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# SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair

2019 - 2020 Regular

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<b>Bill No:</b>	SB 1175	<b>Hearing Date:</b>	May 26, 2020
<b>Author:</b>	Stern		
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<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
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**Subject:** Animals: prohibitions on importation and possession of wild animals: live animal markets

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Judiciary Committee.

## BACKGROUND AND EXISTING LAW

Existing state law establishes the California Department of Fish and Wildlife (department) and the Fish and Game Commission (commission) in the California Natural Resources Agency.

The department's mission is "to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public." The department's jurisdiction does not include domesticated animals.

In general, the commission sets regulations that the department implements and enforces. The department also provides data and expertise to inform the commission's decision-making process

The COVID-19 disease pandemic is caused by the SARS-CoV-2 coronavirus. The coronavirus is a novel zoonotic disease which means the disease can spread from animals to humans. Although the specific origin of the coronavirus is currently unknown, the transmission from wild animal hosts to humans is reported to have occurred at a seafood market in Wuhan. Conditions at the market where wild and domesticated animals are kept in close proximity, and hygiene practices may not be consistently followed are thought to have contributed to the transmission. According to the Centers for Disease Control and Prevention (CDC), "more than 6 out of every 10 known infectious diseases in people can be spread from animals, and 3 out of 4 new or emerging infectious diseases in people come from animals."

Recent epidemics of novel zoonotic diseases include the 2002 – 2003 outbreak of Severe Acute Respiratory Syndrome (SARS) and the Middle East Respiratory Syndrome (MERS). In both of these instances, bats were reservoir species for the coronavirus and other mammals – civets sold as meat and camels – were the intermediary species that facilitated transmission to humans. A recent report in the New

York Times suggested that stopping the trade in wildlife will help to prevent the next epidemic.

The department has statutory authority over the importation, transportation, possession, and live release of wild animals. The department has an established restricted species program for wild animals (see Fish and Game Code (FGC) §§2116 *et seq.* and Title 14, California Code of Regulations, §§671 *et seq.* for the restricted species program). The commission, in cooperation with the Department of Food and Agriculture (CDFA), adopts the restricted species regulations.

The restricted species program allows those with specific permits from the department to import, transport or possess wild animals. Existing law requires the regulations implementing the restricted species program to be designed to prevent damage to the native wildlife or agriculture interests of this state, and to provide for the welfare of wild animals and the safety of the public.

The restricted species program requires annual permitting and inspections for applicable species and includes minimum state standards for transportation, housing, and veterinary care, among other things.

It is also unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or a part or product thereof, of a polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf (*canis lupus*), zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin or porpoise (*delphinidae*), Spanish lynx, elephant, crocodile, alligator, or seal. (Penal Code (PEN) §653o, §653q) As of January 1, 2022, the same prohibitions will apply to iguana, skink, caiman, hippopotamus, or Teju, Ring, or Nile lizard. (PEN §653o)

Existing federal law provides, under the Endangered Species Act (ESA), for the conservation of species that are endangered or threatened throughout all or a significant portion of their range, and the conservation of the ecosystems on which they depend (Title 16, United State Code, §§1531 *et seq.*)

With certain exceptions, the body parts and products of endangered or threatened species cannot be imported, exported, or sold. The ESA lists species regardless of the country the species live in even through the prohibitions regarding those species apply only to people subject to the jurisdiction of the United States. The ESA does not prohibit the hunting of listed species outside of the United States.

The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) regulates the trade internationally of many species. The United States is a party to CITES, and uses the ESA to implement CITES.

According to a recent report from the United Nations, “as many as 1 million species are at risk of extinction – many within decades.” Many wildlife species in Africa have faced significant population declines. For example, between 2007–2015, Savanna elephant populations declined by 30% and between 1993 – 2014, African lion populations are estimated to have declined by over 40%. Loss of habitat, war, the encroachment of

livestock, illegal poaching and legal hunting, among other things, have contributed to the significant decline in wildlife populations across Africa as a whole.

The United States is the largest importer of animal trophies in the world. A person wishing to import an animal trophy subject to ESA and/or CITES protections would need to obtain appropriate permits. For certain species, a positive enhancement finding is required under ESA indicating that trophy hunting has contributed to the survival of the species in general. The Obama Administration determined that such a finding was not warranted for certain hunts, and blocked the importation of trophies from these hunts into the United States. The Trump Administration reversed these prohibitions, and the import of trophies is now assessed on a “case-by-case basis.”

SB 1487 (Stern, 2018) sought to implement a ban on the possession of certain “iconic African trophy species” and passed the legislature with bipartisan support. The bill was vetoed by Governor Brown who wrote in part:

“SB 1487 imposes a state civil penalty for activities expressly authorized by the U.S. Endangered Species Act.”

“Even though I share the sentiments of the author, this bill, if enacted, would be unenforceable.”

Existing law bars the importation of any live aquatic plant or animal into the state without the prior written approval of the department, as specified. (FGC §2271) It also prohibits any person from bringing or causing to be brought into this state any fish, reptile, amphibian, or aquatic plant from any place wherein any infected, diseased, or parasited fish, reptile, amphibian, or aquatic plants are known to exist. (FGC §2270)

Existing law prohibits the malicious and intentional maiming, mutilation, torture or wounding or killing of a live animal with specified penalties. (Penal Code (PEN) §597a)

Existing law requires that every person who operates a live animal market shall provide that no animal will be dismembered, flayed, cut open, or have its skin, scales, feathers or sell removed while the animal is alive or that the live animals will be confine in such a way that results in injury, starvation, dehydration or suffocation. A “live animal market” is a retail food market where frogs, turtles, and birds other than poultry are stored alive and sold to consumers for purposes of human consumption. (PEN §597.3)

Existing law provides that any city, county or city and county may adopt an ordinance that provides for the regulation and disposition of bullfrogs and turtles imported for sale in live animal markets for use as food, as specified, including that animals be “dispatched” at the time of sale. (Health and Safety Code (HSC) §111067)

According to the department, approximately 2 million bullfrogs and 300,000 turtles are imported annually into the state for sale for live sale for human consumption or the pet trade. Some of these animals may be illegally released to the wild. At least some of these species have established wild populations throughout the state.

**PROPOSED LAW**

This bill would make various changes in state law related to the trafficking of certain wild and non-native animals in order to address zoonotic disease transmission, prohibit the possession of certain iconic African trophy species and prohibit the live sale of frogs and turtles for food. Specifically, this bill would:

- 1) Require the department to immediately suspend any authorization to import a wild animal species into the state when evidence suggests zoonotic transmission from this species, or a closely related species, could be responsible for a novel, readily transmissible human disease, as specified.
  - a) The department shall not authorize importation of any individual animals of a wild animal species that could be responsible for zoonotic transmission of a readily transmissible human disease until a robust testing protocol is implemented to ensure individual animals are not carriers.
  - b) The department is authorized to take additional measures, if needed, related to wild animal species necessary to protect public health, and the commission is required to consider public health in the development of the restricted species regulations.
  - c) The department must revise the list of wild animals that cannot be imported into the state, as applicable.
- 2) Establish the Iconic African Species Act (act).
  - a) The act prohibits the possession by any individual, firm, corporation, association, or partnership with the state of California of an iconic African species with certain exceptions.
  - b) An “iconic African species” is any species or subspecies of African elephant, African lion, leopard, black rhinoceros, white rhinoceros, giraffe, Jentink’s duiker, plains zebra, mountain zebra, hippopotamus, pangolin, babbon, and hyaena, described, and any part, product or the dead body or parts thereof, excluding fossils, as specified.
  - c) There are numerous exceptions to the prohibition on possession provided, including, among others, by an agent undertaking law enforcement activities, if the trophy was possessed prior to January 1, 2021 based upon photographic or other evidence, the trophy is in-transit to a final destination outside California, and the possession is for educational or scientific purposes, as specified.
  - d) Violations of the act are subject to a civil penalty of at least \$5,000 and not more than \$40,000 for each violation, in addition to any other penalty.
  - e) The state Attorney General or the city attorney our county counsel of the city or county in which the violation occurred may bring a civil action to recover the civil penalty, as specified. Any moneys obtained shall be deposited in the Fish and Game Preservation Fund, and, upon judgement, the seized article is forfeited. Enforcement under certain provisions of existing law is not precluded, as specified.

- f) The department is authorized to pay a reward of up to \$500 to any person providing information that leads to a court judgment imposing a fine, with certain exclusions.
  - g) Provisions of the act are severable.
- 3) Prohibit the operation of a live animal market.
- a) A live animal market is a retail food market where frogs, turtles and birds other than poultry are stored alive and sold for human consumption.
  - b) The penalty for a first violation is a written warning, as specified, and for a second or subsequent violation is an infraction with a penalty of \$250 - \$1,000.
- 4) Make legislative findings, and appropriate conforming changes to law.
- 5) Create a new crime and a state-mandated local program and provide that no reimbursement is required, as specified.

### **ARGUMENTS IN SUPPORT**

The author notes that SB 1175 seeks to respond to future pandemics as “import permits for species linked to zoonotic disease transmission will be suspended until either studies show no link exists or individual animals can be tested for whether they are carriers.”

According to the author, “[w]e need to stop the brutal trade in exotic and endangered wildlife once and for all. Whether it’s a pangolin being sold for faulty medicine, a white Bengal tiger being enslaved for entertainment, or a black rhino “trophy” used to satisfy some misguided hunter’s ego. California must put an end to wildlife trafficking.”

The author notes that “SB 1175 takes a multi-pronged approach” to addressing this multi-faceted problem

The Center for Biological Diversity, a co-sponsor further notes “While proponents of trophy hunting regularly cite the ‘sustainable’ nature of their pursuit and the purported conservation benefits that flow from such killing, recent studies have demonstrated this this is often not the case.”

Social Compassion in Legislation, a co-sponsor, writes that the legal hunting may lend itself to set-up a dual track with the black market trade to launder species and hamper law enforcement.

PawPAC adds “Now that COVID-19 has brought its wakeup call to all nations, causing every government to address wildlife and planetary exploitation, with respect to every aspect of individual human, public, animal, environmental, climate and economic health, there is no more time to stay in a pattern of inaction.”

### **ARGUMENTS IN OPPOSITION**

NACSO writing in opposition, notes “... that without hunting, conservation would be brought to a close in many communal conservancies which do not have tourism potential and which depend for their income on the hunting of selected animals for

trophies. Conservancy income is used to pay more than 600 community game guards who conduct anti-poaching patrols and to provide benefits to conservancy members, thus uplifting living standards in poorer rural communities.”

“A ban on the importation of trophies to the State of California could result in a meaningful decline of hunters visiting Namibia, with a comparable decline in income to conservancies and their members, which in turn, is likely [to] lead to an increase in wildlife crime and reduced habitat for wildlife.”

“In summary, banning of the import of trophies to the State of California will not protect Africa’s wildlife, but will in fact, have a detrimental impact to Namibia’s wildlife population, and most importantly to the livelihoods of the Namibian rural people who depend on this wildlife will be negatively affected.” The CAMPFIRE Association of Zimbabwe makes similar arguments.

In a opposition sign-on letter, the California Rifle and Pistol Association, Inc., among others, writes:

“SB 1175 is unenforceable. This legislation proposes to impose a state civil penalty for activities expressly authorized by the [ESA] which allow import of listed species when the U.S. Fish and Wildlife Species (sic) determines that the activity ‘enhances the survival of the species.’ Not only is what SB 1175 proposes in conflict with the federal ESA, it is also in conflict with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) – an international agreement between governments with the goal of ensuring that international trade in specimens of wild animals and plants does not threaten their survival. Both the federal ESA and CITES wholly preempt state law.”

## COMMENTS

This bill is a work-in-progress. The bill was amended in response to the COVID-19 pandemic to address broader wildlife trafficking issues beyond the iconic African trophy species included in the author’s earlier bill. Following discussions with the author’s office, Committee staff understand that efforts are ongoing to further develop the wildlife trafficking aspects of the bill with respect to health risks, disease transmission and invasive species, among other things. In particular, this may include:

- Incorporating elements of the commission’s “exotic animals”/introduction of non-native species policy
- Ensuring department efforts coordinate with and complement existing California Department of Public Health veterinary health requirements for imported species, where applicable, and that health risks posed by imported species are thoroughly assessed proactively. Beyond the state level, these efforts should coordinate with and complement the relevant requirements of local and federal authorities.
- Addressing the inclusion of non-African species in the trophy list, and how various separate and distinct statutory provisions applicable to a particular species interact.

The Committee may wish to amend the bill to incorporate the author's efforts to protect the public and the state's native wildlife and biodiversity, and to further refine the findings. [Amendment 1]

Additionally, the Committee may wish to direct staff to continue working with the author's office as the bill language is further developed, and may also wish to bring the bill back to Committee for re-hearing.

Disease, wildlife, and health. In the last week, the department issued an alert announcing the first detection of Rabbit Hemorrhagic Disease in a wild jackrabbit near Palm Springs. This disease is highly contagious and is apparently deadly to both domesticated and wild rabbits. The department also, for example, regularly monitors elk for chronic wasting disease which is endemic in many elk populations in the United States, although not yet in California. The department, as well as other state agencies, such as the California Department of Public Health, are mindful of the risks posed by at least certain infectious agents to other wildlife and humans. The department maintains a zoonotic disease page (although many of the links appear to be currently broken). As cited above, there are numerous provisions in state law empowering the department and commission to act. It is not clear, however, how uniform efforts are, and what criteria are used to prioritize efforts given resource constraints. Legislative action to facilitate transparent, proactive, comprehensive and holistic efforts to ensure public and environmental health and safety across relevant state agencies may well be warranted.

Restricted species permits in California. There are approximately 248 restricted species permittees. Permits are valid for one year. Permittees may have more than one animal species on their permits. Importation is not tracked by the department. It is difficult to characterize these permittees who hold 323 permits which include exhibiting, research and shelter. Health certificates are required for all restricted species permits.

Additional permits required to protect public health. The Veterinary Public Health Section of the California Department of Public Health (CDPH) requires that those who wish to import certain species of non-human primates, bats or carnivores into the state from other states must first obtain a wild animal importation permit (HSC §§121775 – 121870, 17 CCR 30070 – 30086). Upon arrival into the state, these animals are quarantined and are released only after their health is certified by a veterinarian. Some of these animals also require restricted species permits from CDFW. Species imported from overseas are subject to regulation by the CDC, among other federal entities. In fact, depending upon the animal species, several different federal agencies with varying jurisdiction and capacities to assess health and disease of the animals may be involved to varying degrees. CDPH explicitly states its intent to cooperate with other applicable agencies involved in the regulation of animals, including the department, CDFA, federal agencies, and county and city government (17 CCR 30085).

More on CITES. Animals listed in CITES' Appendices are subject to varying levels of trade restriction. There are three appendices. Appendix I species are the most endangered species among CITES-listed animals and international trade in those species is prohibited. Appendix II species are "not now threatened with extinction, but may become so if trade is not controlled." Appendix II species include "look-alike" species for those species that appear similar when traded. Appendix III species are those where a country has asked for its international trade to be controlled.

Protected status of “iconic” trophy animals. Of the ten animal species and three animal orders listed in this bill, all have either an Appendix I or Appendix II listing under CITES, with the exception of hyaenas where only one species is listed under Appendix III. Similarly, of the specific animal species, only the hippopotamus, giraffe and plains zebra do not have either a threatened or endangered listing under ESA (a petition is pending for the giraffe). For the three animal orders, at least one of the individual species has an ESA listing. The International Union for the Conservation of Nature’s Red List of Threatened Species notes that many of the species of the animals specifically identified in this bill have declining populations and are listed as either vulnerable, endangered, or critically endangered by their criteria.

Federal preemption of state efforts related to trophy species. As noted above, opponents argue and then-Governor Brown decided that the iconic African trophy species language is unenforceable. The author took amendments following the hearing of SB 1487 in 2018 before the Assembly Judiciary Committee to address possible federal preemption and those amendments are retained in the current language of this bill. There is a detailed discussion of federal preemption in that Committee’s bill analysis of SB 1487. Additionally, the expanded list of species specified in this bill carry varying CITES and/or ESA status (described above). The trophy provisions of the bill include a severability provision.

Comments provided by the Senate Judiciary Committee staff. This bill touches upon various issues with the jurisdiction of the Senate Judiciary Committee, including due process, civil actions, and issues of federal preemption. This bill is similar, but not identical to SB 1487 (Stern, 2018), which was vetoed by Governor Brown for imposing state civil penalties “for activities expressly authorized by the U.S. Endangered Species Act.” SB 1487 (Stern, 2018) was not referred to the Senate Judiciary Committee. The civil penalty provisions in this bill seem to be identical to the civil penalty provisions in SB 1487 (Stern, 2018).

International trophy hunting. According to the Congressional Research Service (CRS), from 2011 – 2015, trophy imports of CITES-listed mammals into the US at well over 50,000 exceeded the sum of CITES-listed species imported into the other top nine trophy-importing countries in the world.

Proponents of trophy hunting argue that trophy hunting provides significant funding for conservation and needed jobs in African countries. Opponents counter that trophy hunting contributes to declining populations of endangered or threatened species such as African lions, leopards and African elephants, and that hunts are poorly managed, spur corruption and provide cover for illegal wildlife trafficking

Determining the impact of international trophy hunting on species can be challenging, particularly due to lack of data. Multiple factors may be responsible for a species decline including habitat alteration or destruction, resource availability, population genetics, climate change, non-native species presence, poaching, hunting for subsistence of market and trophy hunting. Game reserves or private conservancies have installed fencing which can fragment the habitat of certain species. Kenya and Botswana have banned trophy hunting. The Kenyan ban was introduced in 1977, and some wildlife species have continued to decline in population. This may in part be



attributable to the Kenyan population more than tripling to 48.5 million in 2016, and the rising prevalence of livestock keeping.

Some studies have found as little as 3% of the hunting revenues accrue to the local community while others indicate that some programs may direct over 50% to local wildlife management. An average hunting fee in 2019 was tens of thousands of dollars – about \$45,000 for an African elephant and \$34,000 for a male African lion. From 2013 – 2017 inclusive approximately 839 hippos, 984 African elephants, 1,525 leopards, 2,148 mountain zebra, 2,552 chacma baboon, and 2,645 African lions were imported into the US with a permit.

From 2010 – 2015, the US Fish and Wildlife Service documented almost 3,000 violations related to the importation of hunting trophies into the United States. Almost half of these violations include violations of the ESA.

More on bullfrogs and turtles. American bullfrogs (*lithobates catesbeianus*), the red-eared slider turtle (*Trachemys scripta elegans*) and softshell turtles – of which the most common is the Chinese softshell turtle (*pelodiscus sinensis*) – are all reported to be sold in live animal markets. There appears to be at least some concern regarding illegal harvesting of wild turtles in other states.

The department's ongoing budget issues. While the department's budget is beyond this Committee's jurisdiction, the department is in the midst of a multi-year review of the tasks required to accomplish its mission, including an evaluation of staff requirements, current service levels, and an analysis of its existing revenue structure and funding. This effort is called Service-Based Budgeting, and began in earnest following the identification of an approximately annual \$20 million structural deficit in the department's main fund, and passage of the Public Resources Budget Trailer Bill (SB 854, Committee on Budget and Fiscal Review, Chapter 51, Statutes of 2018). The department has long been described as "underfunded and over-mandated," however. The department appears to have made good progress in this effort. Results to date indicate that the department has the resources and personnel to achieve roughly one third of its mission. The largest shortfall is in Species and Habitat Conservation where the department meets only about 25% of its mission. In recognition of the need, the Brown and Newsom Administrations had begun to provide additional resources to the department. In the current economy, however, the department's resources will likely be reduced, similarly to other public entities.

#### Recent related bills

SB 1487 (Stern, 2018) would have banned the possession of certain iconic African trophy species in the state. (*This bill was vetoed by Governor Brown.*)

AB 2479 (Kuehl, Chapter 1061, Statutes of 2000) established restrictions on retail markets where live bullfrogs and turtles are sold for human consumption, among other things.

AB 238 (Honda, Chapter 1062, Statutes of 2000) authorized local ordinances related to the live sale of bullfrogs and turtles for human consumption, as specified.

## **SUGGESTED AMENDMENTS**

**AMENDMENT 1**

Revise and clarify the findings to reflect the author's intent.

Revise the language to incorporate a broader science-based review of risks associated with certain species, provide for revised permitting and other requirements, as applicable, and make conforming changes.

**SUPPORT**

Social Compassion in Legislation (co-sponsor)  
Center for Biological Diversity (co-sponsor)  
Action for Animals  
Adamant Media  
Animal Defenders International  
Animal Rebellion  
Animal Wellness Action/Animal Wellness Foundation  
Bear League  
Berkeley Animal Rights Center  
Born Free USA  
Capital Kitty Catos  
Coalition for Pets & Public Safety  
Communities, Legislation & Animal Welfare  
Compassionate Bay  
Delfina Saddlery  
Direct Action Everywhere  
EPIC  
Hector Hill Animal Sanctuary  
Humane Decisions  
In Defense of Animals  
Lean and Green Kids  
Long Beach Spay and Neuter Foundation  
Orange County Animal Save  
PawPAC  
PeaCe  
People for the Ethical Treatment of Animals  
Physicians Committee for Responsible Medicine  
PlantDiego  
Point Reyes Safaris  
Poison Free Calabasas  
Poison Free Malibu  
Project Coyote  
St. John Creative  
Sarah Killingsworth Photography  
Save the Frogs!  
Saving Gentle Hearts  
Sierra Wildlife Coalition  
SPCA Fiji Islands  
The Fix Project DBA Fix Long Beach  
Wildcare of SoCal  
Wildlife Emergency Services

Wildlife Generate  
Women United for Animal Welfare  
Hundreds of individuals

**OPPOSITION**

The Black Brant Group  
Cal-Ore Wetlands and Waterfowl Council  
California Bowmen Hunters/State Archery Association  
California Deer Association  
California Houndsmen for Conservation  
California Rifle and Pistol Association, Inc.  
California Sportsman's Lobby  
California Waterfowl Association  
Community Areas Management Program for Indigenous Resources in Zimbabwe  
(CAMPFIRE Association)  
Congressional Sportsmen's Foundation  
Muchinga Adventures, Limited  
Namibian Association of Community-Based Natural Resource Management Support  
Organizations (NACSO)  
Outdoor Sportsmen's Coalition of California  
Rocky Mountain Elk Foundation  
Safari Club International  
Safari Club International – California Coalition  
Safari Club International – San Francisco Bay Area Chapter  
San Diego County Wildlife Federation  
The Wild Sheep Foundation – California Chapter  
Tulare Basin Wetlands Association  
Universal Trophy Services, cc

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