



Summary of Initiative 1401

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 1401. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

BRIEF SUMMARY

- Makes unlawful, with some exceptions, the distribution or trade of parts from certain endangered animals or products that contain parts from endangered animals.

BACKGROUND

Initiative 1401

Initiative 1401 was certified to the ballot on July 30, 2015. The ballot title and ballot measure summary prepared by the Attorney General are as follows:

Ballot Title

Statement of Subject: Initiative Measure No. 1401 concerns trafficking of animal species threatened with extinction.

Concise Description: This measure would make selling, purchasing, trading, or distributing certain animal species threatened with extinction, and products containing such species, a gross misdemeanor or class-C felony, with exemptions for certain types of transfers.

Should this measure be enacted into law? Yes [] No []

Ballot Measure Summary

This measure would prohibit sale, purchase, trading, or distribution of elephant, rhinoceros, tiger, lion, leopard, cheetah, pangolin, marine turtle, shark, or ray species listed as endangered or vulnerable in the Convention on International Trade in Endangered Species or the International Union for Conservation of Nature's red list, including items made from listed species. Violations would be a gross misdemeanor or class-C felony. It would exempt certain distributions, including musical instruments

and transfers for educational purposes.

State Fish and Wildlife Laws

The Washington Department of Fish and Wildlife (WDFW) is the agency primarily charged with enforcing the state's criminal laws related to fish and wildlife. These laws are generally related to the unlawful harvesting, possession, or trafficking of fish and wildlife species that are native to the state of Washington. However, there are criminal prohibitions against the possession or trafficking of certain animals that are not endemic to the state. These prohibitions extend to the fins of sharks harvested outside of Washington waters and to the possession of any fish or wildlife that was taken in another state or country in a known violation of that state or country's fish and wildlife laws.

Fish and wildlife violations are assigned various penalty categories. There are infractions, misdemeanors, gross misdemeanors, class C felonies, and class B felonies. In addition, certain violations have associated mandatory criminal wildlife penalty assessments. These assessments are in addition to any underlying criminal sanctions and are used by the WDFW, in part, to fund the investigation and prosecution of fish and wildlife crimes and to provide rewards to individuals who provide information regarding fish and wildlife violations. The criminal wildlife penalty assessments range from \$500 for the unlawful fishing of a green sturgeon to \$12,000 for the unlawful hunting of a mountain caribou, grizzly bear, or trophy mountain sheep.

International Fish and Wildlife Treaty

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a multilateral treaty regarding the international movement of endangered plants and animals. Under the CITES treaty, endangered species are organized in one of three appendices. Appendix I, covering approximately 1,200 species, lists the species that are threatened with extinction and are subject to strict export and import permits. Appendix II, which covers approximately 21,000 species, lists species that are not threatened with extinction but could become so absent regulation of their trade. Appendix II species are subject to export certificates but do not, under CITES, require import documentation. Appendix III is reserved for species of special concern for an individual CITES signatory nation.

Federal Law

The United States is a signatory to the CITES treaty and enforces it domestically primarily through the Lacey Act, a federal law first enacted in the year 1900. The Lacey act makes illegal the knowing importation, exportation, sale, and acquisition of any fish, wildlife, or plants that are taken, possessed, transported, or sold in violation of a treaty entered into by the United States or in violation of federal, state, or foreign law. The Lacey Act also specifically limits the importation, exportation, or sale of any lion, tiger, leopard, cheetah, jaguar, or cougar.

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Violations of the Lacey Act are enforced both criminally and civilly with a potential fine up to \$10,000.

SUMMARY

It is unlawful to distribute or engage in trade of parts from certain endangered animals or products that contain parts from endangered animals. The covered endangered animals (covered species) include species of elephants, rhinoceroses, tigers, lions, leopards, cheetahs, pangolins, marine turtles, sharks, and rays if the individual species is listed either: (1) in Appendix I or II by the process established for the CITES treaty or (2) as critically endangered, endangered, or vulnerable on the list of threatened species maintained by the Switzerland-based international non-governmental organization known as the International Union for Conservation of Nature and Natural Resources.

A person can be found guilty of Unlawful Trafficking in a Species Threatened with Extinction in either the second or the first degree. Unlawful Trafficking in a Species Threatened with Extinction in the second degree, which is punishable as gross misdemeanor, occurs when a person distributes or trades in a covered species part or a product containing a part of a covered species that is valued at less than \$250. Unlawful Trafficking in a Species Threatened with Extinction in the first degree, which is punishable as a class C felony, occurs if one of the following three events occur: (1) distribution or trade in a covered species part or product that is valued at \$250 or greater; (2) distribution or trade in covered species parts or products of any value if the person has ever been convicted of Unlawful Trafficking in a Species Threatened with Extinction in the first or second degree at any time in the past; or (3) distribution or trade in covered species parts or products of any value if the person has been convicted of any other fish and wildlife-related gross misdemeanor or felony in the previous five years.

In addition to criminal sanctions, a person convicted of Unlawful Trafficking in a Species Threatened with Extinction in the first or second degree is subject to a mandatory criminal wildlife penalty assessment. A second degree conviction is subject to a \$2,000 assessment and a first degree conviction is subject to a \$4,000 assessment. In the event that multiple individuals are convicted from a single event, the criminal wildlife penalty assessment must be applied to each person individually but may be collected jointly and severally.

There are some exceptions that allow a person to lawfully distribute or trade in covered animal parts or products that contain covered animal parts. These exceptions allow: the distribution of covered animal parts or products to a museum or for other educational or scientific purposes; as part of the legal distribution of property following the death of the owner; any intrastate distribution expressly allowed under federal law or by a permit; and the distribution of a musical instrument that has as part of its construction a covered animal part as long as the covered animal part or parts comprise less than 15 percent of the instrument's volume. There is also an exception for bona fide antiques older than 100 years that contain covered animal parts. To

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qualify for the antique exception, the owner or seller of the product must establish the historical documentation that evidences the provenance and age of the item. Like musical instruments, the portion of an antique item that is composed of covered animal parts must comprise less than 15 percent of the item's overall volume in order to qualify for the exemption.

The WDFW's existing authority to seize wildlife, fish, and shellfish with probable cause of a legal violation is extended to include covered animal parts and products that contain covered animal parts. Once seized, the WDFW may dispose of the parts or products by way of donation to a bona fide educational or scientific institution solely for the purposes of raising awareness of the trafficking and threatened nature of endangered species.

Effective Date: The initiative takes effect 30 days after the election at which it is approved.

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