

112TH CONGRESS
2D SESSION

S. 3606

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 SENATE OF THE UNITED STATES

SEPTEMBER 20, 2012

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. PURPOSE.**

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

- 7 (1) economic or environmental harm; or
- 8 (2) harm to humans or animal health.

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

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

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

18 (ii) is an educational entity;

19 (B) does not commercially trade in animals
20 regulated under this Act, including offspring,
21 parts, and byproducts of those animals;

22 (C) does not propagate animals regulated
23 under this Act; and

24 (D) meets any additional criteria that the
25 Service determines are necessary and consistent
26 with the purpose of this Act.

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

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

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

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

21 (6) NATIONAL INVASIVE SPECIES COUNCIL.—
22 The term “National Invasive Species Council”
23 means the National Invasive Species Council estab-
24 lished by Executive Order 13112 on February 8,
25 1999 (64 Fed. Reg. 6183).

1 (7) NATIVE.—The term “native”, with respect
 2 to a wildlife taxon, means a wildlife taxon that his-
 3 torically occurred or currently occurs in the United
 4 States, other than as a result of an intentional or
 5 unintentional introduction by humans.

6 (8) NONNATIVE WILDLIFE TAXON.—

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

12 (B) INCLUSIONS.—The term “nonnative
 13 wildlife taxon” includes any viable egg, sperm,
 14 gamete, or other reproductive material or off-
 15 spring of an animal of a family, genus, species,
 16 or subspecies described in subparagraph (A).

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

19 (i) any taxon that is—

20 (I) specifically defined or regu-
 21 lated as a plant pest or approved for
 22 biological control purposes under the
 23 Plant Protection Act (7 U.S.C. 7701
 24 et seq.); or

1 (II) defined or regulated as a
 2 threat to livestock or poultry under
 3 the Animal Health Protection Act (7
 4 U.S.C. 8301 et seq.); or

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

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

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

9 (III) chicken (*Gallus gallus*
 10 domesticus);

11 (IV) common canary (*Serinus*
 12 canaria domesticus);

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

14 (VI) donkey or ass (*Equus*
 15 asinus);

16 (VII) domesticated members of
 17 the family Anatidae (geese);

18 (VIII) duck (domesticated *Anas*
 19 spp.);

20 (IX) domesticated ferret
 21 (*Mustela furo*);

22 (X) gerbil (*Meriones*
 23 unguiculatus);

24 (XI) goat (*Capra aegagrus*
 25 hircus);

1 (XII) guinea pig or Cavy (*Cavia*
2 porcellus);

3 (XIII) goldfish (*Carassius*
4 auratus auratus);

5 (XIV) domesticated hamsters
6 (*Cricetulus griseus*, *Mesocricetus*
7 auratus, *Phodopus campbelli*,
8 *Phodopus sungorus*, and *Phodopus*
9 roborovskii);

10 (XV) horse (*Equus caballus*);

11 (XVI) llama (*Lama glama*);

12 (XVII) mule or hinny (*Equus*
13 caballus x *E. asinus*);

14 (XVIII) pig or hog (*Sus scrofa*
15 domestica);

16 (XIX) domesticated varieties of
17 rabbit (*Oryctolagus cuniculus*);

18 (XX) sheep (*Ovis aries*); or

19 (XXI) any other species or sub-
20 species that the Service determines to
21 be common and clearly domesticated.

22 (9) PERSON.—The term “person” means—

23 (A) an individual, corporation, partnership,
24 trust, association, or other private entity;

1 (B) any officer, employee, agent, depart-
 2 ment, or instrumentality of the Federal Govern-
 3 ment, or of any tribal government, or of any
 4 State, municipality, or political subdivision of a
 5 State, or of any foreign government; and

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

8 (10) QUALIFIED INSTITUTION.—The term
 9 “qualified institution” means an institution that is
 10 determined by the Service to be—

11 (A) for scientific, veterinary, or medical re-
 12 search or education, or a zoo or aquarium ac-
 13 credited by the Association of Zoos and Aquar-
 14 iums; or

15 (B) an approved wildlife sanctuary.

16 (11) SECRETARY.—The term “Secretary”
 17 means the Secretary of the Interior.

18 (12) SERVICE.—The term “Service” means the
 19 United States Fish and Wildlife Service.

20 (13) STATE.—The term “State” means—

21 (A) each of the several States of the
 22 United States;

23 (B) the District of Columbia;

24 (C) the Commonwealth of Puerto Rico;

25 (D) Guam;

- 1 (E) American Samoa;
- 2 (F) the Commonwealth of the Northern
- 3 Mariana Islands;
- 4 (G) the Federated States of Micronesia;
- 5 (H) the Republic of the Marshall Islands;
- 6 (I) the Republic of Palau; and
- 7 (J) the United States Virgin Islands.

8 (14) UNITED STATES.—The term “United
9 States” means—

- 10 (A) the States; and
- 11 (B) any land and water, including the ter-
12 ritorial sea and the Exclusive Economic Zone,
13 within the jurisdiction or sovereignty of the
14 Federal Government.

15 **SEC. 4. PROPOSALS FOR REGULATION OF NONNATIVE**
16 **WILDLIFE TAXA.**

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

20 (b) INFORMATION.—A proposal by a person or agen-
21 cy should include adequate information to allow the Serv-
22 ice to determine whether the taxon meets the criteria for
23 designation as Injurious I or Injurious II under section
24 5(a)(1)(A).

1 (c) PUBLIC AND AGENCY COMMENT.—Upon receipt
 2 of a proposal that the Service determines to be complete,
 3 and for any proposal the Service elects to prepare, the
 4 Service shall publish notice of the proposal in the Federal
 5 Register and provide an opportunity for at least 60 days
 6 of public comment.

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

12 (e) NOTICE OF DETERMINATION.—The Service
 13 shall—

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

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

18 **SEC. 5. SCIENTIFIC RISK ASSESSMENT AND RISK DETER-**
 19 **MINATION REGULATIONS.**

20 (a) ASSESSMENT AND DETERMINATION.—

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

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

1 (i) an Injurious I taxon, which shall
2 be a taxon—

3 (I) that the Service determines—

4 (aa) to be injurious to
5 human beings, the interests of
6 agriculture, horticulture, or for-
7 estry, or wildlife or wildlife re-
8 sources of the United States; and

9 (bb) to have a high degree
10 of potential harm and is a taxon
11 with which qualified institutions
12 have not previously had signifi-
13 cant experience in maintaining
14 successfully in captivity and pre-
15 venting escapes or releases; and

16 (II) the importation and trans-
17 portation of which in interstate com-
18 merce shall be conducted only pursu-
19 ant to a permit issued under section
20 12 to a qualified institution; or

21 (ii) an Injurious II taxon, which shall
22 be a taxon—

23 (I) that the Service determines—

24 (aa) to be injurious to
25 human beings, the interests of

1 agriculture, horticulture, or for-
2 estry, or wildlife or wildlife re-
3 sources of the United States; but

4 (bb) to have a degree of po-
5 tential for harm that is less than
6 the degree of potential harm of
7 an Injurious I taxon or is a taxon
8 with which qualified institutions
9 have previously had significant
10 experience in maintaining suc-
11 cessfully in captivity and pre-
12 venting escapes or releases; and

13 (II) for which no permit is re-
14 quired if the taxon is—

15 (aa) imported to a qualified
16 institution;

17 (bb) transported in inter-
18 state commerce and intrastate
19 commerce to and among qualified
20 institutions; or

21 (cc) held by a qualified insti-
22 tution;

23 (B) to establish a process for assessing and
24 analyzing the risks of taxa that may have been,
25 or foreseeably could be, imported into, or found

1 in interstate commerce within, the United
2 States; and

3 (C) that may also provide for cases in
4 which exceptions or additions to the Injurious I
5 taxon or Injurious II taxon criteria may be nec-
6 essary to address extraordinary risks.

7 (2) BASIS, AVAILABILITY, AND REVIEW.—The
8 Service shall—

9 (A) ensure that the risk assessment and
10 risk determination processes conducted under
11 this section are based on sound science; and

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

14 (3) PREVIOUSLY LISTED TAXA.—Each wildlife
15 taxon previously designated by statute or by the Sec-
16 retary as injurious under section 42(a) of title 18,
17 United States Code (including under any regulation
18 promulgated under that authority), shall, after the
19 effective date of the final regulations promulgated
20 under this subsection, be promptly designated by the
21 Service as an Injurious I taxon or Injurious II taxon
22 under this subsection, based on a determination by
23 the Service of whether the taxon meets the criteria
24 described in clause (i) or (ii), respectively, of para-
25 graph (1)(A).

1 (4) DEADLINES.—

2 (A) PROPOSED REGULATIONS.—Not later
3 than 1 year after the date of enactment of this
4 Act, the Secretary shall publish in the Federal
5 Register a proposed version of the regulations
6 required under this subsection.

7 (B) FINAL REGULATIONS.—Not later than
8 18 months after the date of enactment of this
9 Act, the Secretary shall promulgate final regu-
10 lations required under this subsection, including
11 a public notification of the process for submis-
12 sion of a proposal under section 4(a).

13 (C) ADDITIONAL REQUIREMENT OF PRE-
14 IMPORT RISK SCREENING FOR ALL TAXA NOVEL
15 TO THE UNITED STATES.—

16 (i) IN GENERAL.—Five years after the
17 date of enactment of this Act, the Sec-
18 retary shall by regulation—

19 (I) define the phrase “non-native
20 wildlife taxa novel to the United
21 States” for the purpose of this sec-
22 tion; and

23 (II) set forth a process to ensure
24 that all unregulated non-native wild-
25 life taxa novel to the United States

1 are thereafter reviewed by the Service
2 prior to allowance of their importation
3 to the United States to determine
4 whether they should be regulated
5 under any of clause (i) or (ii) of para-
6 graph (1)(A).

7 (ii) AVOIDANCE OF NEW INCEN-
8 TIVES.—In promulgating the regulation
9 under clause (i), the Secretary shall seek
10 to avoid creating a new incentive for ani-
11 mal importers to import novel taxa prior to
12 the effective date of the regulation.

13 (iii) NEW REGULATION FOR IMPORTS
14 OF TAXA NOVEL TO THE UNITED
15 STATES.—Not later than 1 year after the
16 date of promulgation of the regulation
17 under clause (i), the Secretary shall imple-
18 ment the regulation.

19 (b) SCIENTIFIC RISK ASSESSMENT.—The regulations
20 promulgated under subsection (a) shall require consider-
21 ation, in an initial scientific risk assessment of a taxon,
22 of at least—

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

1 (2) whether the taxon has established or
2 spread, or caused harm to the economy, the environ-
3 ment, or the health of other animal species in the
4 United States or in an ecosystem similar to an eco-
5 system in the United States;

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

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

11 (5) whether the taxon will cause harm to
12 human beings, to the interests of agriculture, horti-
13 culture, forestry, or to wildlife or the wildlife re-
14 sources of the United States;

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

18 (7) the best available scientific risk screening
19 systems or predictive models that apply to the taxon;
20 and

21 (8) other factors important to assessing risks, if
22 any, associated with the taxon, in accordance with
23 the purpose of this Act.

24 (c) RISK DETERMINATION.—Prior to designating any
25 nonnative wildlife taxon as an Injurious I taxon or Inju-

rious II taxon under subsection (a), after conducting a risk assessment, the Service shall prepare a risk determination that takes into consideration—

(1) the results of the risk assessment; and

(2) at a minimum—

(A) the capabilities and any efforts of States, local governments, and Indian tribes to address the risks, if any, identified by the Service with respect to the taxon, including the results of any risk assessments conducted for the taxon that are available to the Service;

(B) the potential for reduction, mitigation, control, and management of any risks identified; and

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

(d) DISCRETIONARY ANALYSIS.—

(1) IN GENERAL.—In preparing the risk determination for a taxon, the Service may consider the economic, social, and cultural impacts of a decision on whether to regulate the taxon.

(2) OTHER REQUIREMENTS.—This section shall satisfy the requirements of, and apply in lieu of any other requirement to complete an analysis under,

1 any other law (including a regulation or Executive
2 order) on economic, social, or cultural impact.

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

6 (1) affected States, Indian tribes, and other
7 stakeholders;

8 (2) the Aquatic Nuisance Species Task Force;

9 (3) the National Invasive Species Council;

10 (4) the Department of Agriculture;

11 (5) the Centers for Disease Control and Preven-
12 tion; and

13 (6) the National Oceanic and Atmospheric Ad-
14 ministration.

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

16 (a) IN GENERAL.—If the Service determines an
17 emergency exists because an unregulated nonnative wild-
18 life taxon poses an imminent threat of harm to individuals
19 in or wildlife of the United States, or the economy or envi-
20 ronment of the United States, the Service may imme-
21 diately temporarily designate the nonnative wildlife taxon
22 as Injurious I in accordance with section 5(a)(1)(A)(i).

23 (b) NOTICE OF TEMPORARY DESIGNATION.—The
24 Service shall promptly—

1 (1) publish in the Federal Register notice of
2 each temporary designation under this subsection;
3 and

4 (2) make the basis for the designation available
5 on a publicly available Federal Internet site and
6 through other appropriate means.

7 (c) DETERMINATION.—Not later than 1 year after
8 temporarily designating a nonnative wildlife taxon using
9 the emergency authority under this section, the Service
10 shall—

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

14 (2) publish notice of that final determination in
15 the Federal Register; and

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

18 (d) LIMITATION ON PROCEDURES.—The procedures
19 under sections 4 and 5 of this Act and section 553 of title
20 5, United States Code, shall not apply to temporary des-
21 ignations under this section.

22 (e) STATE REQUESTS.—If the Governor of a State
23 requests a temporary emergency designation under this
24 section, the Service shall respond promptly with a written
25 determination on the request.

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

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

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

10 (2) not later than 30 days after the date of im-
11 portation of wildlife described in paragraph (1),
12 make the information described in that paragraph
13 (other than confidential business information associ-
14 ated with those imports that is protected under
15 other Federal law) available on a publicly available
16 Federal Internet site.

17 (b) ANNUAL REPORT OF INFORMATION.—Not later
18 than 3 years after the date of enactment of this Act, and
19 not later than each April 1 thereafter, the Service shall
20 issue, including on a publicly available Federal Internet
21 site, a report that includes, at a minimum, a description
22 of—

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

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

3 (c) MONITORING IMPORT INFORMATION.—In con-
4 sultation with inspection, customs, and border officials in
5 the Departments of Agriculture and Homeland Security,
6 the Service shall regularly—

7 (1) monitor the identities and quantities of non-
8 native wildlife taxa being imported, with particular
9 emphasis on wildlife newly in the import trade to the
10 United States; and

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

15 **SEC. 8. INJURIOUS WILDLIFE DETERMINATIONS.**

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

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

23 (1) shall use the best available scientific risk
24 screening systems or predictive models that apply to
25 the taxon under consideration;

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

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

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

8 This Act and the regulations promulgated under this
 9 Act shall take precedence over any conflicting regulation
 10 promulgated under section 42 of title 18, United States
 11 Code.

12 **SEC. 10. PREVENTION OF WILDLIFE PATHOGENS AND**
 13 **PARASITES.**

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

18 (b) REGULATIONS.—

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

22 (A) to minimize the likelihood of introduc-
 23 tion or dissemination of any disease or harmful
 24 parasite of native or nonnative wildlife; and

(B) to impose any additional necessary import restrictions, including management measures, health certifications, quarantine requirements, specifications for conveyances, holding water, and associated materials, shipment and handling requirements, and other measures that the Secretary determines to be necessary—

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

(ii) to address—

(I) a particular taxon;

(II) the place of origin of a particular taxon; and

(III) the conveyance and materials associated with wildlife transport.

(c) RELATIONSHIP TO OTHER AUTHORITIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall exclude from regulation under this section any pathogen, parasite, or host taxon that is—

(A) defined or regulated by the Department of Health and Human Services as a

1 threat to humans under section 361 of the Pub-
 2 lic Health Service Act (42 U.S.C. 264);

3 (B) defined or regulated by the Depart-
 4 ment of Agriculture as a threat to livestock or
 5 poultry under the Animal Health Protection Act
 6 (7 U.S.C. 8301 et seq.); or

7 (C) specifically defined or regulated by the
 8 Department of Agriculture as a plant pest or
 9 approved for biological control purposes under
 10 the Plant Protection Act (7 U.S.C. 7701 et
 11 seq.).

12 (2) EXCEPTION.—The Secretary may regulate a
 13 pathogen, parasite, or host taxon described in any of
 14 subparagraphs (A) through (C) of paragraph (1) to
 15 the extent that the taxon also poses a wildlife dis-
 16 ease risk.

17 (d) COORDINATION.—

18 (1) IN GENERAL.—In promulgating regulations
 19 under and otherwise carrying out this section and
 20 section 7, the Secretary shall consult and coordinate
 21 with—

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

24 (B) State wildlife agencies;

25 (C) State veterinarians; and

1 (D) other officials with related authorities.

2 (2) CONSULTATION BY SECRETARY OF AGRICULTURE.—In any case in which the Secretary of
3
4 Agriculture participates in the World Organization
5 for Animal Health, the Secretary of Agriculture
6 shall confer and consult with the Secretary on any
7 matters relating to prevention of wildlife diseases
8 that may threaten the United States.

9 **SEC. 11. PROHIBITIONS.**

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

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

19 (2) to engage in interstate commerce for any
20 nonnative wildlife taxon described in paragraph (1),
21 or to knowingly possess such an animal, or the de-
22 scendant of an animal, that was transported in
23 interstate commerce in violation of this subsection;

24 (3) to violate any term or condition of a permit
25 issued to a qualified institution under section 12 for

1 a taxon designated as Injurious I under clause (i) of
2 section 5(a)(1)(A) or under section 6;

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

5 (5) to violate any additional regulation promul-
6 gated by the Secretary as necessary to prevent the
7 importation of, and interstate commerce in, wildlife
8 pathogens and harmful parasites under this Act; or
9 (6) to attempt any of the prohibited actions de-
10 scribed in paragraphs (1) through (5).

11 (b) EXEMPTION FOR INTERSTATE TRANSPORTATION
12 OF ANIMALS OF LATER-REGULATED TAXA.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), an individual animal that was lawfully
15 owned prior to the taxa to which the animal belongs
16 being regulated by the Service under this Act as In-
17 jurious II may be transported interstate without a
18 permit by any person for noncommercial purposes
19 only.

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

23 (c) LIMITATION ON APPLICATION.—

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

1 (A) any action by Federal, State, tribal, or
 2 local law enforcement personnel to enforce this
 3 section; and

4 (B) any action by Federal, State, tribal, or
 5 local officials to prevent the introduction or es-
 6 tablishment of nonnative wildlife, or wildlife
 7 pathogens or parasites, including actions to
 8 transport, hold, and shelter animals of taxa reg-
 9 ulated under this Act.

10 (2) IMPORTATION AND TRANSPORTATION BY
 11 FEDERAL AGENCIES.—Nothing in this Act shall re-
 12 strict the importation or transportation between any
 13 States of nonnative wildlife by a Federal agency for
 14 the use of the Federal agency if the nonnative wild-
 15 life remains in the possession of a Federal agency.

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

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

21 (a) PERMITS.—The Service may issue to a qualified
 22 institution a permit authorizing any of the actions other-
 23 wise prohibited under section 11 for any wildlife taxon
 24 designated under clause (i) or (ii) of section 5(a)(1)(A)
 25 or under section 6.

1 (b) TERMS AND CONDITIONS.—The Service may in-
2 clude in a permit under subsection (a) terms and condi-
3 tions to minimize the risk of introduction or establishment
4 of nonnative wildlife, pathogens, and parasites in the
5 United States.

6 (c) EXEMPTION AND REPORTING.—

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

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

20 (3) RECORD.—Each qualified institution or live
21 animal transporter that imports, transports (on an
22 interstate or intrastate basis), possesses, or breeds
23 any taxa designated as Injurious II shall maintain
24 records, subject to annual inspection by the Service,
25 at the discretion of the Service, that summarize the

1 transactions of the qualified institution or live ani-
2 mal transporter for the covered taxa.

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

5 (1) promulgate regulations to implement this
6 section; and

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

10 **SEC. 13. USER FEES.**

11 (a) DEFINITION OF LIVE WILDLIFE SHIPMENTS.—
12 In this section, the term “live wildlife shipment” does not
13 include shipments made by qualified institutions for sci-
14 entific, veterinary, or medical research, education, con-
15 servation outreach, or display purposes.

16 (b) REASONABLE FEE.—Not later than 2 years after
17 the date of enactment of this Act, the Secretary shall pro-
18 pose, and subsequently adopt, by regulation, a reasonable
19 fee to be charged on imported live wildlife shipments for
20 use in recovering a portion of the costs of—

21 (1) improving the information available on the
22 importation and interstate commerce trade of wild-
23 life;

24 (2) monitoring that information under section
25 7;

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

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

6 (5) preventing wildlife pathogens and parasites
7 under section 10.

8 (c) COST RECOVERY PURPOSE.—The purpose of the
9 user fees in this section shall be to recover approximately
10 75 percent of the Service’s costs of the services it under-
11 takes listed in subsection (b), after such date as the user
12 fee regulation under subsection (b) is fully implemented
13 and the amounts of the fees received have been appro-
14 priated to the Injurious Wildlife Prevention Fund pursu-
15 ant to section 16(b)(2)(A) for at least one full fiscal year.

16 (d) FEE LIMIT.—The amount of the additional fee
17 to be charged on any live wildlife shipment under this sec-
18 tion shall be set by the Secretary only after fully consid-
19 ering public comments on the proposed fee regulation and
20 it shall be charged broadly and fairly across the live wild-
21 life import industry and at the lowest level feasible to
22 achieve the cost recovery purpose in subsection (c). The
23 fees shall be set so that the annual total fee revenue shall
24 not exceed the amount of the annual total fee revenue of
25 the fee charged by the Service under the inspection pro-

1 gram of the Service to oversee the importation of live wild-
2 life carried out pursuant to—

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

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

7 (3) other applicable authority.

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

9 (a) PURPOSE.—The general purpose of this Act is
10 improving Federal regulation of international importation
11 and interstate commerce in injurious wildlife taxa. Posses-
12 sion of lawfully obtained injurious wildlife taxa within a
13 State is intended to be a matter of State law and not to
14 be Federally regulated or to require a Federal permit
15 under this Act.

16 (b) IN GENERAL.—Except as provided in subsection
17 (c), nothing in this Act, or in the regulations and deter-
18 minations to be promulgated or issued by the Secretary
19 or the Service under this Act, preempts or otherwise af-
20 fects the application of any State law that establishes
21 more stringent requirements for—

22 (1) the importation, transportation, possession,
23 sale, purchase, release, breeding of, or bartering for,
24 or any other transaction involving, any nonnative
25 wildlife taxon; or

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

3 (c) LIMITATION ON APPLICATION OF PROHIBITIONS
4 TO PREVENT RELEASE.—The Service may limit the appli-
5 cation of this Act to facilitate implementation of any
6 State, local, or tribal program that results in voluntary
7 surrender of regulated nonnative wildlife, if the Service de-
8 termines that the limitation will prevent the release of that
9 wildlife.

10 **SEC. 15. PENALTIES AND SANCTIONS.**

11 (a) CIVIL PENALTIES.—

12 (1) CIVIL ADMINISTRATIVE PENALTIES.—

13 (A) IN GENERAL.—Any person who is
14 found by the Secretary, after notice and oppor-
15 tunity for a hearing conducted in accordance
16 with section 554 of title 5, United States Code,
17 to have committed any act prohibited by section
18 11 shall be liable to the United States for a
19 civil penalty in an amount not to exceed
20 \$10,000 for each violation.

21 (B) SUBPOENA POWER.—For the purposes
22 of conducting any investigation or hearing
23 under this Act, the Secretary may—

24 (i) issue subpoenas for the attendance
25 and testimony of witnesses and the produc-

1 tion of relevant papers, books, and docu-
2 ments; and

3 (ii) administer oaths.

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

9 (b) CRIMINAL OFFENSES.—Any person who know-
10 ingly violates any provision of this Act, or any regulation
11 promulgated or permit issued under this Act, shall, upon
12 conviction, be guilty of a class A misdemeanor.

13 (c) NATURAL RESOURCE DAMAGES.—All costs relat-
14 ing to the mitigation of injury caused by a violation of
15 this Act shall be borne by the person that violated this
16 Act.

17 (d) ENFORCEMENT.—

18 (1) OTHER POWERS AND AUTHORITIES.—Any
19 person authorized by the Secretary to enforce this
20 Act shall have the same authorities as are described
21 in section 6 of the Lacey Act Amendments of 1981
22 (16 U.S.C. 3375).

23 (2) FORFEITURE.—

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

4 (i) any property, real or personal,
5 taken or retained in connection with or as
6 a result of the offense; and

7 (ii) any property, real or personal,
8 used or intended to be used to commit or
9 to facilitate the commission of the offense.

10 (B) DISPOSAL OF PROPERTY.—Upon the
11 forfeiture to the United States of any property
12 or item described in clause (i) or (ii) of sub-
13 paragraph (A), or upon the abandonment or
14 waiver of any claim to any such property or
15 item, the property or item shall be disposed of
16 by the Secretary in a manner consistent with
17 the purpose of this Act.

18 (e) APPLICATION OF CUSTOMS LAWS.—All powers,
19 rights, and duties conferred or imposed by the customs
20 laws upon any officer or employee of the Customs Service
21 may, for the purpose of this Act, be exercised or performed
22 by the Secretary, or by such officers or employees of the
23 United States as the Secretary may designate.

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

2 (a) ESTABLISHMENT.—There is established in the
3 Treasury of the United States a Fund, to be known as
4 the “Injurious Wildlife Prevention Fund”, to be adminis-
5 tered by the Secretary, and to be available without fiscal
6 year limitation and subject to appropriation, for use in ac-
7 cordance with subsection (c).

8 (b) TRANSFERS TO FUND.—

9 (1) IN GENERAL.—The Fund shall consist of
10 such amounts as are appropriated to the Fund
11 under paragraph (2).

12 (2) FEES AND PENALTIES.—There are appro-
13 priated to the Fund, out of funds of the Treasury
14 not otherwise appropriated, amounts equivalent to
15 amounts collected—

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

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

20 (C) as a civil penalty for any violation of
21 section 42 of title 18, United States Code (in-
22 cluding a regulation promulgated under that
23 section).

24 (c) USE OF FUNDS.—

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

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

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

6 (2) AID FOR STATE WILDLIFE RISK ASSESS-
7 MENTS.—

8 (A) IN GENERAL.—The Secretary shall es-
9 tablish a program to provide natural resource
10 assistance grants to States for use in sup-
11 porting best practices and capacity-building by
12 States, consistent with the purpose of this Act,
13 for—

14 (i) inspecting and monitoring wildlife
15 imports and interstate commerce; and

16 (ii) conducting assessments of risk as-
17 sociated with the intentional importation of
18 nonnative wildlife taxa.

19 (B) ADMINISTRATION.—The program
20 under this paragraph shall be administered by
21 the Service under the Federal Aid to States
22 program of the Service.

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

1 (e) ANNUAL REPORTS.—

2 (1) IN GENERAL.—Not later than 60 days after
3 the end of each fiscal year beginning with fiscal year
4 2011, the Secretary shall submit to the Committee
5 on Appropriations of the House of Representatives,
6 the Committee on Appropriations of the Senate, the
7 Committee on Environment and Public Works of the
8 Senate, and the Committee on Natural Resources of
9 the House of Representatives a report on the oper-
10 ation of the Fund during the fiscal year.

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

13 (A) A statement of the amounts deposited
14 in the Fund.

15 (B) A description of the expenditures made
16 from the Fund for the fiscal year, including the
17 purpose of the expenditures.

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

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

22 (f) SEPARATE APPROPRIATIONS ACCOUNT.—Section
23 1105(a) of title 31, United States Code, is amended—

24 (1) by redesignating paragraphs (35) and (36)
25 as paragraphs (36) and (37), respectively;

1 (2) by redesignating the second paragraph (33)
 2 (relating to obligational authority and outlays re-
 3 quested for homeland security) as paragraph (35);
 4 and

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

6 “(38) a separate statement for the Injurious
 7 Wildlife Prevention Fund established by section
 8 16(a) of the Invasive Wildlife Prevention Act of
 9 2012, which shall include the estimated amount of
 10 deposits in the Fund, obligations, and outlays from
 11 the Fund.”.

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

13 Nothing in this Act—

14 (1) repeals, supersedes, or modifies any provi-
 15 sion of—

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

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

20 (C) the Plant Protection Act (7 U.S.C.
 21 7701 et seq.); or

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

24 (2) authorizes any action with respect to the
 25 importation of any plant pest, including a biological

1 control agent, under the Federal Plant Pest Act (7
2 U.S.C. 150aa et seq.), to the extent that the impor-
3 tation is subject to regulation under that Act.

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

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

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