

112TH CONGRESS
2D SESSION

H. R. 5864

To establish an improved regulatory process for injurious wildlife to prevent the introduction and establishment in the United States of nonnative wildlife and wild animal pathogens and parasites that are likely to cause harm.

IN THE HOUSE OF REPRESENTATIVES

MAY 30, 2012

Ms. SLAUGHTER (for herself, Mr. RANGEL, Mr. ROGERS of Michigan, Mr. KUCINICH, Ms. BORDALLO, Mr. HINCHEY, Mr. FARR, Mrs. MALONEY, Mr. KILDEE, and Mr. GRIJALVA) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on the Judiciary, Ways and Means, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish an improved regulatory process for injurious wildlife to prevent the introduction and establishment in the United States of nonnative wildlife and wild animal pathogens and parasites that are likely to cause harm.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Invasive Fish and
3 Wildlife Prevention Act of 2012”.

4 **SEC. 2. PURPOSE.**

5 The purpose of this Act is to establish an improved
6 regulatory process for injurious wildlife to prevent the in-
7 troduction and establishment in the United States of non-
8 native wildlife and wild animal pathogens and parasites
9 that are likely to cause—

10 (1) economic or environmental harm; or

11 (2) harm to humans or animal health.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) **APPROVED WILDLIFE SANCTUARY.**—The
15 term “approved wildlife sanctuary” means a sanc-
16 tuary that cares for wildlife species that—

17 (A)(i) is a corporation that is exempt from
18 taxation under section 501(a) of the Internal
19 Revenue Code 1986 and is described in sections
20 501(c)(3) and 170(b)(1)(A)(vi) of that Code; or

21 (ii) is an educational entity;

22 (B) does not commercially trade in animals
23 regulated under this Act, including offspring,
24 parts, and byproducts of those animals;

25 (C) does not propagate animals regulated
26 under this Act; and

1 (D) meets any additional criteria that the
2 Service determines are necessary and consistent
3 with the purpose of this Act.

4 (2) AQUATIC NUISANCE SPECIES TASK
5 FORCE.—The term “Aquatic Nuisance Species Task
6 Force” means the Aquatic Nuisance Species Task
7 Force established under section 1201 of the Non-
8 indigenous Aquatic Nuisance Prevention and Control
9 Act of 1990 (16 U.S.C. 4702).

10 (3) FUND.—The term “Fund” means the Inju-
11 rious Wildlife Prevention Fund established by sec-
12 tion 16(a).

13 (4) IMPORT.—The term “import” means to
14 bring into, or introduce into, or attempt to bring
15 into, or introduce into, any place subject to the ju-
16 risdiction of the United States, regardless of whether
17 the bringing into or introduction constitutes an im-
18 portation within the meaning of the customs laws of
19 the United States.

20 (5) INDIAN TRIBE.—The term “Indian tribe”
21 has the meaning given the term in section 4 of the
22 Indian Self-Determination and Education Assistance
23 Act (25 U.S.C. 450b).

24 (6) INJURIOUS WILDLIFE.—The term “inju-
25 rious wildlife” means any species of mammal, bird,

1 fish, mollusk, crustacean, arthropod, coelenterate,
2 amphibian, or reptile, and any offspring or egg of
3 such a species, that is designated as injurious under
4 a regulation promulgated by the Secretary pursuant
5 to section 42(a) of title 18, United States Code.

6 (7) NATIONAL INVASIVE SPECIES COUNCIL.—
7 The term “National Invasive Species Council”
8 means the National Invasive Species Council estab-
9 lished by Executive Order 13112 on February 8,
10 1999 (64 Fed. Reg. 6183).

11 (8) NATIVE.—The term “native”, with respect
12 to a wildlife taxon, means a wildlife taxon that his-
13 torically occurred or currently occurs in the United
14 States, other than as a result of an intentional or
15 unintentional introduction by humans.

16 (9) NONNATIVE WILDLIFE TAXON.—

17 (A) IN GENERAL.—The term “nonnative
18 wildlife taxon” means any family, genus, spe-
19 cies, or subspecies of live animal that is not na-
20 tive to the United States, regardless of whether
21 the animal was born or raised in captivity.

22 (B) INCLUSIONS.—The term “nonnative
23 wildlife taxon” includes any viable egg, sperm,
24 gamete, or other reproductive material or off-

1 spring of an animal of a family, genus, species,
2 or subspecies described in subparagraph (A).

3 (C) EXCLUSIONS.—The term “nonnative
4 wildlife taxon” does not include—

5 (i) any taxon that is—

6 (I) specifically defined or regu-
7 lated as a plant pest or approved for
8 biological control purposes under the
9 Plant Protection Act (7 U.S.C. 7701
10 et seq.); or

11 (II) defined or regulated as a
12 threat to livestock or poultry under
13 the Animal Health Protection Act (7
14 U.S.C. 8301 et seq.); or

15 (ii) any common and clearly domes-
16 ticated species or subspecies, including—

17 (I) cat (*Felis catus*);

18 (II) cattle or oxen (*Bos taurus*);

19 (III) chicken (*Gallus gallus*
20 domesticus);

21 (IV) common canary (*Serinus*
22 canaria domesticus);

23 (V) dog (*Canis lupus familiaris*);

24 (VI) donkey or ass (*Equus*
25 asinus);

- 1 (VII) domesticated members of
2 the family Anatidae (geese);
3 (VIII) duck (domesticated *Anas*
4 spp.);
5 (IX) domesticated ferret
6 (*Mustela furo*);
7 (X) gerbil (*Meriones*
8 *unguiculatus*);
9 (XI) goat (*Capra aegagrus*
10 *hircus*);
11 (XII) guinea pig or Cavy (*Cavia*
12 *porcellus*);
13 (XIII) goldfish (*Carassius*
14 *auratus auratus*);
15 (XIV) domesticated hamsters
16 (*Cricetulus griseus*, *Mesocricetus*
17 *auratus*, *Phodopus campbelli*,
18 *Phodopus sungorus*, and *Phodopus*
19 *roborovskii*);
20 (XV) horse (*Equus caballus*);
21 (XVI) llama (*Lama glama*);
22 (XVII) mule or hinny (*Equus*
23 *caballus* x *E. asinus*);
24 (XVIII) pig or hog (*Sus scrofa*
25 *domestica*);

1 (XIX) domesticated varieties of
2 rabbit (*Oryctolagus cuniculus*);
3 (XX) sheep (*Ovis aries*); or
4 (XXI) any other species or sub-
5 species that the Service determines to
6 be common and clearly domesticated.

7 (10) PERSON.—The term “person” means—

8 (A) an individual, corporation, partnership,
9 trust, association, or other private entity;

10 (B) any officer, employee, agent, depart-
11 ment, or instrumentality of the Federal Govern-
12 ment, or of any tribal government, or of any
13 State, municipality, or political subdivision of a
14 State, or of any foreign government; and

15 (C) any other entity subject to the jurisdic-
16 tion of the Federal United States.

17 (11) QUALIFIED INSTITUTION.—The term
18 “qualified institution” means an institution that—

19 (A) is determined by the Service to be—

20 (i) for scientific research, medical re-
21 search, or display purposes in a zoo or
22 aquarium accredited by the Association of
23 Zoos and Aquariums; or

24 (ii) an approved wildlife sanctuary;
25 and

1 (B) for which the Service determines that
2 there has been a proper showing by the owner
3 or operator of the institution of responsibility
4 and continued protection of the public interest.

5 (12) SECRETARY.—The term “Secretary”
6 means the Secretary of the Interior.

7 (13) SERVICE.—The term “Service” means the
8 United States Fish and Wildlife Service.

9 (14) STATE.—The term “State” means—

10 (A) each of the several States of the
11 United States;

12 (B) the District of Columbia;

13 (C) the Commonwealth of Puerto Rico;

14 (D) Guam;

15 (E) American Samoa;

16 (F) the Commonwealth of the Northern
17 Mariana Islands;

18 (G) the Federated States of Micronesia;

19 (H) the Republic of the Marshall Islands;

20 (I) the Republic of Palau; and

21 (J) the United States Virgin Islands.

22 (15) UNITED STATES.—The term “United
23 States” means—

24 (A) the States; and

1 (B) any land and water, including the ter-
2 ritorial sea and the Exclusive Economic Zone,
3 within the jurisdiction or sovereignty of the
4 Federal Government.

5 **SEC. 4. PROPOSALS FOR REGULATION OF NONNATIVE**
6 **WILDLIFE TAXA.**

7 (a) PROPOSALS.—Any person or entity, or the Serv-
8 ice, at the discretion of the Service, may propose the regu-
9 lation of, or revised regulation of, 1 or more taxa.

10 (b) INFORMATION.—A proposal by a person or agen-
11 cy should include adequate information to allow the Serv-
12 ice to determine whether the taxon meets the criteria for
13 designation as Injurious I or Injurious II under section
14 5(a)(1)(A).

15 (c) PUBLIC AND AGENCY COMMENT.—Upon receipt
16 of a proposal that the Service determines to be complete,
17 and for any proposal the Service elects to prepare, the
18 Service shall publish notice of the proposal in the Federal
19 Register and provide an opportunity for at least 60 days
20 of public comment.

21 (d) DETERMINATION.—Not later than 180 days after
22 the date of publication of a proposal under subsection (c),
23 or as soon thereafter as is feasible, the Service shall make
24 a determination as to whether the proposal should be ap-
25 proved or disapproved.

1 (e) NOTICE OF DETERMINATION.—The Service
2 shall—

3 (1) publish in the Federal Register notice of the
4 determination made under subsection (d); and

5 (2) make the basis for the determination avail-
6 able on a publicly available Federal Internet site.

7 **SEC. 5. SCIENTIFIC RISK ASSESSMENT AND RISK DETER-**
8 **MINATION REGULATIONS.**

9 (a) ASSESSMENT AND DETERMINATION.—

10 (1) IN GENERAL.—The Secretary, acting
11 through the Service, shall promulgate regulations—

12 (A) to further specify the criteria for regu-
13 lating a nonnative wildlife taxon as—

14 (i) an Injurious I taxon, which shall
15 be a taxon—

16 (I) that the Service determines—

17 (aa) to be injurious to
18 human beings, the interests of
19 agriculture, horticulture, or for-
20 estry, or wildlife or wildlife re-
21 sources of the United States; and

22 (bb) to have a high degree
23 of potential harm and is a taxon
24 with which qualified institutions
25 have not previously had signifi-

1 cant experience in maintaining
2 successfully in captivity and pre-
3 venting escapes or releases; and

4 (II) the importation and trans-
5 portation of which in interstate com-
6 merce shall be conducted only pursu-
7 ant to a permit issued under section
8 12 to a qualified institution; or

9 (ii) an Injurious II taxon, which shall
10 be a taxon—

11 (I) that the Service determines—

12 (aa) to be injurious to
13 human beings, the interests of
14 agriculture, horticulture, or for-
15 estry, or wildlife or wildlife re-
16 sources of the United States; but

17 (bb) to have a degree of po-
18 tential for harm that is less than
19 the degree of potential harm of
20 an Injurious I taxon or is a taxon
21 with which qualified institutions
22 have previously had significant
23 experience in maintaining suc-
24 cessfully in captivity and pre-
25 venting escapes or releases; and

1 (II) for which no permit is re-
2 quired if the taxon is—

3 (aa) imported to a qualified
4 institution;

5 (bb) transported in inter-
6 state commerce and intrastate
7 commerce to and among qualified
8 institutions; or

9 (cc) held by a qualified insti-
10 tution;

11 (B) to establish a process for assessing and
12 analyzing the risks of taxa that may have been,
13 or foreseeably could be, imported into, or found
14 in interstate commerce within, the United
15 States; and

16 (C) that may also provide for cases in
17 which exceptions or additions to the Injurious I
18 taxon or Injurious II taxon criteria may be nec-
19 essary to address extraordinary risks.

20 (2) BASIS, AVAILABILITY, AND REVIEW.—The
21 Service shall—

22 (A) ensure that the risk assessment and
23 risk determination processes conducted under
24 this section are based on sound science; and

1 (B) make the results of each such assess-
2 ment and determination available to the public.

3 (3) PREVIOUSLY LISTED TAXA.—Each wildlife
4 taxon previously designated by statute or by the Sec-
5 retary as injurious under section 42(a) of title 18,
6 United States Code (including under any regulation
7 promulgated under that authority), shall, after the
8 effective date of the final regulations promulgated
9 under this subsection, be promptly designated by the
10 Service as an Injurious I taxon or Injurious II taxon
11 under this subsection, based on a determination by
12 the Service of whether the taxon meets the criteria
13 described in clause (i) or (ii), respectively, of para-
14 graph (1)(A).

15 (4) DEADLINES.—

16 (A) PROPOSED REGULATIONS.—Not later
17 than 1 year after the date of enactment of this
18 Act, the Secretary shall publish in the Federal
19 Register a proposed version of the regulations
20 required under this subsection.

21 (B) FINAL REGULATIONS.—Not later than
22 18 months after the date of enactment of this
23 Act, the Secretary shall promulgate final regu-
24 lations required under this subsection, including

1 a public notification of the process for submis-
2 sion of a proposal under section 4(a).

3 (C) ADDITIONAL REQUIREMENT OF PRE-
4 IMPORT RISK SCREENING FOR ALL TAXA NOVEL
5 TO THE UNITED STATES.—

6 (i) IN GENERAL.—Five years after the
7 date of enactment of this Act, the Sec-
8 retary shall by regulation—

9 (I) define the phrase “non-native
10 wildlife taxa novel to the United
11 States” for the purpose of this sec-
12 tion; and

13 (II) set forth a process to ensure
14 that all unregulated non-native wild-
15 life taxa novel to the United States
16 are thereafter reviewed by the Service
17 prior to allowance of their importation
18 to the United States to determine
19 whether they should be regulated
20 under any of clause (i) or (ii) of para-
21 graph (1)(A).

22 (ii) AVOIDANCE OF NEW INCEN-
23 TIVES.—In promulgating the regulation
24 under clause (i), the Secretary shall seek
25 to avoid creating a new incentive for ani-

mal importers to import novel taxa prior to the effective date of the regulation.

(iii) NEW REGULATION FOR IMPORTS OF TAXA NOVEL TO THE UNITED STATES.—Not later than 1 year after the date of promulgation of the regulation under clause (i), the Secretary shall implement the regulation.

(b) SCIENTIFIC RISK ASSESSMENT.—The regulations promulgated under subsection (a) shall require consideration, in an initial scientific risk assessment of a taxon, of at least—

(1) the scientific name and native range of the taxon;

(2) whether the taxon has established or spread, or caused harm to the economy, the environment, or the health of other animal species in the United States or in an ecosystem similar to an ecosystem in the United States;

(3) whether environmental conditions suitable for the establishment or spread of the taxon exist or will exist in the United States;

(4) the likelihood of establishment and spread of the taxon;

1 (5) whether the taxon will cause harm to
2 human beings, to the interests of agriculture, horti-
3 culture, forestry, or to wildlife or the wildlife re-
4 sources of the United States;

5 (6) whether the taxon will damage land, water,
6 or facilities of the National Park System or other
7 public land;

8 (7) the best available scientific risk screening
9 systems or predictive models that apply to the taxon;
10 and

11 (8) other factors important to assessing risks, if
12 any, associated with the taxon, in accordance with
13 the purpose of this Act.

14 (c) RISK DETERMINATION.—Prior to designating any
15 nonnative wildlife taxon as an Injurious I taxon or Inju-
16 rious II taxon under subsection (a), after conducting a
17 risk assessment, the Service shall prepare a risk deter-
18 mination that takes into consideration—

19 (1) the results of the risk assessment; and

20 (2) at a minimum—

21 (A) the capabilities and any efforts of
22 States, local governments, and Indian tribes to
23 address the risks, if any, identified by the Serv-
24 ice with respect to the taxon, including the re-

1 sults of any risk assessments conducted for the
2 taxon that are available to the Service;

3 (B) the potential for reduction, mitigation,
4 control, and management of any risks identi-
5 fied; and

6 (C) whether any risks identified already
7 are adequately addressed under other applicable
8 law.

9 (d) DISCRETIONARY ANALYSIS.—

10 (1) IN GENERAL.—In preparing the risk deter-
11 mination for a taxon, the Service may consider the
12 economic, social, and cultural impacts of a decision
13 on whether to regulate the taxon.

14 (2) OTHER REQUIREMENTS.—This section shall
15 satisfy the requirements of, and apply in lieu of any
16 other requirement to complete an analysis under,
17 any other law (including a regulation or Executive
18 order) on economic, social, or cultural impact.

19 (e) NOTICE AND CONSULTATION.—In promulgating
20 regulations under subsection (a), the Service shall notify
21 and consult with, at a minimum—

22 (1) affected States, Indian tribes, and other
23 stakeholders;

24 (2) the Aquatic Nuisance Species Task Force;

25 (3) the National Invasive Species Council;

- 1 (4) the Department of Agriculture;
2 (5) the Centers for Disease Control and Preven-
3 tion; and
4 (6) the National Oceanic and Atmospheric Ad-
5 ministration.

6 **SEC. 6. EMERGENCY TEMPORARY DESIGNATION.**

7 (a) IN GENERAL.—If the Service determines an
8 emergency exists because an unregulated nonnative wild-
9 life taxon poses an imminent threat of harm to individuals
10 in or wildlife of the United States, or the economy or envi-
11 ronment of the United States, the Service may imme-
12 diately temporarily designate the nonnative wildlife taxon
13 as Injurious I in accordance with section 5(a)(1)(A)(i).

14 (b) NOTICE OF TEMPORARY DESIGNATION.—The
15 Service shall promptly—

16 (1) publish in the Federal Register notice of
17 each temporary designation under this subsection;
18 and

19 (2) make the basis for the designation available
20 on a publicly available Federal Internet site and
21 through other appropriate means.

22 (c) DETERMINATION.—Not later than 1 year after
23 temporarily designating a nonnative wildlife taxon using
24 the emergency authority under this section, the Service
25 shall—

1 (1) make a final determination regarding
2 whether the taxon should be further regulated under
3 either of clause (i) or (ii) of section 5(a)(1)(A);

4 (2) publish notice of that final determination in
5 the Federal Register; and

6 (3) make the basis for the determination avail-
7 able on a publicly available Federal Internet site.

8 (d) LIMITATION ON PROCEDURES.—The procedures
9 under sections 4 and 5 of this Act and section 553 of title
10 5, United States Code, shall not apply to temporary des-
11 ignations under this section.

12 (e) STATE REQUESTS.—If the Governor of a State
13 requests a temporary emergency designation under this
14 section, the Service shall respond promptly with a written
15 determination on the request.

16 **SEC. 7. INFORMATION ON IMPORTED ANIMALS.**

17 (a) IMPROVED INFORMATION.—The Service shall—

18 (1) not later than 18 months after the date of
19 enactment of this Act, establish an electronic data-
20 base that describes, using scientific names to the
21 species level (or subspecies level, if applicable), all
22 quantities of imports of all live wildlife, and the reg-
23 ulatory status of the wildlife, in a form that permits
24 that information to be rapidly accessed; and

1 (2) not later than 30 days after the date of im-
2 portation of wildlife described in paragraph (1),
3 make the information described in that paragraph
4 (other than confidential business information associ-
5 ated with those imports that is protected under
6 other Federal law) available on a publicly available
7 Federal Internet site.

8 (b) ANNUAL REPORT OF INFORMATION.—Not later
9 than 3 years after the date of enactment of this Act, and
10 not later than each April 1 thereafter, the Service shall
11 issue, including on a publicly available Federal Internet
12 site, a report that includes, at a minimum, a description
13 of—

14 (1) all nonnative wildlife imported, using sci-
15 entific names of the wildlife to the species or sub-
16 species level, to the extent known; and

17 (2) cumulative quantities of imported wildlife
18 and the regulatory status of the wildlife.

19 (c) MONITORING IMPORT INFORMATION.—In con-
20 sultation with inspection, customs, and border officials in
21 the Departments of Agriculture and Homeland Security,
22 the Service shall regularly—

23 (1) monitor the identities and quantities of non-
24 native wildlife taxa being imported, with particular

1 emphasis on wildlife newly in the import trade to the
2 United States; and

3 (2) determine, to the maximum extent prac-
4 ticable, whether the newly traded taxa would meet
5 the criteria for regulation, and should be regulated,
6 under any of clause (i) or (ii) of section 5(a)(1)(A).

7 **SEC. 8. INJURIOUS WILDLIFE DETERMINATIONS.**

8 (a) IN GENERAL.—Immediately upon the date of en-
9 actment of this Act, the Secretary shall make more rapid
10 determinations on proposals for regulation of wildlife
11 under section 42 of title 18, United States Code.

12 (b) STREAMLINING OF DETERMINATIONS.—In car-
13 rying out subsection (a) and other provisions of this Act,
14 the Secretary—

15 (1) shall use the best available scientific risk
16 screening systems or predictive models that apply to
17 the taxon under consideration;

18 (2) shall forego time-consuming optional admin-
19 istrative steps, unless the Secretary determines the
20 steps to be essential; and

21 (3) notwithstanding chapter 6, and section 804,
22 of title 5, United States Code, may forego economic
23 impact analyses.

1 **SEC. 9. EFFECT ON INJURIOUS WILDLIFE PROVISION.**

2 This Act and the regulations promulgated under this
3 Act shall take precedence over any conflicting regulation
4 promulgated under section 42 of title 18, United States
5 Code.

6 **SEC. 10. PREVENTION OF WILDLIFE PATHOGENS AND**
7 **PARASITES.**

8 (a) IN GENERAL.—The Secretary shall have the pri-
9 mary authority to prevent, and the primary responsibility
10 for preventing, the importation of, and interstate com-
11 merce in, wildlife pathogens and harmful parasites.

12 (b) REGULATIONS.—

13 (1) IN GENERAL.—In addition to regulations
14 required under section 5(a), the Secretary shall pro-
15 mulgate such regulations as are necessary—

16 (A) to minimize the likelihood of introduc-
17 tion or dissemination of any disease or harmful
18 parasite of native or nonnative wildlife; and

19 (B) to impose any additional necessary im-
20 port restrictions, including management meas-
21 ures, health certifications, quarantine require-
22 ments, specifications for conveyances, holding
23 water, and associated materials, shipment and
24 handling requirements, and other measures that
25 the Secretary determines to be necessary—

1 (i) to prevent the importation of, and
2 interstate commerce in, wildlife pathogens
3 and harmful parasites; and

4 (ii) to address—

5 (I) a particular taxon;

6 (II) the place of origin of a par-
7 ticular taxon; and

8 (III) the conveyance and mate-
9 rials associated with wildlife trans-
10 port.

11 (c) RELATIONSHIP TO OTHER AUTHORITIES.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2), the Secretary shall exclude from regula-
14 tion under this section any pathogen, parasite, or
15 host taxon that is—

16 (A) defined or regulated by the Depart-
17 ment of Health and Human Services as a
18 threat to humans under section 361 of the Pub-
19 lic Health Service Act (42 U.S.C. 264);

20 (B) defined or regulated by the Depart-
21 ment of Agriculture as a threat to livestock or
22 poultry under the Animal Health Protection Act
23 (7 U.S.C. 8301 et seq.); or

24 (C) specifically defined or regulated by the
25 Department of Agriculture as a plant pest or

1 approved for biological control purposes under
2 the Plant Protection Act (7 U.S.C. 7701 et
3 seq.).

4 (2) EXCEPTION.—The Secretary may regulate a
5 pathogen, parasite, or host taxon described in any of
6 subparagraphs (A) through (C) of paragraph (1) to
7 the extent that the taxon also poses a wildlife dis-
8 ease risk.

9 (d) COORDINATION.—

10 (1) IN GENERAL.—In promulgating regulations
11 under and otherwise carrying out this section and
12 section 7, the Secretary shall consult and coordinate
13 with—

14 (A) other Federal agencies and depart-
15 ments with authority to regulate taxa;

16 (B) State wildlife agencies;

17 (C) State veterinarians; and

18 (D) other officials with related authorities.

19 (2) CONSULTATION BY SECRETARY OF AGRI-
20 CULTURE.—In any case in which the Secretary of
21 Agriculture participates in the World Organization
22 for Animal Health, the Secretary of Agriculture
23 shall confer and consult with the Secretary on any
24 matters relating to prevention of wildlife diseases
25 that may threaten the United States.

1 **SEC. 11. PROHIBITIONS.**

2 (a) PROHIBITIONS.—Except as provided in this sec-
3 tion or section 12, it shall be unlawful for any person sub-
4 ject to the jurisdiction of the United States—

5 (1) to import into the United States any non-
6 native wildlife taxon the Service has designated as
7 Injurious I or Injurious II under section 5(a)(1)(A)
8 or under section 6, or to knowingly possess such an
9 animal, or the descendant of such an animal, that
10 was imported in violation of this subsection;

11 (2) to engage in interstate commerce for any
12 nonnative wildlife taxon described in paragraph (1),
13 or to knowingly possess such an animal, or the de-
14 scendant of an animal, that was transported in
15 interstate commerce in violation of this subsection;

16 (3) to violate any term or condition of a permit
17 issued to a qualified institution under section 12 for
18 a taxon designated as Injurious I under clause (i) of
19 section 5(a)(1)(A) or under section 6;

20 (4) to release into the wild any nonnative wild-
21 life taxon described in paragraph (1);

22 (5) to violate any additional regulation promul-
23 gated by the Secretary as necessary to prevent the
24 importation of, and interstate commerce in, wildlife
25 pathogens and harmful parasites under this Act; or

1 (6) to attempt any of the prohibited actions de-
2 scribed in paragraphs (1) through (5).

3 (b) EXEMPTION FOR INTERSTATE TRANSPORTATION
4 OF ANIMALS OF LATER-REGULATED TAXA.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), an individual animal that was lawfully
7 owned prior to the taxa to which the animal belongs
8 being regulated by the Service under this Act as In-
9 jurious II may be transported interstate without a
10 permit by any person for noncommercial purposes
11 only.

12 (2) EXCEPTION.—The exemption under para-
13 graph (1) does not apply to an animal of any taxa
14 designated by the Service as Injurious I.

15 (c) LIMITATION ON APPLICATION.—

16 (1) IN GENERAL.—The prohibitions in this sec-
17 tion shall not apply to—

18 (A) any action by Federal, State, tribal, or
19 local law enforcement personnel to enforce this
20 section; and

21 (B) any action by Federal, State, tribal, or
22 local officials to prevent the introduction or es-
23 tablishment of nonnative wildlife, or wildlife
24 pathogens or parasites, including actions to

1 transport, hold, and shelter animals of taxa reg-
2 ulated under this Act.

3 (2) IMPORTATION AND TRANSPORTATION BY
4 FEDERAL AGENCIES.—Nothing in this Act shall re-
5 strict the importation or transportation between any
6 States of nonnative wildlife by a Federal agency for
7 the use of the Federal agency if the nonnative wild-
8 life remains in the possession of a Federal agency.

9 (d) EFFECTIVE DATE.—This section takes effect on
10 the date that is 30 days after the date of promulgation
11 of the final regulations under section 5(a).

12 **SEC. 12. PERMITS AND EXEMPTIONS FOR QUALIFIED INSTI-**
13 **TUTIONS AND LIVE ANIMAL TRANSPORTERS.**

14 (a) PERMITS.—The Service may issue to a qualified
15 institution a permit authorizing any of the actions other-
16 wise prohibited under section 11 for any wildlife taxon
17 designated under clause (i) or (ii) of section 5(a)(1)(A)
18 or under section 6.

19 (b) TERMS AND CONDITIONS.—The Service may in-
20 clude in a permit under subsection (a) terms and condi-
21 tions to minimize the risk of introduction or establishment
22 of nonnative wildlife, pathogens, and parasites in the
23 United States.

24 (c) EXEMPTION AND REPORTING.—

1 (1) IN GENERAL.—No permit shall be required
2 for any qualified institution or any live animal trans-
3 portation company or other live animal transporter
4 that is in temporary possession of an animal deliv-
5 ering it to, or transporting it from, a qualified insti-
6 tution, to import or transport (on an interstate or
7 intrastate basis), or possess or breed, any taxon that
8 the Service has designated as an Injurious II taxon
9 under section 5(a)(1)(A)(ii).

10 (2) EXCLUSIONS.—The exemption described in
11 paragraph (1) does not include the transfer of own-
12 ership of an Injurious II taxon to any person or en-
13 tity other than to another qualified institution.

14 (3) REPORTS.—Each qualified institution or
15 live animal transporter that imports, transports (on
16 an interstate or intrastate basis), possesses, or
17 breeds any taxa designated as Injurious II shall file
18 annual reports with the Service that summarize, for
19 the period covered by the report, transactions of the
20 qualified institution or live animal transporter for
21 the covered taxa.

22 (d) REGULATIONS; LIST OF QUALIFIED INSTITU-
23 TIONS.—The Secretary shall—

24 (1) promulgate regulations to implement this
25 section; and

1 (2) maintain a current roster of designated
2 qualified institutions on a publicly available Federal
3 Internet site and through other appropriate means.

4 **SEC. 13. USER FEES.**

5 (a) IN GENERAL.—Not later than 2 years after the
6 date of enactment of this Act, the Secretary shall propose,
7 and subsequently adopt, by regulation, a reasonable fee
8 to be charged on imported live wildlife shipments for use
9 in recovering a portion of the costs of—

10 (1) improving the information available on the
11 importation and interstate commerce trade of wild-
12 life;

13 (2) monitoring that information under section
14 7;

15 (3) conducting risk assessments and risk anal-
16 yses for nonnative wildlife taxa in that trade under
17 sections 4 and 5;

18 (4) making emergency designations under sec-
19 tion 6; and

20 (5) preventing wildlife pathogens and parasites
21 under section 10.

22 (b) COST RECOVERY PURPOSE.—The purpose of the
23 user fees in this section shall be to recover approximately
24 75 percent of the Service’s costs of the services it under-
25 takes listed in subsection (a), after such date as the user

1 fee regulation under subsection (a) is fully implemented
 2 and the amounts of the fees received have been appro-
 3 priated to the Injurious Wildlife Prevention Fund pursu-
 4 ant to section 16(b)(2)(A) for at least one full fiscal year.

5 (c) FEE LIMIT.—The amount of the additional fee
 6 to be charged on any live wildlife shipment under this sec-
 7 tion shall be set by the Secretary only after fully consid-
 8 ering public comments on the proposed fee regulation and
 9 it shall be charged broadly and fairly across the live wild-
 10 life import industry and at the lowest level feasible to
 11 achieve the cost recovery purpose in subsection (b). The
 12 fees shall be set so that the annual total fee revenue shall
 13 not exceed the amount of the annual total fee revenue of
 14 the fee charged by the Service under the inspection pro-
 15 gram of the Service to oversee the importation of live wild-
 16 life carried out pursuant to—

17 (1) section 11(f) of the Endangered Species Act
 18 of 1973 (16 U.S.C. 1540(f));

19 (2) subpart I of part 14 of title 50, Code of
 20 Federal Regulations (or successor regulations); and

21 (3) other applicable authority.

22 **SEC. 14. RELATIONSHIP TO STATE LAW.**

23 (a) PURPOSE.—The general purpose of this Act is
 24 improving Federal regulation of international importation
 25 and interstate commerce in injurious wildlife taxa. Posses-

1 sion of lawfully obtained injurious wildlife taxa within a
2 State is intended to be a matter of State law and not to
3 be Federally regulated or to require a Federal permit
4 under this Act.

5 (b) IN GENERAL.—Except as provided in subsection
6 (c), nothing in this Act, or in the regulations and deter-
7 minations to be promulgated or issued by the Secretary
8 or the Service under this Act, preempts or otherwise af-
9 fects the application of any State law that establishes
10 more stringent requirements for—

11 (1) the importation, transportation, possession,
12 sale, purchase, release, breeding of, or bartering for,
13 or any other transaction involving, any nonnative
14 wildlife taxon; or

15 (2) the prevention of wildlife pathogens and
16 harmful parasites.

17 (c) LIMITATION ON APPLICATION OF PROHIBITIONS
18 TO PREVENT RELEASE.—The Service may limit the appli-
19 cation of this Act to facilitate implementation of any
20 State, local, or tribal program that results in voluntary
21 surrender of regulated nonnative wildlife, if the Service de-
22 termines that the limitation will prevent the release of that
23 wildlife.

24 **SEC. 15. PENALTIES AND SANCTIONS.**

25 (a) CIVIL PENALTIES.—

1 (1) CIVIL ADMINISTRATIVE PENALTIES.—

2 (A) IN GENERAL.—Any person who is
3 found by the Secretary, after notice and oppor-
4 tunity for a hearing conducted in accordance
5 with section 554 of title 5, United States Code,
6 to have committed any act prohibited by section
7 11 shall be liable to the United States for a
8 civil penalty in an amount not to exceed
9 \$10,000 for each violation.

10 (B) SUBPOENA POWER.—For the purposes
11 of conducting any investigation or hearing
12 under this Act, the Secretary may—

13 (i) issue subpoenas for the attendance
14 and testimony of witnesses and the produc-
15 tion of relevant papers, books, and docu-
16 ments; and

17 (ii) administer oaths.

18 (2) CIVIL JUDICIAL PENALTIES.—Any person
19 who violates any provision of this Act, or any regula-
20 tion promulgated or permit issued under this Act,
21 shall be subject to a civil penalty in an amount not
22 to exceed \$500 for each such violation.

23 (b) CRIMINAL OFFENSES.—Any person who know-
24 ingly violates any provision of this Act, or any regulation

1 promulgated or permit issued under this Act, shall, upon
2 conviction, be guilty of a class A misdemeanor.

3 (c) NATURAL RESOURCE DAMAGES.—All costs relat-
4 ing to the mitigation of injury caused by a violation of
5 this Act shall be borne by the person that violated this
6 Act.

7 (d) ENFORCEMENT.—

8 (1) OTHER POWERS AND AUTHORITIES.—Any
9 person authorized by the Secretary to enforce this
10 Act shall have the same authorities as are described
11 in section 6 of the Lacey Act Amendments of 1981
12 (16 U.S.C. 3375).

13 (2) FORFEITURE.—

14 (A) IN GENERAL.—A person who is deter-
15 mined to have violated any provision of this Act
16 shall forfeit to the United States—

17 (i) any property, real or personal,
18 taken or retained in connection with or as
19 a result of the offense; and

20 (ii) any property, real or personal,
21 used or intended to be used to commit or
22 to facilitate the commission of the offense.

23 (B) DISPOSAL OF PROPERTY.—Upon the
24 forfeiture to the United States of any property
25 or item described in clause (i) or (ii) of sub-

1 paragraph (A), or upon the abandonment or
2 waiver of any claim to any such property or
3 item, the property or item shall be disposed of
4 by the Secretary in a manner consistent with
5 the purpose of this Act.

6 (e) APPLICATION OF CUSTOMS LAWS.—All powers,
7 rights, and duties conferred or imposed by the customs
8 laws upon any officer or employee of the Customs Service
9 may, for the purpose of this Act, be exercised or performed
10 by the Secretary, or by such officers or employees of the
11 United States as the Secretary may designate.

12 **SEC. 16. INJURIOUS WILDLIFE PREVENTION FUND.**

13 (a) ESTABLISHMENT.—There is established in the
14 Treasury of the United States a Fund, to be known as
15 the “Injurious Wildlife Prevention Fund”, to be adminis-
16 tered by the Secretary, and to be available without fiscal
17 year limitation and subject to appropriation, for use in ac-
18 cordance with subsection (c).

19 (b) TRANSFERS TO FUND.—

20 (1) IN GENERAL.—The Fund shall consist of
21 such amounts as are appropriated to the Fund
22 under paragraph (2).

23 (2) FEES AND PENALTIES.—There are appro-
24 priated to the Fund, out of funds of the Treasury

1 not otherwise appropriated, amounts equivalent to
2 amounts collected—

3 (A) as user fees and received in the Treas-
4 ury under section 13(a);

5 (B) as civil administrative or judicial pen-
6 alties under section 15; and

7 (C) as a civil penalty for any violation of
8 section 42 of title 18, United States Code (in-
9 cluding a regulation promulgated under that
10 section).

11 (c) USE OF FUNDS.—

12 (1) IN GENERAL.—Of the amounts deposited in
13 the Fund for a fiscal year—

14 (A) 75 percent shall be available to the
15 Secretary for use in carrying out this Act (other
16 than paragraph (2)); and

17 (B) 25 percent shall be used by the Sec-
18 retary to carry out paragraph (2).

19 (2) AID FOR STATE WILDLIFE RISK ASSESS-
20 MENTS.—

21 (A) IN GENERAL.—The Secretary shall es-
22 tablish a program to provide natural resource
23 assistance grants to States for use in sup-
24 porting best practices and capacity-building by

1 States, consistent with the purpose of this Act,
2 for—

3 (i) inspecting and monitoring wildlife
4 imports and interstate commerce; and

5 (ii) conducting assessments of risk as-
6 sociated with the intentional importation of
7 nonnative wildlife taxa.

8 (B) ADMINISTRATION.—The program
9 under this paragraph shall be administered by
10 the Service under the Federal Aid to States
11 program of the Service.

12 (d) PROHIBITION.—Amounts in the Fund may not
13 be made available for any purpose other than a purpose
14 described in subsection (c).

15 (e) ANNUAL REPORTS.—

16 (1) IN GENERAL.—Not later than 60 days after
17 the end of each fiscal year beginning with fiscal year
18 2011, the Secretary shall submit to the Committee
19 on Appropriations of the House of Representatives,
20 the Committee on Appropriations of the Senate, the
21 Committee on Environment and Public Works of the
22 Senate, and the Committee on Natural Resources of
23 the House of Representatives a report on the oper-
24 ation of the Fund during the fiscal year.

1 (2) CONTENTS.—Each report shall include, for
2 the fiscal year covered by the report, the following:

3 (A) A statement of the amounts deposited
4 in the Fund.

5 (B) A description of the expenditures made
6 from the Fund for the fiscal year, including the
7 purpose of the expenditures.

8 (C) Recommendations for additional au-
9 thorities to fulfill the purpose of the Fund.

10 (D) A statement of the balance remaining
11 in the Fund at the end of the fiscal year.

12 (f) SEPARATE APPROPRIATIONS ACCOUNT.—Section
13 1105(a) of title 31, United States Code, is amended—

14 (1) by redesignating paragraphs (35) and (36)
15 as paragraphs (36) and (37), respectively;

16 (2) by redesignating the second paragraph (33)
17 (relating to obligational authority and outlays re-
18 quested for homeland security) as paragraph (35);
19 and

20 (3) by adding at the end the following:

21 “(38) a separate statement for the Injurious
22 Wildlife Prevention Fund established by section
23 16(a) of the Invasive Wildlife Prevention Act of
24 2012, which shall include the estimated amount of

1 deposits in the Fund, obligations, and outlays from
2 the Fund.”.

3 **SEC. 17. RELATIONSHIP TO OTHER FEDERAL LAWS.**

4 Nothing in this Act—

5 (1) repeals, supersedes, or modifies any provi-
6 sion of—

7 (A) the Public Health Service Act (42
8 U.S.C. 201 et seq.);

9 (B) the Federal Food, Drug, and Cosmetic
10 Act (21 U.S.C. 301 et seq.);

11 (C) the Plant Protection Act (7 U.S.C.
12 7701 et seq.); or

13 (D) the Animal Health Protection Act (7
14 U.S.C. 8301 et seq.); or

15 (2) authorizes any action with respect to the
16 importation of any plant pest, including a biological
17 control agent, under the Federal Plant Pest Act (7
18 U.S.C. 150aa et seq.), to the extent that the impor-
19 tation is subject to regulation under that Act.

20 **SEC. 18. REQUIREMENT TO PROMULGATE REGULATIONS.**

21 In addition to regulations required under section 5
22 and other provisions of this Act, the Secretary shall pro-
23 mulgate such regulations as are necessary to carry out this
24 Act.

○