

114TH CONGRESS
2D SESSION

S. 3278

To establish an improved regulatory process to prevent the introduction and establishment in the United States of injurious wildlife.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2016

Mrs. GILLIBRAND (for herself, Ms. STABENOW, Mr. PETERS, and Mr. SCHUMER) 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 to prevent the introduction and establishment in the United States of injurious wildlife.

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 2016”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to establish an improved
8 regulatory process to prevent the introduction and estab-

1 lishment in the United States of any injurious wildlife that
 2 is likely to cause—

3 (1) economic or environmental harm; or

4 (2) harm to—

5 (A) humans; or

6 (B) animal health.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) **APPROVED WILDLIFE SANCTUARY.**—The
 10 term “approved wildlife sanctuary” means a sanc-
 11 tuary that—

12 (A) provides care for wildlife species; and

13 (B) is a corporation that—

14 (i) is—

15 (I) exempt from taxation under
 16 section 501(a) of the Internal Rev-
 17 enue Code of 1986; and

18 (II) described in sections
 19 501(c)(3) and 170(b)(1)(A)(vi) of
 20 that Code;

21 (ii) does not—

22 (I) commercially trade in any
 23 animal regulated under this Act, in-
 24 cluding any offspring, part, or byprod-

1 uct of any animal regulated under this
2 Act; or

3 (II) propagate any animal regu-
4 lated under this Act; and

5 (iii) meets additional criteria, as the
6 Director determines necessary and con-
7 sistent with the purpose of this Act.

8 (2) DIRECTOR.—The term “Director” means
9 the Director of the United States Fish and Wildlife
10 Service.

11 (3) FUND.—The term “Fund” means the Inju-
12 rious Wildlife Prevention Fund established under
13 section 13(a).

14 (4) IMPORT.—The term “import” means to
15 bring, introduce, or attempt to bring or introduce
16 into any place that is subject to the jurisdiction of
17 the United States, notwithstanding the meaning of
18 the term under the customs law of the United
19 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 TAXON OR TAXA.—

(A) IN GENERAL.—The term “injurious wildlife taxon or taxa” means any family, genus, species, subspecies, or hybrid of non-native wildlife that is determined by the Director to be injurious in the United States to—

(i) a human being;

(ii) an interest of—

(I) agriculture;

(II) horticulture; or

(III) forestry; or

(iii) any wildlife or wildlife resources.

(B) INCLUSIONS.—The term “injurious wildlife taxon or taxa” includes any—

(i) wildlife specimen that represents a family, genus, species, subspecies, or hybrid described in subparagraph (A) that is born or reared in—

(I) captivity; or

(II) the wild;

(ii) viable egg, sperm, gamete, or other reproductive material of a wildlife specimen described in clause (i); and

(iii) offspring of a wildlife specimen described in that clause.

(C) EXCLUSIONS.—The term “injurious wildlife taxon or taxa” does not include any—

(i) plant pest or biological control organism that is specifically defined or regulated under the Plant Protection Act (7 U.S.C. 7701 et seq.);

(ii) pest that is defined or regulated as a threat to livestock or poultry under the Animal Health Protection Act (7 U.S.C. 8301 et seq.); or

(iii) common and clearly domesticated species or subspecies, including—

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

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

(III) the chicken (*Gallus gallus domesticus*);

(IV) the common canary (*Serinus canaria domesticus*);

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

(VI) the donkey or ass (*Equus asinus*);

(VII) the goose (*Anser* spp.);

(VIII) the duck (*Anas* spp.);

- 1 (IX) the ferret (*Mustela furo*,
2 *Mustela putorius furo*);
- 3 (X) the gerbil (*Meriones*
4 *unguiculatus*);
- 5 (XI) the goat (*Capra aegagrus*
6 *hircus*);
- 7 (XII) the guinea pig or Cavy
8 (*Cavia porcellus*);
- 9 (XIII) the goldfish (*Carassius*
10 *auratus auratus*);
- 11 (XIV) hamsters of the species
12 *Cricetulus griseus*, *Mesocricetus*
13 *auratus*, *Phodopus campbelli*,
14 *Phodopus sungorus*, and *Phodopus*
15 *roborovskii*;
- 16 (XV) the horse (*Equus caballus*);
- 17 (XVI) the llama (*Lama glama*);
- 18 (XVII) the mule or hinny (*Equus*
19 *caballus* x *E. asinus*);
- 20 (XVIII) the pig or hog (*Sus*
21 *scrofa domestica*);
- 22 (XIX) the sheep (*Ovis aries*); or
- 23 (XX) any other common and
24 clearly domesticated species or sub-

1 species, as determined by the Direc-
2 tor.

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

4 (A) an individual, corporation, partnership,
5 trust, association, or other private entity;

6 (B) any officer, employee, agent, depart-
7 ment, or instrumentality of—

8 (i) the Federal Government;

9 (ii) any Indian tribe, State, munici-
10 pality, or political subdivision of a State; or

11 (iii) any foreign government; or

12 (C) any other entity subject to the jurisdic-
13 tion of the United States.

14 (8) QUALIFIED INSTITUTION.—The term
15 “qualified institution” means—

16 (A) an institution that carries out a sci-
17 entific, zoological, medical research, or edu-
18 cational purpose, as determined by the Direc-
19 tor; or

20 (B) an approved wildlife sanctuary.

21 (9) SECRETARY.—The term “Secretary” means
22 the Secretary of the Interior.

23 (10) STATE.—The term “State” means—

24 (A) a State;

25 (B) the District of Columbia;

- 1 (C) the Commonwealth of Puerto Rico;
- 2 (D) Guam;
- 3 (E) American Samoa;
- 4 (F) the Commonwealth of the Northern
- 5 Mariana Islands;
- 6 (G) the United States Virgin Islands; and
- 7 (H) any other territory or possession of the
- 8 United States.

9 (11) TRANSPORT.—The term “transport”
 10 means—

- 11 (A) to move;
- 12 (B) to convey;
- 13 (C) to carry;
- 14 (D) to ship by any means; or
- 15 (E) to deliver or receive for the purpose

16 of—

- 17 (i) movement;
- 18 (ii) conveyance;
- 19 (iii) carriage; or
- 20 (iv) shipment.

21 (12) UNITED STATES.—The term “United
 22 States” means—

- 23 (A) all of the United States; and
- 24 (B) any land or water, including the terri-
- 25 torial sea and the Exclusive Economic Zone,

1 within the jurisdiction or sovereignty of the
2 Federal Government.

3 (13) WILDLIFE.—The term “wildlife” means
4 any member of the animal kingdom, including any—

5 (A) mammal;

6 (B) fish;

7 (C) bird;

8 (D) amphibian;

9 (E) reptile; or

10 (F) invertebrate.

11 (14) WILDLIFE RESOURCES.—The term “wild-
12 life resources” means any—

13 (A) wildlife; or

14 (B) type of aquatic or land vegetation on
15 which any wildlife is dependent.

16 **SEC. 4. DESIGNATION OF INJURIOUS WILDLIFE.**

17 (a) DESIGNATION.—The Secretary, acting through
18 the Director, may by regulation designate any wildlife as
19 an injurious wildlife taxon or taxa.

20 (b) BASIS FOR DESIGNATION.—

21 (1) SOUND SCIENCE.—The Secretary, acting
22 through the Director, shall base the designation de-
23 scribed in subsection (a) on sound science.

24 (2) SCIENTIFIC RISK ASSESSMENT.—In making
25 a designation under subsection (a), the Secretary,

1 acting through the Director, shall conduct a sci-
2 entific risk assessment that includes consideration
3 of—

4 (A) the scientific name and native range of
5 the wildlife;

6 (B) the likelihood and magnitude of the re-
7 lease or escape of the wildlife;

8 (C) whether the wildlife has established or
9 spread, or has the potential to establish or
10 spread, outside of the native range of the wild-
11 life in a habitat similar to a habitat in the
12 United States; or

13 (D) whether the wildlife has caused, or has
14 the potential to cause, harm in the United
15 States to—

16 (i) a human being;

17 (ii) an interest of—

18 (I) agriculture;

19 (II) horticulture; or

20 (III) forestry; or

21 (iii) any wildlife or wildlife resources;

22 (E) the potential impact of wildlife control
23 or eradication measures for the wildlife on
24 human beings, agriculture, horticulture, for-

1 estry, wildlife, or wildlife resources in the
2 United States; and

3 (F) any other risk assessment factor, as
4 determined by the Director in accordance with
5 the purpose of this Act.

6 (3) RISK MANAGEMENT DETERMINATION.—In
7 making a designation under subsection (a), the Sec-
8 retary, acting through the Director, shall conduct a
9 risk management determination that includes consid-
10 eration of—

11 (A) the results of the scientific risk assess-
12 ment described in paragraph (2);

13 (B) the ability and effectiveness of meas-
14 ures—

15 (i) to prevent the release or escape of
16 the wildlife;

17 (ii) to manage and control the estab-
18 lishment and spread of the wildlife; or

19 (iii) to rehabilitate and recover eco-
20 systems damaged by the wildlife; and

21 (C) any other risk management factor, as
22 determined by the Director in accordance with
23 the purpose of this Act.

24 (4) AVAILABILITY TO THE PUBLIC.—The Sec-
25 retary, acting through the Director, shall make

1 available to the public the results of the assessments
 2 described in paragraphs (2) and (3).

3 (c) RULEMAKING FOR THE DESIGNATION OF INJU-
 4 RIOUS WILDLIFE TAXON OR TAXA.—

5 (1) PROPOSED RULE.—For a proposal to des-
 6 ignate any wildlife as an injurious wildlife taxon or
 7 taxa, the Director shall—

8 (A) publish a proposed rule in the Federal
 9 Register and on a publicly accessible Federal
 10 website;

11 (B) provide not fewer than 30 days for
 12 public comment; and

13 (C) make available on a publicly accessible
 14 Federal website the results of the scientific risk
 15 assessment and the risk management deter-
 16 mination described in subsection (b).

17 (2) PETITIONS.—

18 (A) IN GENERAL.—Any interested person
 19 may submit to the Director a petition to des-
 20 ignate any wildlife as an injurious wildlife taxon
 21 or taxa.

22 (B) CONSIDERATION OF PETITION.—If the
 23 Director determines that a petition described in
 24 subparagraph (A) is complete and that the peti-
 25 tion presents substantial evidence that the wild-

1 life is an injurious wildlife taxon or taxa, the
2 Director may—

3 (i) conduct a scientific risk assess-
4 ment and a risk management determina-
5 tion under subsection (b); and

6 (ii) propose a rule in accordance with
7 paragraph (1).

8 (3) NOTICE AND CONSULTATION.—In consid-
9 ering a proposed designation of injurious wildlife
10 taxon or taxa described in paragraph (1), the Sec-
11 retary shall notify and consult with, as appro-
12 priate—

13 (A) any affected stakeholder, including—

14 (i) a State;

15 (ii) an Indian tribe; and

16 (iii) a qualified institution;

17 (B) the Aquatic Nuisance Species Task
18 Force;

19 (C) the National Invasive Species Council;

20 (D) the Secretary of the Department of
21 Agriculture;

22 (E) the Director of the Centers for Disease
23 Control and Prevention; and

24 (F) the Administrator of the National Oce-
25 anic and Atmospheric Administration.

1 (4) FINAL DETERMINATION.—Not later than 14
 2 months after the date on which a proposed rule de-
 3 scribed in paragraph (1) is published, the Director
 4 shall publish—

5 (A) a final rule in the Federal Register; or

6 (B) a notice in the Federal Register that
 7 the proposed rule is withdrawn.

8 (d) WILDLIFE NOT IN TRADE TO THE UNITED
 9 STATES.—

10 (1) IN GENERAL.—Any wildlife shall be consid-
 11 ered wildlife not in trade to the United States if the
 12 wildlife—

13 (A) is not native to the United States; and

14 (B) was not—

15 (i) as of the date of enactment of this
 16 Act, designated as an injurious wildlife
 17 taxon or taxa under subsection (a); or

18 (ii) during the 1-year period ending
 19 on the date of enactment of this Act, wide-
 20 ly—

21 (I) imported into the United
 22 States; or

23 (II) transported between States.

1 (2) REGULATIONS.—Not later than 3 years
2 after the date of enactment of this Act, the Director
3 shall promulgate regulations that—

4 (A) define the term “wildlife not in trade
5 to the United States” for the purposes of this
6 Act; and

7 (B) establish a process to ensure, before
8 the importation into the United States or trans-
9 port between States of any wildlife not in trade
10 to the United States, that wildlife is reviewed
11 by the Director to determine whether that wild-
12 life should be designated as an injurious wildlife
13 taxon or taxa under subsection (a).

14 (e) PREVIOUSLY LISTED INJURIOUS SPECIES.—

15 (1) IN GENERAL.—On the date of enactment of
16 this Act, any wildlife designated as injurious by sec-
17 tion 42(a) of title 18, United States Code, including
18 any designation made under that section (as in ef-
19 fect on the day before the date of enactment of this
20 Act), shall be designated as an injurious wildlife
21 taxon or taxa under this Act.

22 (2) APPLICABILITY.—Subsections (a) through
23 (d) and section 553 of title 5, United States Code,
24 shall not apply to any designation, or the publication
25 of a designation, described in paragraph (1).

1 (f) EMERGENCY TEMPORARY DESIGNATION.—

2 (1) IN GENERAL.—The Director may imme-
 3 diately and temporarily make an emergency tem-
 4 porary designation of any wildlife as an injurious
 5 wildlife taxon or taxa for any wildlife that poses an
 6 imminent threat in the United States to—

7 (A) a human being;

8 (B) an interest of—

9 (i) agriculture;

10 (ii) horticulture; or

11 (iii) forestry; or

12 (C) any wildlife or wildlife resources.

13 (2) REGULATION.—

14 (A) IN GENERAL.—In the case of an emer-
 15 gency temporary designation made under para-
 16 graph (1), the Director shall publish a regula-
 17 tion in the Federal Register that includes a de-
 18 tailed reason for which the emergency tem-
 19 porary designation is necessary.

20 (B) EFFECTIVE IMMEDIATELY.—A regula-
 21 tion described in subparagraph (A) shall be ef-
 22 fective immediately on the date of the publica-
 23 tion of the regulation in the Federal Register.

24 (C) EXPIRATION.—A regulation promul-
 25 gated under subparagraph (A) shall cease to

1 have force and effect not earlier than 1 year
2 after the date on which the regulation is pub-
3 lished in the Federal Register.

4 (D) WITHDRAWAL.—The Director shall
5 withdraw a regulation issued under subpara-
6 graph (A) if the Director determines that the
7 regulation is not necessary.

8 (E) APPLICABILITY.—Subsections (b) and
9 (c) and section 553 of title 5, United States
10 Code, shall not apply to an emergency tem-
11 porary designation issued under subparagraph
12 (A).

13 (3) FINAL DETERMINATION.—Not later than 1
14 year after the date on which an emergency tem-
15 porary designation is promulgated under paragraph
16 (2), the Director shall make a final determination
17 regarding whether the wildlife that is the subject of
18 the emergency temporary designation should be des-
19 ignated as an injurious wildlife taxon or taxa under
20 subsection (a).

21 (4) REQUEST BY A GOVERNOR.—If the Gov-
22 ernor of a State requests an emergency temporary
23 designation under paragraph (1), the Director—

24 (A) shall respond promptly to the request
25 in writing; and

1 (B) may make an emergency temporary
2 designation under that paragraph.

3 (g) ECONOMIC IMPACT ANALYSES.—Notwithstanding
4 chapter 6 of title 5, United States Code, and section 804
5 of that title, in carrying out the provisions of this section,
6 the Secretary may forego economic impact analyses.

7 **SEC. 5. REPORT ON COLLECTION OF INFORMATION ON IM-**
8 **PORTED WILDLIFE.**

9 Not later than 18 months after the date of enactment
10 of this Act, the Secretary, in consultation with the Sec-
11 retary of Homeland Security, shall provide to the Com-
12 mittee on Environment and Public Works of the Senate
13 and the Committee on Natural Resources of the House
14 of Representatives a report that describes the status of
15 measures—

16 (1) to coordinate the collection and manage-
17 ment of data on imported wildlife; and

18 (2) to establish an electronic database that
19 readily identifies, using scientific names to the spe-
20 cies level (or subspecies level, if applicable)—

21 (A) imports of all live wildlife; and

22 (B) whether that wildlife species (or sub-
23 species) has been designated as an injurious
24 wildlife taxon or taxa.

1 **SEC. 6. PREVENTION OF WILDLIFE PATHOGENS AND**
2 **PARASITES.**

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

7 (b) REGULATIONS.—

8 (1) IN GENERAL.—The Secretary shall promul-
9 gate regulations—

10 (A) to minimize the likelihood of introduc-
11 tion or dissemination of any disease or harmful
12 parasite of native or nonnative wildlife; and

13 (B) to impose import restrictions, includ-
14 ing management measures, health certifications,
15 quarantine requirements, specifications for con-
16 veyances, holding water, and associated mate-
17 rials, shipment and handling requirements, and
18 any other measure that the Secretary deter-
19 mines to be necessary—

20 (i) to prevent the importation of, and
21 interstate commerce in, wildlife pathogens
22 and harmful parasites of native and non-
23 native wildlife; and

24 (ii) to address—

25 (I) a particular injurious wildlife
26 taxon;

- 1 (II) the place of origin of a par-
2 ticular injurious wildlife taxon; and
3 (III) the conveyance and mate-
4 rials associated with wildlife trans-
5 port.

6 (c) RELATIONSHIP TO OTHER AUTHORITIES.—

7 (1) IN GENERAL.—Subject to paragraph (2),
8 the Secretary shall exclude from regulation under
9 this section any pathogen, parasite, or host taxon
10 that is—

11 (A) defined or regulated by the Secretary
12 of Health and Human Services as a threat to
13 humans under section 361 of the Public Health
14 Service Act (42 U.S.C. 264);

15 (B) defined or regulated by the Secretary
16 of Agriculture as a threat to livestock or poultry
17 under the Animal Health Protection Act (7
18 U.S.C. 8301 et seq.); or

19 (C) specifically defined or regulated by the
20 Secretary of Agriculture as a plant pest or ap-
21 proved for biological control purposes under the
22 Plant Protection Act (7 U.S.C. 7701 et seq.).

23 (2) EXCEPTION.—Notwithstanding paragraph
24 (1), the Secretary may regulate a pathogen, para-
25 site, or host taxon described in that paragraph if the

1 pathogen, parasite, or host taxon poses a wildlife
2 disease risk.

3 (d) COORDINATION.—

4 (1) IN GENERAL.—In carrying out this section,
5 the Secretary shall consult and coordinate with—

6 (A) the heads of other Federal agencies
7 and departments that regulate injurious wildlife
8 taxa;

9 (B) the heads of State wildlife agencies;

10 (C) State veterinarians; and

11 (D) other officials with related authorities.

12 (2) CONSULTATION BY SECRETARY OF AGRICULTURE.—If the Secretary of Agriculture partici-
13 pates in the World Organization for Animal Health,
14 the Secretary of Agriculture shall confer and consult
15 with the Secretary on any matter relating to the pre-
16 vention of wildlife diseases that may threaten the
17 United States.

19 **SEC. 7. PROHIBITIONS.**

20 (a) IN GENERAL.—Subject to subsection (b) and sec-
21 tion 8, it is unlawful for any person subject to the jurisdic-
22 tion of the United States—

23 (1) to import into the United States or trans-
24 port between States any wildlife designated as an in-
25 jurious wildlife taxon or taxa;

1 (2) to possess any wildlife designated as an in-
2 jurious wildlife taxon or taxa, or a descendant of
3 that wildlife, that was imported or transported in
4 violation of this Act;

5 (3) to import into the United States or trans-
6 port between States any wildlife not in trade to the
7 United States;

8 (4) to possess any wildlife not in trade to the
9 United States, or a descendant of that wildlife, that
10 was imported or transported in violation of this Act;

11 (5) to violate any term or condition of a permit
12 issued to a qualified institution under section 8;

13 (6) to release into the wild any wildlife—

14 (A) designated as an injurious wildlife
15 taxon or taxa; or

16 (B) not in trade to the United States; or

17 (7) to attempt any of the prohibited actions de-
18 scribed in paragraphs (1) through (6).

19 (b) LIMITATION ON APPLICATION.—

20 (1) IN GENERAL.—The prohibitions described
21 in subsection (a) shall not apply to any action car-
22 ried out by a Federal, State, or tribal government
23 official—

24 (A) to enforce any of those prohibitions; or

(B) to prevent the introduction or establishment of any wildlife designated as an injurious wildlife taxon or taxa or any wildlife not in trade to the United States, including any action to transport or possess (including holding and sheltering) that wildlife.

(2) WILDLIFE IN POSSESSION OF A FEDERAL AGENCY.—Nothing in this Act restricts the importation or transport between States of an injurious wildlife taxon or taxa or any wildlife not in trade by a Federal agency for the use of the Federal agency if the wildlife remains in the possession of the Federal agency.

(3) DEAD NATURAL HISTORY SPECIMENS.—Nothing in this Act restricts the importation of a dead natural history specimen for a museum or scientific collection if the dead natural history specimen is properly preserved in a manner that minimizes, to the maximum extent practicable, the risk of exposure from any harmful wildlife pathogen or parasite.

SEC. 8. PERMITS.

(a) IN GENERAL.—The Director may issue to a qualified institution a permit that authorizes the import into the United States or transport between States of wildlife designated as an injurious wildlife taxon or taxa for sci-

1 entific, zoological, medical research, or educational pur-
2 poses if the Director finds that qualified institution prop-
3 erly demonstrates—

4 (1) responsibility; and

5 (2) continued protection of—

6 (A) human beings;

7 (B) the interests of—

8 (i) agriculture;

9 (ii) horticulture; and

10 (iii) forestry; and

11 (C) wildlife and wildlife resources.

12 (b) MULTI-YEAR PERMIT.—At the request of the
13 qualified institution, a permit issued under subsection (a)
14 shall be a multi-year permit of not less than 3 years if
15 the permit is for a zoological, public display, conservation,
16 or educational outreach purpose.

17 (c) TERMS AND CONDITIONS.—The Director may in-
18 clude in a permit issued under subsection (a) any terms
19 and conditions designed to minimize the risk of introduc-
20 tion, establishment, and transport between States of any
21 wildlife designated as an injurious wildlife taxon or taxa,
22 as determined by the Director.

23 (d) TERMINATION.—The Director shall immediately
24 terminate a permit issued under this section if the Direc-

1 tor determines that the holder of a multi-year permit
2 issued under this section does not meet—

- 3 (1) the definition of a “qualified institution”; or
4 (2) the requirements of subsection (a).

5 (e) RECORDKEEPING AND REPORTING.—

6 (1) RECORDKEEPING.—A qualified institution
7 that is issued a permit under subsection (a) shall
8 maintain records, subject to annual inspection by the
9 Director, of the importation into the United States,
10 transportation between States, possession, or breed-
11 ing of any wildlife designated as an injurious wildlife
12 taxon or taxa.

13 (2) REPORT.—Not later than March 1 of the
14 first calendar year beginning after the date on which
15 a permit is issued under subsection (a), and each
16 March 1 thereafter for the duration of the permit,
17 each qualified institution shall submit to the Direc-
18 tor a report on the importation, interstate transport,
19 possession, or breeding by the qualified institution of
20 any wildlife designated as an injurious wildlife taxon
21 or taxa during the preceding calendar year.

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

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

1 (2) maintain a current roster of qualified insti-
2 tutions on a publicly available Federal website and
3 through other appropriate means, as determined by
4 the Director.

5 (g) STREAMLINING PERMIT APPLICATIONS.—The
6 Director may develop and implement an electronic system
7 for the submission of permit applications under this sec-
8 tion.

9 **SEC. 9. FEES FOR LIVE WILDLIFE SHIPMENT.**

10 (a) DEFINITION OF LIVE WILDLIFE SHIPMENT.—In
11 this section, the term “live wildlife shipment” does not in-
12 clude a shipment made by a qualified institution for sci-
13 entific, zoological, medical research, or educational pur-
14 poses.

15 (b) REASONABLE USER FEE.—Not later than 2
16 years after the date of enactment of this Act, the Director
17 shall propose and adopt by regulation a reasonable fee to
18 be charged on any imported live wildlife shipment for use
19 in recovering a portion of the costs of—

20 (1) improving the information available on the
21 importation into the United States and transport be-
22 tween States of wildlife;

23 (2) monitoring the import information described
24 section 5;

1 (3) conducting scientific risk assessments and
2 risk management determinations for wildlife taxa
3 under section 4(b);

4 (4) making emergency temporary designations
5 under section 4(f); and

6 (5) developing and implementing an electronic
7 system for streamlining the submission of permit ap-
8 plications in accordance with section 8(g).

9 (c) COST RECOVERY PURPOSE.—The purpose of the
10 user fee described in subsection (b) is to recover approxi-
11 mately 75 percent of the costs to the Director for the serv-
12 ices listed in that subsection after—

13 (1) the date on which the user fee regulation
14 described in that subsection is fully implemented;
15 and

16 (2) the amounts of the user fees received have
17 been appropriated to the Fund established in section
18 13(a) for not less than 1 full fiscal year.

19 (d) FEE LIMIT.—

20 (1) IN GENERAL.—The amount of the user fee
21 under this section shall be—

22 (A) set by the Director only after consid-
23 ering public comments on the proposed user fee
24 regulation; and

25 (B) charged—

1 (i) broadly and fairly across the live
2 wildlife import industry; and

3 (ii) at the lowest level practicable to
4 achieve the cost recovery purpose described
5 in subsection (c).

6 (2) ANNUAL TOTAL FEE REVENUE.—In setting
7 the user fee under this section, the Director shall
8 seek to set a user fee amount that ensures that the
9 annual total user fee revenue is not more than the
10 amount of the annual total fee revenue of the fees
11 charged by the Director under the inspection pro-
12 gram of the Director to oversee the importation of
13 live wildlife carried out pursuant to—

14 (A) section 11(f) of the Endangered Spe-
15 cies Act of 1973 (16 U.S.C. 1540(f)); and

16 (B) subpart I of part 14 of title 50, Code
17 of Federal Regulations (or successor regula-
18 tions).

19 (e) SEPARATION FROM OTHER FEES.—The Sec-
20 retary shall keep the user fees collected in accordance with
21 this section separate from any other fees that the Sec-
22 retary collects for any other law enforcement or inspection
23 activity.

1 **SEC. 10. PENALTIES AND SANCTIONS.**

2 (a) ENFORCEMENT.—The Secretary and the Sec-
3 retary of Homeland Security—

4 (1) shall enforce the provisions of this Act, in-
5 cluding any regulations or permits issued under this
6 Act; and

7 (2) may require the furnishing of an appro-
8 priate bond, if desirable to ensure compliance with
9 those provisions.

10 (b) AUTHORIZATION BY THE SECRETARY.—Any per-
11 son authorized by the Secretary to enforce this Act shall
12 have the authorities described in section 6(b) of the Lacey
13 Act Amendments of 1981 (16 U.S.C. 3375(b)).

14 (c) CIVIL PENALTIES.—

15 (1) IN GENERAL.—Subject to paragraph (2),
16 any person who violates any provision of this Act,
17 any permit issued under this Act, or a regulation
18 issued under this Act may be assessed a civil penalty
19 by the Secretary of not more than \$10,000 for each
20 violation.

21 (2) NOTICE AND OPPORTUNITY FOR A HEAR-
22 ING.—

23 (A) IN GENERAL.—No civil penalty may be
24 assessed under this subsection for a violation
25 under this Act unless a person described in

1 paragraph (1) is given notice and opportunity
2 for a hearing with respect to the violation.

3 (B) HEARING.—

4 (i) IN GENERAL.—A hearing described
5 in subparagraph (A) shall be conducted in
6 accordance with section 554 of title 5,
7 United States Code.

8 (ii) SUBPOENA.—The Secretary may,
9 for any hearing under this paragraph—

10 (I) issue a subpoena for—

11 (aa) the attendance or testi-
12 mony of a witness; or

13 (bb) the production of rel-
14 evant papers, books, or docu-
15 ments; and

16 (II) administer an oath.

17 (iii) FEES AND MILEAGE.—Any wit-
18 ness summoned under clause (ii) shall be
19 paid the same fees and mileage that are
20 paid to a witness in a court of the United
21 States.

22 (iv) CONTUMACY OR FAILURE TO
23 OBEY A SUBPOENA.—

24 (I) IN GENERAL.—In the case of
25 contumacy or failure to obey a sub-

1 poena issued under clause (ii), the dis-
2 trict court of the United States for
3 the district in which the subpoenaed
4 person is found, resides, or transacts
5 business, on application by the United
6 States and after notice to the subpoe-
7 naed person, may issue an order re-
8 quiring the person—

9 (aa) to appear and give tes-
10 timony before the Secretary; or

11 (bb) to appear and produce
12 documentary evidence before the
13 Secretary.

14 (II) FAILURE TO OBEY ORDER.—

15 Any failure to obey an order issued
16 under subclause (I) may be punished
17 by the court described in that sub-
18 clause as contempt of that court.

19 (3) SEPARATE OFFENSE.—Each violation under
20 this Act shall be a separate offense.

21 (4) REMISSION OR MITIGATION.—The Secretary
22 may remit or mitigate any civil penalty assessed
23 under this subsection.

24 (5) FAILURE TO PAY.—

1 (A) IN GENERAL.—If a person assessed a
2 civil penalty under paragraph (1) fails to pay
3 the civil penalty, the Secretary may request
4 that the Attorney General institute a civil ac-
5 tion to collect the penalty in a district court of
6 the United States for any district in which the
7 person is found, resides, or transacts business,
8 and that court shall have jurisdiction to hear
9 and decide the action.

10 (B) RECORD; SUBSTANTIAL EVIDENCE.—
11 The court described in subparagraph (A)
12 shall—

13 (i) hear the action described in that
14 subparagraph on the record made before
15 the Secretary in a hearing under in para-
16 graph (2)(B); and

17 (ii) sustain the decision of the Sec-
18 retary if that decision is supported by sub-
19 stantial evidence in the record, considered
20 as a whole.

21 (d) CRIMINAL OFFENSES.—Any person who know-
22 ingly violates any provision of this Act, any permit issued
23 under this Act, or a regulation issued under this Act shall
24 be guilty of a class A misdemeanor.

1 (e) NATURAL RESOURCE DAMAGES.—Any costs re-
2 lating to the mitigation of injury caused by a violation of
3 this Act shall be borne by the person who violated this
4 Act.

5 (f) FORFEITURE.—

6 (1) IN GENERAL.—

7 (A) WILDLIFE.—Any wildlife that is im-
8 ported, transported, possessed, or released into
9 the wild in violation of this Act or a permit or
10 regulation issued under this Act, or any wildlife
11 that any person has attempted to import, trans-
12 port, possess, or release into the wild in viola-
13 tion of this Act or a permit or regulation issued
14 under this Act, shall be promptly exported or
15 destroyed at the expense of the importer, con-
16 signee, or recipient.

17 (B) EQUIPMENT.—Any vessel, vehicle, air-
18 craft, or other equipment used to aid in the im-
19 porting, transporting, possessing, or releasing
20 into the wild, or in the attempt to import,
21 transport, possess, or release into the wild, of
22 wildlife in a criminal violation of this Act shall
23 be subject to forfeiture to the United States if
24 the owner of the vessel, vehicle, aircraft, or
25 equipment was, at the time of the alleged illegal

1 act, a consenting party or privy to the alleged
2 illegal act or in the exercise of due care should
3 have known that the vessel, vehicle, aircraft, or
4 equipment would be used in a criminal violation
5 of this Act.

6 (2) APPLICATION OF CUSTOMS LAW.—

7 (A) IN GENERAL.—Subject to subpara-
8 graph (B), all provisions of law relating to the
9 seizure, forfeiture, and condemnation of prop-
10 erty for violation of customs law, the disposition
11 of that property or the proceeds from the sale
12 of that property, and the remission or mitiga-
13 tion of that forfeiture, shall apply to the sei-
14 zures and forfeitures incurred, or alleged to
15 have been incurred, under this Act if those pro-
16 visions of law are not inconsistent with this Act.

17 (B) EXCEPTION.—Any power, right, or
18 duty conferred or imposed by customs law on
19 any officer or employee of the Department of
20 Homeland Security may, for the purposes of
21 this Act, be exercised or performed by the Sec-
22 retary, or by such persons as the Secretary may
23 designate, only if a warrant for the search or
24 seizure is issued in accordance with rule 41 of
25 the Federal Rules of Criminal Procedure.

1 (3) STORAGE COST.—Any person convicted of
 2 an offense or assessed a civil penalty under this Act
 3 shall be liable for the costs incurred in the storage,
 4 care, and maintenance of any wildlife seized in con-
 5 nection with the applicable violation.

6 (4) CIVIL FORFEITURE.—A civil forfeiture
 7 under this section shall be governed by chapter 46
 8 of title 18, United States Code.

9 **SEC. 11. RELATIONSHIP TO STATE AND FEDERAL LAW.**

10 (a) RELATIONSHIP TO STATE LAW.—Nothing in this
 11 Act prevents a State or Indian tribe from making or en-
 12 forcing a law or regulation that is consistent with this Act.

13 (b) REPEAL.—

14 (1) IN GENERAL.—Section 42 of title 18,
 15 United States Code, is amended—

16 (A) by striking “(a)(1) The” and all that
 17 follows through “(c) The Secretary” and insert-
 18 ing “The Secretary”; and

19 (B) by striking “this subsection” each
 20 place it appears and inserting “this section”.

21 (2) EFFECT.—The amendment made by para-
 22 graph (1) shall not affect any right or duty that ma-
 23 tured, any penalty that was incurred, or any pro-
 24 ceeding begun, under subsection (a) or (b) of section
 25 42 of title 18, United States Code (as in effect on

1 the day before the date of enactment of this Act),
2 before the date of enactment of this Act.

3 (c) RELATIONSHIP TO OTHER FEDERAL LAWS.—

4 Nothing in this Act—

5 (1) repeals, supersedes, or modifies—

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

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

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

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

14 (E) the Animal Welfare Act (7 U.S.C.
15 2131 et seq.);

16 (F) the Endangered Species Act of 1973
17 (16 U.S.C. 1531 et seq.);

18 (G) any other provision of Federal law
19 other than the provision described in subsection
20 (b); or

21 (H) any right, privilege, or immunity
22 granted, reserved, or established pursuant to a
23 treaty, statute, or an Executive order relating
24 to any Indian tribe, band, or community;

1 (2) enlarges or diminishes the authority of any
2 State or Indian tribe to regulate the activities of any
3 person on an Indian reservation; or

4 (3) authorizes any action with respect to the
5 importation of any plant pest, including any biological
6 control agent, under the Plant Protection Act (7
7 U.S.C. 7701 et seq.) to the extent that the importa-
8 tion of the plant pest, including a biological control
9 agent, is subject to regulation under that Act.

10 **SEC. 12. REQUIREMENT TO PROMULGATE REGULATIONS.**

11 The Secretary—

12 (1) shall promulgate the regulations required by
13 this Act; and

14 (2) may promulgate other such regulations as
15 are necessary to carry out this Act.

16 **SEC. 13. ESTABLISHMENT OF FUNDS AND AUTHORIZATION**
17 **OF APPROPRIATIONS.**

18 (a) INJURIOUS WILDLIFE PREVENTION FUND.—

19 (1) ESTABLISHMENT.—The Secretary of the
20 Treasury shall establish in the Treasury of the
21 United States a fund, to be known as the “Injurious
22 Wildlife Prevention Fund”.

23 (2) DEPOSITS.—Beginning with the next full
24 fiscal year after the date of enactment of this Act
25 and for each fiscal year thereafter, the Secretary

1 and the Secretary of the Treasury shall deposit in
 2 the Fund all revenues received by the Secretary and
 3 the Secretary of the Treasury as user fees under
 4 section 9 and civil and criminal penalties under sec-
 5 tion 10.

6 (3) ADMINISTRATION.—The Secretary shall ad-
 7 minister the Fund.

8 (4) OBLIGATIONS.—

9 (A) IN GENERAL.—The Secretary and the
 10 Director, as appropriate, may obligate amounts
 11 in the Fund to carry out this Act, without fur-
 12 ther appropriation.

13 (B) AVAILABILITY.—Amounts available for
 14 obligation under this section shall remain avail-
 15 able without fiscal year limitation.

16 (b) USE OF FUNDS.—

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

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

22 (B) 25 percent shall be used by the Direc-
 23 tor to carry out paragraph (2).

24 (2) NATURAL RESOURCE ASSISTANCE
 25 GRANTS.—

1 (A) IN GENERAL.—The Secretary shall es-
2 tablish a program to make natural resource as-
3 sistance grants to States and Indian tribes for
4 use in supporting best practices and capacity
5 building by States and Indian tribes, consistent
6 with the purposes of this Act, for—

7 (i) inspecting and monitoring inter-
8 state transport of wildlife between States;
9 and

10 (ii) conducting assessments of risk as-
11 sociated with the intentional importation of
12 any wildlife.

13 (B) FUNDING.—Of the amounts described
14 in paragraph (1)(B), 10 percent shall be avail-
15 able to the Director for the implementation of
16 the program established under subparagraph
17 (A).

18 (c) PROHIBITION.—Amounts in the Fund may not be
19 made available for any purpose other than a purpose de-
20 scribed in subsection (b).

21 (d) ANNUAL REPORTS.—

22 (1) IN GENERAL.—Not later than 60 days after
23 the end of each fiscal year beginning with fiscal year
24 2017, the Director shall submit to the Committees
25 on Appropriations and Environment and Public

1 Works of the Senate and the Committees on Appro-
2 priations and Natural Resources of the House of
3 Representatives a report that describes the operation
4 of the Fund during the preceding fiscal year.

5 (2) CONTENTS.—A report described in para-
6 graph (1) shall include, for the fiscal year covered by
7 the report—

8 (A) a statement of the amounts deposited
9 in the Fund;

10 (B) a description of any expenditure made
11 from the Fund for the fiscal year, including the
12 purpose of the expenditure;

13 (C) a recommendation for any additional
14 authority to fulfill the purpose of the Fund; and

15 (D) a statement of the balance remaining
16 in the Fund at the end of the fiscal year.

17 (e) SEPARATE APPROPRIATIONS ACCOUNT.—Section
18 1105(a) of title 31, United States Code, is amended by
19 adding at the end the following:

20 “(40) a separate statement for the Injurious
21 Wildlife Prevention Fund established under section
22 13(a) of the Invasive Fish and Wildlife Prevention
23 Act of 2016, that includes the estimated amount of
24 deposits in the Fund, obligations, and outlays from
25 the Fund.”.

1 (f) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to carry out this Act
3 such sums as may be necessary, to remain available until
4 expended.

5 **SEC. 14. SEVERABILITY.**

6 If any provision of this Act, an amendment made by
7 this Act, or the application of such a provision or amend-
8 ment to any person or circumstance is held to be unconsti-
9 tutional, the remainder of this Act and the amendments
10 made by this Act, and the application of the provision or
11 amendment to any other person or circumstance, shall not
12 be affected.

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