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FISCAL IMPACT REPORT

SPONSOR Gonzales/McKenna/ ORIGINAL DATE 01/26/21
McQueen/Chandler LAST UPDATED 03/12/21 **HB** _____
SHORT TITLE Wildlife Conservation & Public Safety Act **SB** 32/aSCONC/aSJC/aSFI
#1
ANALYST Wan

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications					

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Agriculture (NMDA)
 Office of the Attorney General (NMAG)
 Department of Game and Fish (DGF)
 Energy, Minerals and Natural Resources (EMNRD)
 Commissioner of Public Lands (SLO)

SUMMARY

Synopsis of Senate Floor #1 Amendment

Senate floor amendment #1 to Senate Bill 32 adds language to the section of the bill providing exceptions to the bill’s provisions to specify trapping for religious or ceremonial purposes by an enrolled members of a federally recognized Indian nation, tribe, or pueblo shall be exempt “pursuant to rules issued by the Department of Game and Fish in collaboration with the secretary of Indian Affairs and consistent with federal procedures for recognition and protection of bona fide Indian nation, tribe, or pueblo religious ceremonies.”

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 32 amends the definition of “cage trap” to specify that it does not include a corral.

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment to Senate Bill 32 adds lands administered by

the U.S. Fish and Wildlife Service to the list of lands defined as “public land” in the bill.

Synopsis of Original Bill

SB32/aSCONC would enact the Wildlife Conservation and Public Safety Act, which would make it unlawful to use a trap, snare, or wildlife poison on public land. It establishes a variety of exceptions with specific requirements. The bill provides for misdemeanor penalties for violations of the Wildlife Conservation and Public Safety Act.

The effective date of this bill is April 1, 2022.

FISCAL IMPLICATIONS

The Department of Game and Fish (DGF) expects SB32/aSCONC to reduce the sale of furbearer licenses by an unknown amount. No other agencies reported a potential fiscal impact. It is likely district attorneys and the judiciary would incur costs proportional to the enforcement of the provisions of the bill. The provisions for restitution to agencies in Section 5 of the bill may offset some or all of these costs.

SIGNIFICANT ISSUES

The bill includes exceptions to the restrictions on using traps, snares, and poisons on public lands, specifically for:

- Taking of wildlife with firearms, fishing equipment, archery equipment, falconry equipment, or other implements in hand as authorized by law;
- The control of birds, fish, or rodents not defined as burbearers in Section 17-5-2 NMSA 1978;
- A government entity acting in the course of its official duties to prevent or mitigate threats to human health and safety;
- Ecosystem management conducted by DGF, the United States Fish and Wildlife Service, or a conservancy district of the state or its employee, agent, or representative acting in the course of its official duties;
- Bona fide scientific research;
- Depredation trapping by DGF or a designated DGF agent using non-lethal traps or non-lethal snares, but only when accompanied by visible signs at the location of each device notifying the public of the presence of such devices;
- The use of cage traps to recover or to provide veterinary care or husbandry to a domestic animal or feral animal as authorized by law, or to abate damages caused by any animal to property, crops or livestock; provided that:
 - once the damage has been abated, use of the cage trap shall cease; and
 - any captured animal is disposed of in accordance with rules established by DGF or appropriate animal agency; and
- Enrolled members of a federally recognized Indian nation, tribe, or pueblo when trapping is conducted solely for religious or ceremonial purposes.

DGF anticipates SB32/aSCONC would increase demand for the agency’s wildlife depredation mitigation services as a result of limited opportunity for agricultural producers to mitigate

depredation on public lands themselves. DGF also states non-lethal traps and snares, which the agency would be limited to under the bill, can be ineffective for beavers, nutria, and muskrats affecting irrigation systems.

The NMAG noted that SB32/aSCONC raises potential concerns with respect to state authority over lands owned by the federal government. Because the term “government entity” includes any agency of the federal government, and the term “public land” extends to all specified lands managed by the state as well as federal agencies operating on federal land in New Mexico, these would be included within the bill’s scope.

A February 2018 report by the Congressional Research Service (<http://tiny.cc/i5gv2y>) noted that while state authority to regulate hunting on federal lands does not supersede federal law, for the most part, states have the right and responsibility to manage hunting and fishing on federal lands when not in conflict with federal law.

“Statutes authorizing federal land management agency activities often clarify that [federal] agencies shall not impede upon state authority to manage fish and wildlife where it is not in conflict with federal law, and align federal management with state fish and wildlife laws and management to the maximum extent practicable.”

USDA’s Wildlife Services illustrates this type of deference to state management of wildlife in two recent environmental assessments of their work in Colorado and Arizona – states that both have broad restrictions on using traps, poisons, and snares on public land. In Colorado:

“Unless Amendment 14 [Colorado’s constitutional ban on trapping] is revoked or modified, or the State otherwise provides an interpretation that it is inapplicable to Federal programs and actions, Wildlife Services-Colorado will continue to abide by Amendment 14 in accordance with Wildlife Service’s policy of abiding by State and local laws.” (<http://tiny.cc/53gv2y>)

In Arizona:

“With the passage of Proposition 201 in Arizona, the use of foothold traps, snares, and pesticides is limited only to private and tribal lands in the state [...] Thus, the only methods available that Wildlife Services-Arizona can use in predator damage management actions for livestock or wildlife protection on U.S. Forest Service and Bureau of Land Management lands in the state are nonlethal methods, aerial shooting, and ground-based shooting with the exception of foot-hold traps for Mexican wolves and tools for predator damage management for human health and safety, wildlife disease surveillance, scientific research, and wildlife relocation.” (<http://tiny.cc/i4gv2y>)

ADMINISTRATIVE IMPLICATIONS

DGF would be required to assist the State Game Commission in amending applicable rules, such as the New Mexico Hunter and Trapper Reporting System Rule, 19.30.10 NMAC, and the Trapping and Furbearer Rule, 19.32.2 NMAC, and make the necessary changes to internal policies governing trapping and translocation of wildlife and the Hunting Rules and Information Booklet.

DGF stated that the exemption for religious or ceremonial trapping by enrolled members of a federally recognized Indian nation, tribe or pueblo would place the onus of authentication of an individual’s ethnicity and their motivation the department.

SLO has issued an easement to the State Game Commission permitting authorized hunters, anglers, and trappers to enter certain state trust lands for the regulated harvest of protected species, including hunting, fishing, and trapping of protected species. SB32/aSCONC would nullify the provision of this easement that allows trapping on state trust land.

CW/sb/al