



July 24, 2020

The Honorable Eduardo Garcia, Chair
Assembly Water, Parks and Wildlife Committee
California State Assembly
State Capitol Building
Sacramento, California 95814

Re: Fiscal Impact of SB 1175, “Iconic African Species Protection Act”

Dear Chair Garcia and Committee Members:

We write to clarify certain statements made during the May 26, 2020 Senate Natural Resources and Water Committee hearing for SB 1175 with regard to the section titled “Iconic African Species Protection Act.” Those statements do not accurately represent the potential fiscal impact of enacting this bill.

The California Department of Fish and Wildlife estimates that enforcement of SB 1175 will cost \$4.7 million and twelve positions in the first year, and \$3.2 million every year thereafter. However, this estimate does not account for the costs of defending this bill in court.

As explained below, the “Iconic African Species Protection Act” violates the preemption provision in Section 6(f) of the Endangered Species Act (“ESA”). Under Section 11(g) of the ESA, any person may sue a government instrumentality for violating the ESA and may recover litigation costs including reasonable attorneys’ fees. 16 U.S.C. § 1540(g). **The Committee should include the costs of litigating SB 1175 in assessing the bill’s full fiscal impact**, particularly as federal courts have already found similar California statutes to be invalid under the ESA.

The ESA renders “void” any state law “which applies with respect to the importation or exportation of” listed species, “to the extent that [the law] may effectively ... prohibit what is authorized” under the ESA or its implementing regulations. 16 U.S.C. § 1335(f). Federal courts have previously held that California laws were preempted under this provision. *E.g.*, *Man Hing Ivory & Imps., Inc. v. Deukmejian*, 702 F.2d 760 (9th Cir. 1983); *Fouke Co. v. Brown*, 463 F. Supp. 1142 (E.D. Cal. 1979). Twelve of the thirteen species in SB 1175 are listed in regulations implementing the ESA.¹ Contrary to statements made during the Senate Natural Resources and Water Committee hearing, SB 1175’s focus on how imports are treated within California does not negate the ESA’s plain language. Because imports of listed species fall under federal jurisdiction, SB 1175 is preempted by the ESA. **The Committee can be assured that passage**

¹ Eight of these species are listed under the ESA itself, and twelve are listed on the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”). The ESA implements CITES. 16 U.S.C. § 1537a.

of SB 1175 will result in litigation to declare the law unenforceable with respect to these species.

In 2016, the New Jersey legislature enacted a law similar to SB 1175. Like SB 1175, the New Jersey law prohibited the possession, importation, and exportation (among other things) of African elephants, leopards, lions, and black and white rhinos. The State of New Jersey was immediately sued to enjoin enforcement of this law. Contrary to statements made during the Senate Natural Resources and Water Committee hearing, the New Jersey law was not limited to commercial activity. Nor did New Jersey fail to defend the law. New Jersey argued that the law was enforceable as applied to certain circumstances; however, New Jersey was forced to concede that the law was preempted to the extent it ran counter to the ESA. *See Conservation Force v. Porrino*, No. 16-cv-4124 (D.N.J. Aug. 29, 2016) (consent judgment). **SB 1175 is legally indistinguishable from the New Jersey law.**

SB 1175's sponsor suggested during the Senate Natural Resources and Water Committee hearing that the bill was amended to resolve the federal preemption issue since its predecessor bill, SB 1487, was vetoed as "unenforceable" by former Governor Brown. But the exception language in SB 1175 (Section 4(d)) is almost identical to the same language in the predecessor bill.² SB 1175 has not been amended to resolve the fundamental issue: the ESA preempts state laws that attempt to prohibit activities authorized by federal law. **This bill is just as unenforceable in 2020 as in 2018.**

In sum, federal precedent establishes that SB 1175 is void with respect to listed species. Enacting this bill will result in litigation. The State is likely to incur its own litigation costs as well as the plaintiffs' attorneys' fees and costs. Safari Club International respectfully requests that the Committee carefully consider this additional fiscal impact in evaluating and rejecting SB 1175, the "Iconic African Species Protection Act."

Sincerely,



Regina Lennox
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Litigation Counsel, Safari Club International

² The only differences are: (1) to remove the pronouns "his or her," (2) to change the date from 2019 to 2021, and (3) to insert "this article" in Section 4(d)(5).