

**WRITTEN STATEMENT FROM
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE
ON THE
LEGISLATIVE HEARING ON HR 6784 AND HR 7157 BEFORE THE
SUBCOMMITTEE ON WATER, WILDLIFE, AND FISHERIES
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

The National Oceanic and Atmospheric Administration (NOAA) is responsible for the stewardship of the nation's living marine resources and their habitat. Backed by sound science and an ecosystem-based approach to management, NOAA Fisheries provides vital services for the nation, including management and sustainment of our fisheries, ensuring safe sources of seafood, and the recovery and conservation of protected species and healthy ecosystems. The resilience of our marine ecosystems and coastal communities depends on healthy marine species, including protected species such as whales, sea turtles, salmon, and corals.

The Endangered Species Act

Under the Endangered Species Act (ESA), NOAA Fisheries works to recover marine and anadromous species in their natural environment while preserving robust economic and recreational opportunities. There are more than 160 endangered and threatened marine and anadromous species under NOAA's jurisdiction. Our work includes: listing species under the ESA, monitoring species status, designating critical habitat, implementing actions to recover endangered and threatened species, consulting with other federal agencies, developing ESA policies, guidance, and regulations, and working with partners to conserve and recover listed species. NOAA Fisheries shares the responsibility of implementing the ESA with the U.S. Fish and Wildlife Service (hereafter referred to as the Services).

Recognizing that the value of our natural heritage is incalculable, Congress enacted the ESA nearly unanimously in 1973, in acknowledgement of the broad public support for the prevention of species extinction. The ESA is the nation's foremost conservation law for protecting wildlife and plants in danger of extinction. It plays a critical, science-based role in preventing the extinction of imperiled species, promoting their recovery, and conserving their habitats. It is extraordinarily effective at preventing species from going extinct. It has inspired voluntary action to conserve at-risk species and their habitat before they reach the point where they would qualify to be listed as threatened or endangered. Since it was signed into law, more than 99 percent of the species listed have been saved from extinction.

NOAA Fisheries opposes HR 6784 and outlines several concerns with this legislation below.

HR 6784 – The ESA Flexibility Act

The ESA protects endangered and threatened species. The Services list species as endangered or threatened under the ESA based solely on the best scientific and commercial data available. An endangered species is a species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Section 9 of the ESA lists seven specific prohibited actions with respect to endangered species, which include prohibitions on import, export, interstate and foreign commerce, and take of endangered species of fish and wildlife. Section 9 also includes prohibitions for endangered plants. The Section 9 prohibitions for endangered species do not automatically apply to threatened species. Section 4(d) of the ESA provides that whenever a species is listed as threatened, the Secretary shall issue regulations she deems necessary and advisable to provide for the conservation of such species. In addition, the Secretary may extend by regulation the Section 9 prohibitions to threatened species under 4(d).

HR 6784 would modify the statutory ESA protections for endangered species. The prohibitions in section 9(a) automatically apply to endangered species at the time of listing. HR 6784 provides that the Secretary can either issue a 4(d) rule to protect an endangered species or allow it to be protected automatically by Section 9(a) of the ESA.

The ESA recognizes the different status of threatened and endangered species and provides greater flexibility in the conservation and management of threatened species under Section 4(d) as described above. In providing authority for the Services to intervene to protect species before they reach endangered status, the ESA allows for more flexible regulation and protections to prevent their further decline and increase the likelihood of recovery. NOAA Fisheries has utilized section 4(d) to provide a flexible, targeted approach to the management and conservation of threatened species. Such an approach is appropriate for threatened species that are less imperiled than endangered species and not yet on the brink of extinction.

In contrast, endangered species are in danger of extinction now. Because of their imperiled status, it is critical that these species receive the full suite of ESA Section 9 protections to ensure these species do not go extinct and instead can begin to recover. HR 6784 would authorize weakening the protections for endangered species and blur the ESA's distinction between threatened and endangered species. HR 6784 would also place a burden on NOAA Fisheries' limited resources. While section 4(d) allows NOAA Fisheries to tailor regulations for threatened species, promulgating those rules is resource intensive and requires additional staff, resources, and time. Those additional resources are not required when the full suite of protections in Section 9 that are critical to protecting endangered species are applied to those species. The diversion of resources to promulgate regulations under 4(d) for endangered species will shift our efforts away from the important work of stabilizing and recovering endangered species and could have

significant negative consequences for their conservation. In addition, HR 6784 would allow for novel disputes to arise regarding whether the discretionary ability to prepare species-specific 4(d) rules for endangered species had been appropriately exercised. This may also divert the work of limited staff resources, even where the agency did not promulgate a species-specific rule for an endangered species.

Finally, the ESA already provides flexibility to allow certain activities that affect endangered species that are otherwise prohibited under section 9 of the ESA. Under Section 10 of the ESA, the Services may issue permits for take that results from scientific research, activities that enhance propagation or survival of wildlife or plants, or that result in incidental take of the endangered species. In addition, the Services may issue incidental take statements under Section 7 that provide an exception to the prohibitions on take of endangered species.

The Lacey Act

First enacted in 1900, and amended in 1981 and 2008 in order to strengthen and expand the scope of protections, the Lacey Act has a long history as a critical tool for the conservation of the nation's fish, wildlife, and plants, and combating international trafficking in wild fauna and flora, including marine fishery products. Among other provisions of the Lacey Act, 16 USC 3372 includes prohibitions relative to the trafficking of illegally-harvested and falsely-labeled fish, wildlife, and plants imported into the United States. Unlike other natural resource protection statutes, the Lacey Act provides criminal as well as civil penalties for violations of the prohibitions on trafficking and false labeling as well as detention, search and inspection and authority tailored to detecting such illegal trade. These provisions make the Lacey Act the most important tool we have for addressing fish and wildlife trafficking violations, including those involving critically endangered species and transnational organized crime.

Under the authorities granted by the Lacey Act, NOAA Fisheries Office of Law Enforcement (NOAA OLE) works with our federal partners to combat wildlife trafficking and the illegal international trade in marine fishery products. Perhaps most importantly, the authorities provided in the Lacey Act allow NOAA OLE to interdict and investigate the import of illegally-harvested, improperly documented, and fraudulently labeled seafood products that introduce unfair competition and threaten the livelihoods of American fisherman, processors, and producers, or otherwise engaged in lawful and sustainable fishing activities and trade.

As one of the world's largest importers of seafood, the United States plays a critical role in promoting sustainable fisheries worldwide, including through robust enforcement of the Lacey Act. NOAA OLE leads USG efforts to combat illegal, unreported, and unregulated fishing, and ensure illicit, unsustainably harvested seafood products do not enter U.S. commerce. The Lacey Act also serves as a powerful deterrent to prevent illicit seafood products from entering U.S. markets.

In light of the foregoing, we offer the following comments on HR 7157:

HR 7157 - The Strengthen Wood Product Supply Chains Act

Expansion of import regulations to nearly all species of wild fauna and flora

Despite the title: *Strengthen Wood Products Supply Chains Act*, the provisions of HR 7157, as written, would apply more broadly, imposing the same requirements on enforcement of the Lacey Act with respect to all imports on wildlife products, seafood, and marine fishery products, vastly expanding existing requirements for these commonly imported commodities.

Increased burden on USG regulatory agencies

The proposed provisions of HR 7157 impose an additional burden on NOAA Office of Law Enforcement (OLE) and U.S. Fish & Wildlife Service (USFWS). OLE is to provide the ‘importer’ with a Notice of Detention, comprising of the facts and reasons surrounding the detention, a description of all tests to be performed, an explanation of specific purpose(s) for the tests, and a description of what information could be provided by the importer in order to accelerate disposition of the detention. These new requirements would not only impose a significant and unnecessary additional administrative burden on the government but would also pose significant challenges, as in many cases, some of the aforementioned information is not yet known at the time of import, including who the true ‘importer’ actually is, as corporations commonly use intermediaries, associates, freight forwarders, and customs brokers to facilitate these types of imports. The provisions in the proposed bill would also present an unreasonable and unnecessary burden on the already overextended personnel of the agencies engaged in enforcement at the border, including NOAA OLE, USFWS OLE and U.S. Customs and Border Protection. For example, NOAA OLE, despite being charged with our federal partners to ensure the legality, safety, proper identification and accurate labeling of imported seafood, currently employs only 72 Special Agents and 84 Enforcement Officers nationally.

HR 7157 imposes the following requirements: (A) that, within 5 days, a Detention Notice be issued to the ‘importer’ with all the detailed information described in the foregoing, or (B) “release to such importer [of] the detained merchandise.” In situations where the Detention Notice cannot be issued, including where required information is still unknown, the only option provided to the government is the immediate release of the merchandise to the importer. This requirement undermines the government’s ability to detect and determine the nature and extent of a violation. It also imposes an unnecessary, immediate, and significant risk of releasing potentially illicit imports of fishery products, or worse, potentially mislabeled, contaminated, or harmful products, into U.S. commerce. Finally, this requirement presents the risk of release of

narcotics or other illicit goods which may be concealed or co-mingled in imported fish and fish products, as illustrated in a recent seizure of cocaine discovered in a fish shipment destined for the United States.

In addition, HR 7157 provides that after 10 days, regardless of the circumstances of the detention, the USG must allow the importer to transport the detained merchandise to “*a location that is not under the control of the United States,*” meaning an unsecured, non-customs bonded location, including a storage area, yard, or property under the control of the importer themselves. This provision of mandating the release to an importer of an uncleared, uninspected, and potentially illegal or dangerous consignment, considering the import had been detained with reasonable suspicion by the government of illegal activity or an identified need for further inquiry, presents an unnecessary, immediate, and significant national security risk, for all the aforementioned reasons.

Potential Conflict with Existing Seizure and Forfeiture Procedures

The seizure, appeal and review processes set out in (c)(5)-(7) present potential timing and procedural conflicts and redundancies with existing procedures relating to seizure and administrative forfeiture set out in the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) and NOAA’s civil procedure regulations at 15 CFR Part 904 implementing the agency’s obligations under CAFRA. In particular, those rules provide that forfeiture proceedings must be initiated within 60 days of a seizure by a federal agency, or the seized property must be returned. An interested party has 35 days to file a claim to the seized property. If a claim is filed, the case is referred promptly to the U.S. Department of Justice for institution of judicial proceedings. NOAA’s rules also authorize bonded release as well as the sale of perishable product and subsequent seizure and forfeiture of the proceeds.

The proposed measures in HR 7157, as written and expansively applied to nearly all fauna and flora, would significantly impact NOAA Fisheries OLE’s ability to temporarily detain imports and sample (test) imported fishery products from high-risk countries, including the People’s Republic of China (PRC) for genetic identification, potential contaminants, disease or human health risk vectors, or other forensic testing as needed to ensure both the legality and safety of imported commodities for the American consumer. NOAA stands ready to work with the Committee.

Conclusion

NOAA is proud to continue to lead the world in conducting ocean science, serving the nation’s coastal communities and industries, and ensuring responsible stewardship of our ocean and coastal resources. We value the opportunity to continue working with this Subcommittee on these important issues. Thank you and your staff for your work to support NOAA’s mission.