

TO EXEMPT IMPORTATION AND EXPORTATION OF SEA URCHINS AND SEA
CUCUMBERS FROM LICENSING REQUIREMENTS UNDER THE ENDAN-
GERED SPECIES ACT OF 1973

SEPTEMBER 6, 2016.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4245]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4245) to exempt importation and exportation of sea urchins and sea cucumbers from licensing requirements under the Endangered Species Act of 1973, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. EXEMPTION OF EXPORTATION OF CERTAIN ECHINODERMS AND MOLLUSKS FROM PERMISSION AND LICENSING REQUIREMENTS.

(a) EXEMPTION.—Not later than 30 days after the date of the enactment of this Act, the Director of the United States Fish and Wildlife Service shall amend section 14.92 of title 50, Code of Federal Regulations, to clarify that—

(1) fish or wildlife described in subsection (b) are fishery products exempt from the export permission requirements of section 9(d)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1538(d)(1)); and

(2) any person may engage in business as an exporter of such fish or wildlife without procuring permission under such section of that Act or an export license under subpart I of part 14 of such title.

(b) COVERED FISH OR WILDLIFE.—The fish or wildlife referred to in subsection (a) are members of the phylum Echinodermata that are commonly known as sea urchins and sea cucumbers, and members of the phylum Mollusca that are commonly known as squid, octopus, and cuttlefish, including products thereof, that—

(1) do not require a permit under part 16, 17, or 23 of title 50, Code of Federal Regulations;

(2) are harvested in waters under the jurisdiction of the United States or are processed in the United States; and

(3) are—

- (A) exported for purposes of human or animal consumption; or
- (B) taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes.

Amend the title so as to read:

A bill to exempt exportation of certain echinoderms and mollusks from licensing requirements under the Endangered Species Act of 1973.

PURPOSE OF THE BILL

The purpose of H.R. 4245, as ordered reported, is to exempt exportation of certain echinoderms and mollusks from licensing requirements under the Endangered Species Act of 1973.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 4245, as amended, eliminates redundant, time-consuming and costly federal inspection and licensing requirements for certain species that are exported for seafood purposes. According to the Congressional Budget Office, the bipartisan bill would have a “negligible effect on the federal budget.”

The U.S. Fish and Wildlife Service (USFWS) has the authority to inspect and regulate fish and fishery products that are to be imported or exported. According to USFWS, this broad authority allows it to charge licensing and inspection fees to importers and exporters of all fish, fish products, and wildlife. In an effort to help preserve domestic and international trade of U.S. seafood and seafood products, USFWS established criteria to exempt shellfish if used for consumption from these regulations. As outlined in section 14 of title 50 of the Code of Federal Regulations, to qualify for this exemption the species must not be listed as injurious under the Lacey Act and not listed under the Endangered Species Act or the Convention on International Trade in Endangered Species. This exemption is essential to the trade of shellfish as many species, such as oysters, clams, and lobsters, are often traded live and/or have a very short timeframe for safe consumption. USFWS has a current exemption list that includes many of these species.

Until December 8, 2008, other key species, such as sea urchin, sea cucumber, squid, octopus and cuttlefish were also exempt from USFWS’ import and export licensing requirements. USFWS received multiple comments on this proposed change to the exemption requirements from members of the fishing industry and the National Marine Fisheries Service (NMFS), which is a partnering agency with USFWS for oversight of these species. NMFS specifically commented on the proposed changes and how USFWS’ definition of “shellfish” for the sake of inspections and exemptions was not consistent with NMFS’ or that of the United Nations Food and Agriculture Organization. NMFS requested that USFWS revise its definition to be consistent with NMFS’. Fishing industry comments echoed those of NMFS, stating that the revisions “would create a financial burden” on the industry, including not only importers and exporters, but others down to divers.

H.R. 4245, as amended, corrects this inconsistency between the two federal agencies by exempting domestically harvested or proc-

essed sea urchin, sea cucumber, squid, octopus and cuttlefish from USFWS export inspection requirements. During a February 2, 2016, Water, Power and Oceans Subcommittee’s hearing on H.R. 4245, there was bipartisan agreement that certain USFWS export inspections may be “dramatic overkill.”

These requirements can also harm domestic seafood businesses. As an example, Mr. Atchan Tamaki, a Portland, Maine-based sea urchin exporter, testified that:

Lost paperwork, unexplained delays, and lack of responsiveness by overworked Fish & Wildlife Service employees in New York has often led to spoiled product (or “dead loss”), unhappy customers overseas, and a dramatic hit to my company’s bottom line. In the approximately two years during which we have been subjected to this process, it has only gotten worse—particularly when Fish & Wildlife, unlike Customs, shuts down entirely over the December holidays, our busiest season. All of this disruption is due to inspections that similar and far more prominent seafood products, such as lobster, avoid entirely—and this disparity has no basis with respect to science or sustainability.¹

Sea urchin are generally harvested for their roe, more commonly known as “uni,” which is a delicacy food item in Japan and Europe. While typically harvested by hand, sea urchin can also be harvested by fishing vessels outfitted with dragging nets. According to the State of Maine’s Department of Marine Resources, diving is the primary technique used to harvest the species, with roughly 115 divers harvesting 60 percent of the State’s landings. Sea urchin harvesting is also a significant fishery off parts of California’s coast. This fishery, with just over 200 active divers, harvested almost 13 million pounds of urchin valued at \$9.8 million in 2013 according to California’s Department of Fish and Wildlife. H.R. 4245, as amended, also covers squid. According to the State of New Jersey, squid species have become a major product out of Cape May since the 1980s, with much of the product being exported to Hong Kong as well as European countries such as Italy and Spain.

SECTION-BY-SECTION ANALYSIS

Section 1. As amended, this section directs USFWS to amend section 14 of title 50 of the Code of Federal Regulations to clarify that domestically harvested or processed sea urchin, sea cucumber, squid, octopus and cuttlefish shall be exempt from export requirements under section 9(d)(1) of the Endangered Species Act and section 14.91 of title 50 of the Code of Federal Regulations.

COMMITTEE ACTION

H.R. 4245 was introduced on December 11, 2015, by Congresswoman Chellie Pingree (D–ME). The bill was referred to the Committee on Natural Resources, and in addition to the Committees on Ways and Means and Foreign Affairs. Within the Natural Resources Committee, the bill was referred to the Subcommittee on Water, Power and Oceans. On February 2, 2016, that Sub-

¹ <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=399795>

committee held a hearing on the bill. On June 14, 2016, the Natural Resources Committee met to consider the bill. The Subcommittee on Water, Power and Oceans was discharged by unanimous consent. Congressman Jared Huffman (D-CA) offered an amendment designated #1; it was adopted by unanimous consent. No additional amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent on June 15, 2016.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation and Section 308(a) of Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 12, 2016.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4245, a bill to exempt exportation of certain echinoderms and mollusks from licensing requirements under the Endangered Species Act of 1973.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 4245—A bill to exempt exportation of certain echinoderms and mollusks from licensing requirements under the Endangered Species Act of 1973

H.R. 4245 would exempt exporters of certain species of sea creatures from having to obtain export licenses from the United States Fish and Wildlife Service (USFWS). Enacting the legislation would reduce offsetting receipts, which are treated as reductions in direct spending, and the associated direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that any net effects on direct spending would be negligible. Enacting the bill would not affect revenues.

Under H.R. 4245, an export license would not be required to ship sea cucumbers, sea urchins, squid, octopus, and cuttlefish to foreign markets. Enacting the bill would reduce offsetting receipts from fees that the USFWS charges for export licenses. The bill also

could reduce receipts from inspection fees because exporters of the affected products would no longer be required to clear shipments directly with the USFWS. CBO estimates that enacting the bill would reduce the fees from licensing and inspecting such shipments by less than \$500,000 a year. Because the agency is authorized to retain and spend proceeds from those activities, any reduction in fee collections would be offset by a similar reduction in direct spending. On net, CBO estimates that enacting the bill would have a negligible effect on the federal budget.

CBO estimates that enacting H.R. 4245 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4245 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is to exempt exportation of certain echinoderms and mollusks from licensing requirements under the Endangered Species Act of 1973.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman believes that this bill directs an executive branch official to conduct one specific rule-making proceeding.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

July 7, 2016

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 EXECUTIVE DIRECTOR

The Honorable Kevin Brady
 Chairman
 Committee on Ways and Means
 1102 Longworth HOB
 Washington, DC 20515

Dear Mr. Chairman:

On December 10, 2015, the Committee on Natural Resources favorably reported as amended H.R. 4245, to exempt exportation of certain echinoderms and mollusks from licensing requirements under the Endangered Species Act of 1973. This bill was referred primarily to the Committee on Natural Resources, and in addition to the Committees on Ways and Means and Foreign Affairs. My staff has forwarded the reported text to your committee for review.

Based on this text, I ask that you allow the Committee on Ways and Means to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Ways and Means represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Natural Resources to memorialize our understanding, as well as in the Congressional Record.

Thank you for your consideration of my request, and I look forward to further opportunities to work with you this Congress.

Sincerely,



Rob Bishop
 Chairman
 Committee on Natural Resources

cc: The Honorable Paul D. Ryan, Speaker
 The Honorable Kevin McCarthy, Majority Leader
 The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources
 The Honorable Thomas J. Wickham, Jr., Parliamentarian

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JANICE MAYS,
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July 7, 2016

The Honorable Rob Bishop
Chairman
Committee on Natural Resources
1324 Longworth House Office Building
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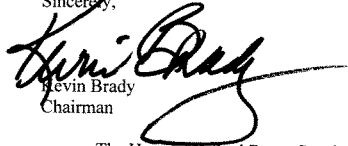
Dear Chairman Bishop,

Thank you for your letter concerning H.R. 4245, to exempt the importation and exportation of sea urchins and sea cucumbers from licensing requirements under the Endangered Species Act. As you note, the Committee on Ways and Means was granted an additional referral.

I appreciate your willingness to work with my Committee on this legislation. In order to allow H.R. 4245 to move expeditiously to the House floor, I agree to waive formal consideration of this bill. The Committee on Ways and Means takes this action with our mutual understanding that by foregoing consideration on H.R. 4245 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as this bill or similar legislation moves forward. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and asks that you support any such request.

I would appreciate your response to this letter confirming this understanding, and would request that you include a copy of this letter and your response in the Congressional Record during the floor consideration of this bill. Thank you in advance for your cooperation.

Sincerely,


Kevin Brady
Chairman

cc: The Honorable Paul Ryan, Speaker
The Honorable Sander Levin
The Honorable Raul Grijalva

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U.S. House of Representatives
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August 30, 2016

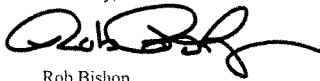
EDWARD R. ROYCE
CHAIRMAN
COMMITTEE ON FOREIGN AFFAIRS
2170 RAYBURN HOB
WASHINGTON, DC 20515

Dear Mr. Chairman:

On December 10, 2015, the Committee on Natural Resources favorably reported as amended H.R. 4245, to exempt exportation of certain echinoderms and mollusks from licensing requirements under the Endangered Species Act of 1973. This bill was referred primarily to the Committee on Natural Resources, and in addition to the Committees on Foreign Affairs and Ways and Means. My staff has forwarded the reported text to your committee for review.

Based on this text, I ask that you allow the Committee on Foreign Affairs to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Foreign Affairs represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Natural Resources to memorialize our understanding, as well as in the Congressional Record.

Thank you for your consideration of my request, and I look forward to further opportunities to work with you this Congress.

Sincerely,

Rob Bishop
Chairman
Committee on Natural Resources

- cc: The Honorable Paul D. Ryan, Speaker
The Honorable Kevin McCarthy, Majority Leader
The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources
The Honorable Thomas J. Wickham, Jr., Parliamentarian

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www.foreignaffairs.house.gov

August 31, 2016

The Honorable Rob Bishop
Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for consulting with the Committee on Foreign Affairs on your committee-reported text of H.R. 4245, a bill to exempt exportation of certain echinoderms and mollusks from licensing requirements under the Endangered Species Act of 1973.

I agree that the Foreign Affairs Committee may be discharged from further action on this bill so that it may proceed expeditiously to the Floor, subject to the understanding that this waiver does not in any way diminish or alter the jurisdiction of the Foreign Affairs Committee, or prejudice its jurisdictional prerogatives on this bill or similar legislation in the future. The Committee also reserves the right to seek an appropriate number of conferees to any House-Senate conference involving this bill, and would appreciate your support for any such request.

I ask that you place our exchange of letters into the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,

EDWARD R. ROYCE
Chairman

cc: The Honorable Paul Ryan
The Honorable Eliot L. Engel
The Honorable Raul M. Grijalva
Mr. Thomas J. Wickham, Jr., Parliamentarian

ADDITIONAL VIEWS

The Endangered Species Act (ESA) is one of our bedrock conservation laws, and has been remarkably successful in protecting imperiled species from extinction. The ESA also helps regulate commerce in threatened and endangered fish, wildlife, and plants, and is an important tool in combating illegal wildlife trafficking. While we have seen many bills introduced this Congress that are designed to undermine the ESA, H.R. 4245 is not one of them.

Instead, H.R. 4245 seeks to clarify U.S. Fish and Wildlife Service regulations under the ESA regarding the exportation of certain seafood products, specifically sea cucumbers, sea urchins, squid, cuttlefish, and octopus. None of these species are listed as threatened or endangered under the ESA. We consider them to be seafood products from well-regulated fisheries, and therefore worthy of being exempted from export permit requirements, including inspections. Because of concerns with illegally harvested fish and wildlife being commingled with shipments of these products from other countries, the exemption in H.R. 4245 does not extend to imports, or to products intended for re-export. We support this narrow, limited clarification.

RAÚL M. GRIJALVA,
Ranking Member,
Committee on Natural Resources.

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