal agencies, foreign governments, native peoples and non-governmental organizations in promoting coordinated domestic and international strategies to protect, restore, and enhance the world's diverse wildlife and habitats.

The Service will continue working with other nations, international groups, states and Federal enforcement counterparts in this country to combat illegal wildlife trade. We welcome the Subcommittee's interest in strengthening domestic efforts to accomplish this, and appreciate the opportunity to participate in this hearing.

Madam Chairwoman, this concludes my prepared remarks. I would be happy to respond to any questions that you may have.