

115TH CONGRESS
2D SESSION

S. 3210

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 12, 2018

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 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”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to establish an improved
8 regulatory process to prevent the introduction and estab-
9 lishment in the United States of any injurious wildlife that
10 is likely to cause—

1 (1) economic or environmental harm; or

2 (2) harm to—

3 (A) humans; or

4 (B) animal health.

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

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

10 (A) provides care for wildlife species; and

11 (B) is a corporation that—

12 (i) is—

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

16 (II) described in sections
17 501(c)(3) and 170(b)(1)(A)(vi) of
18 that Code;

19 (ii) does not—

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

1 (II) propagate any animal regu-
2 lated under this Act; and

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

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

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

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

18 (5) INDIAN TRIBE.—The term “Indian tribe”
19 has the meaning given the term in section 4 of the
20 Indian Self-Determination and Education Assistance
21 Act (25 U.S.C. 5304).

22 (6) INJURIOUS WILDLIFE TAXON OR TAXA.—

23 (A) IN GENERAL.—The term “injurious
24 wildlife taxon or taxa” means any family,
25 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 regu-

lated 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.*);

(IX) the ferret (*Mustela furo*,
Mustela putorius furo);

(X) the gerbil (*Meriones*
unguiculatus);

1 (XI) the goat (*Capra aegagrus*
2 *hircus*);

3 (XII) the guinea pig or Cavy
4 (*Cavia porcellus*);

5 (XIII) the goldfish (*Carassius*
6 *auratus auratus*);

7 (XIV) hamsters of the species
8 *Cricetulus griseus*, *Mesocricetus*
9 *auratus*, *Phodopus campbelli*,
10 *Phodopus sungorus*, and *Phodopus*
11 *roborovskii*;

12 (XV) the horse (*Equus caballus*);

13 (XVI) the llama (*Lama glama*);

14 (XVII) the mule or hinny (*Equus*
15 *caballus* x *E. asinus*);

16 (XVIII) the pig or hog (*Sus*
17 *scrofa domestica*);

18 (XIX) the sheep (*Ovis aries*); or

19 (XX) any other common and
20 clearly domesticated species or sub-
21 species, as determined by the Direc-
22 tor.

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

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

1 (B) any officer, employee, agent, depart-
 2 ment, or instrumentality of—

3 (i) the Federal Government;

4 (ii) any Indian tribe, State, munic-
 5 ipality, or political subdivision of a State; or

6 (iii) any foreign government; or

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

9 (8) QUALIFIED INSTITUTION.—The term
 10 “qualified institution” means—

11 (A) an institution that carries out a sci-
 12 entific, zoological, medical research, or edu-
 13 cational purpose, as determined by the Direc-
 14 tor; or

15 (B) an approved wildlife sanctuary.

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

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

19 (A) a State;

20 (B) the District of Columbia;

21 (C) the Commonwealth of Puerto Rico;

22 (D) Guam;

23 (E) American Samoa;

24 (F) the Commonwealth of the Northern
 25 Mariana Islands;

1 (G) the United States Virgin Islands; and

2 (H) any other territory or possession of the

3 United States.

4 (11) TRANSPORT.—The term “transport”

5 means—

6 (A) to move;

7 (B) to convey;

8 (C) to carry;

9 (D) to ship by any means; or

10 (E) to deliver or receive for the purpose

11 of—

12 (i) movement;

13 (ii) conveyance;

14 (iii) carriage; or

15 (iv) shipment.

16 (12) UNITED STATES.—The term “United

17 States” means—

18 (A) all of the United States; and

19 (B) any land or water, including the terri-

20 torial sea and the Exclusive Economic Zone,

21 within the jurisdiction or sovereignty of the

22 Federal Government.

23 (13) WILDLIFE.—The term “wildlife” means

24 any member of the animal kingdom, including any—

25 (A) mammal;

- 1 (B) fish;
- 2 (C) bird;
- 3 (D) amphibian;
- 4 (E) reptile; or
- 5 (F) invertebrate.

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

- 8 (A) wildlife; or
- 9 (B) type of aquatic or land vegetation on
10 which any wildlife is dependent.

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

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

15 (b) BASIS FOR DESIGNATION.—

16 (1) SCIENTIFIC RISK ASSESSMENT.—In making
17 a designation under subsection (a), the Secretary,
18 acting through the Director, shall conduct a sci-
19 entific risk assessment based on the best available
20 science that includes consideration of—

- 21 (A) the scientific name and native range of
22 the wildlife;
- 23 (B) the likelihood and magnitude of the re-
24 lease or escape of the wildlife;

1 (C) whether the wildlife has established or
2 spread, or has the potential to establish or
3 spread, outside of the native range of the wild-
4 life in a habitat similar to a habitat in the
5 United States;

6 (D) whether the wildlife has caused, or has
7 the potential to cause, harm in the United
8 States to—

9 (i) a human being;

10 (ii) an interest of—

11 (I) agriculture;

12 (II) horticulture; or

13 (III) forestry; or

14 (iii) any wildlife or wildlife resources;

15 (E) the potential impact of wildlife control
16 or eradication measures for the wildlife on
17 human beings, agriculture, horticulture, for-
18 estry, wildlife, or wildlife resources in the
19 United States; and

20 (F) any other risk assessment factor, as
21 determined by the Director in accordance with
22 the purpose of this Act.

23 (2) RISK MANAGEMENT DETERMINATION.—In
24 making a designation under subsection (a), the Sec-
25 retary, acting through the Director, shall conduct a

1 risk management determination that includes consid-
2 eration of—

3 (A) the results of the scientific risk assess-
4 ment described in paragraph (1);

5 (B) the ability and effectiveness of meas-
6 ures—

7 (i) to prevent the release or escape of
8 the wildlife;

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

11 (iii) to rehabilitate and recover eco-
12 systems damaged by the wildlife; and

13 (C) any other risk management factor, as
14 determined by the Director in accordance with
15 the purpose of this Act.

16 (3) AVAILABILITY TO THE PUBLIC.—The Sec-
17 retary, acting through the Director, shall make
18 available to the public the results of the assessments
19 described in paragraphs (1) and (2).

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

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

1 (A) publish a proposed rule in the Federal
2 Register and on a publicly accessible Federal
3 website;

4 (B) provide not fewer than 30 days for
5 public comment; and

6 (C) make available on a publicly accessible
7 Federal website the results of the scientific risk
8 assessment and the risk management deter-
9 mination described in subsection (b).

10 (2) PETITIONS.—

11 (A) IN GENERAL.—Any interested person
12 may submit to the Director a petition to des-
13 ignate any wildlife as an injurious wildlife taxon
14 or taxa.

15 (B) CONSIDERATION OF PETITION.—If the
16 Director determines that a petition described in
17 subparagraph (A) is complete and that the peti-
18 tion presents substantial evidence that the wild-
19 life is an injurious wildlife taxon or taxa, the
20 Director may—

21 (i) conduct a scientific risk assess-
22 ment and a risk management determina-
23 tion under subsection (b); and

24 (ii) propose a rule in accordance with
25 paragraph (1).

1 (3) NOTICE AND CONSULTATION.—In consid-
2 ering a proposed designation of injurious wildlife
3 taxon or taxa described in paragraph (1), the Sec-
4 retary shall notify and consult with, as appro-
5 prium—

6 (A) any affected stakeholder, including—

7 (i) a State;

8 (ii) an Indian tribe; and

9 (iii) a qualified institution;

10 (B) the Aquatic Nuisance Species Task
11 Force;

12 (C) the National Invasive Species Council;

13 (D) the Secretary of Agriculture;

14 (E) the Director of the Centers for Disease
15 Control and Prevention; and

16 (F) the Administrator of the National Oce-
17 anic and Atmospheric Administration.

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

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

23 (B) a notice in the Federal Register that
24 the proposed rule is withdrawn.

1 (d) WILDLIFE NOT IN TRADE TO THE UNITED
2 STATES.—

3 (1) IN GENERAL.—Any wildlife shall be consid-
4 ered wildlife not in trade to the United States if the
5 wildlife—

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

7 (B) was not—

8 (i) as of the date of enactment of this
9 Act, designated as an injurious wildlife
10 taxon or taxa under subsection (a); or

11 (ii) during the 1-year period ending
12 on the date of enactment of this Act, wide-
13 ly—

14 (I) imported into the United
15 States; or

16 (II) transported between States.

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

20 (A) define the term “wildlife not in trade
21 to the United States” for the purposes of this
22 Act; and

23 (B) establish a process to ensure, before
24 the importation into the United States or trans-
25 port between States of any wildlife not in trade

1 to the United States, that the wildlife is re-
2 viewed by the Director to determine whether
3 that wildlife should be designated as an inju-
4 rious wildlife taxon or taxa under subsection
5 (a).

6 (e) PREVIOUSLY LISTED INJURIOUS SPECIES.—

7 (1) IN GENERAL.—On the date of enactment of
8 this Act, any wildlife designated as injurious by sec-
9 tion 42(a)(1) of title 18, United States Code, includ-
10 ing any designation made under that section (as in
11 effect on the day before the date of enactment of
12 this Act), shall be designated as an injurious wildlife
13 taxon or taxa under this Act.

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

18 (f) EMERGENCY TEMPORARY DESIGNATION.—

19 (1) IN GENERAL.—The Director may imme-
20 diately and temporarily make an emergency tem-
21 porary designation of any wildlife as an injurious
22 wildlife taxon or taxa for any wildlife that poses an
23 imminent threat in the United States to—

24 (A) a human being;

25 (B) an interest of—

- 1 (i) agriculture;
- 2 (ii) horticulture; or
- 3 (iii) forestry; or
- 4 (C) any wildlife or wildlife resources.

5 (2) REGULATION.—

6 (A) IN GENERAL.—In the case of an emer-
7 gency temporary designation made under para-
8 graph (1), the Director shall publish a regula-
9 tion in the Federal Register that includes a de-
10 tailed reason for which the emergency tem-
11 porary designation is necessary.

12 (B) EFFECTIVE IMMEDIATELY.—A regula-
13 tion described in subparagraph (A) shall be ef-
14 fective immediately on the date of the publica-
15 tion of the regulation in the Federal Register.

16 (C) EXPIRATION.—A regulation promul-
17 gated under subparagraph (A) shall cease to
18 have force and effect not earlier than 1 year
19 after the date on which the regulation is pub-
20 lished in the Federal Register.

21 (D) WITHDRAWAL.—The Director shall
22 withdraw a regulation issued under subpara-
23 graph (A) if the Director determines that the
24 regulation is not necessary.

1 (E) APPLICABILITY.—Subsections (b) and
2 (c) and section 553 of title 5, United States
3 Code, shall not apply to an emergency tem-
4 porary designation issued under subparagraph
5 (A).

6 (3) FINAL DETERMINATION.—Not later than 1
7 year after the date on which an emergency tem-
8 porary designation is promulgated under paragraph
9 (2), the Director shall make a final determination
10 regarding whether the wildlife that is the subject of
11 the emergency temporary designation should be des-
12 ignated as an injurious wildlife taxon or taxa under
13 subsection (a).

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

17 (A) shall respond promptly to the request
18 in writing; and

19 (B) may make an emergency temporary
20 designation under that paragraph.

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

1 **SEC. 5. REPORT ON COLLECTION OF INFORMATION ON IM-**
2 **PORTED WILDLIFE.**

3 Not later than 18 months after the date of enactment
4 of this Act, the Secretary, in consultation with the Sec-
5 retary of Homeland Security, shall provide to the Com-
6 mittee on Environment and Public Works of the Senate
7 and the Committee on Natural Resources of the House
8 of Representatives a report that describes the status of
9 measures—

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

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

15 (A) imports of all live wildlife; and

16 (B) whether that wildlife species (or sub-
17 species) has been designated as an injurious
18 wildlife taxon or taxa.

19 **SEC. 6. PREVENTION OF WILDLIFE PATHOGENS AND**
20 **PARASITES.**

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

25 (b) REGULATIONS.—The Secretary shall promulgate
26 regulations—

1 (1) to minimize the likelihood of introduction or
2 dissemination of any disease or harmful parasite of
3 native or nonnative wildlife; and

4 (2) to impose import restrictions, including
5 management measures, health certifications, quar-
6 antine requirements, specifications for conveyances,
7 holding water, and associated materials, shipment
8 and handling requirements, and any other measure
9 that the Secretary determines to be necessary—

10 (A) to prevent the importation of, and
11 interstate commerce in, wildlife pathogens and
12 harmful parasites of native and nonnative wild-
13 life; and

14 (B) to address—

15 (i) a particular injurious wildlife
16 taxon;

17 (ii) the place of origin of a particular
18 injurious wildlife taxon; and

19 (iii) the conveyance and materials as-
20 sociated with wildlife transport.

21 (c) RELATIONSHIP TO OTHER AUTHORITIES.—

22 (1) IN GENERAL.—Subject to paragraph (2),
23 the Secretary shall exclude from regulation under
24 this section any pathogen, parasite, or host taxon
25 that is—

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

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

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

13 (2) EXCEPTION.—Notwithstanding paragraph
 14 (1), the Secretary may regulate a pathogen, para-
 15 site, or host taxon described in that paragraph if the
 16 pathogen, parasite, or host taxon poses a wildlife
 17 disease risk.

18 (d) COORDINATION.—

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

21 (A) the heads of other Federal agencies
 22 and departments that regulate injurious wildlife
 23 taxa;

24 (B) the heads of State wildlife agencies;

25 (C) State veterinarians; and

1 (D) other officials with related authorities.

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

9 **SEC. 7. PROHIBITIONS.**

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

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

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

20 (3) to import into the United States or trans-
21 port between States any wildlife not in trade to the
22 United States;

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

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

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

4 (A) designated as an injurious wildlife
5 taxon or taxa; or

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

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

9 (b) LIMITATION ON APPLICATION.—

10 (1) IN GENERAL.—The prohibitions described
11 in subsection (a) shall not apply to any action car-
12 ried out by a Federal, State, or Tribal government
13 official—

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

15 (B) to prevent the introduction or estab-
16 lishment of any wildlife designated as an inju-
17 rious wildlife taxon or taxa or any wildlife not
18 in trade to the United States, including any ac-
19 tion to transport or possess (including holding
20 and sheltering) that wildlife.

21 (2) WILDLIFE IN POSSESSION OF A FEDERAL
22 AGENCY.—Nothing in this Act restricts the importa-
23 tion or transport between States of an injurious
24 wildlife taxon or taxa or any wildlife not in trade by
25 a Federal agency for the use of the Federal agency

1 if the wildlife remains in the possession of the Fed-
 2 eral agency.

3 (3) DEAD NATURAL HISTORY SPECIMENS.—
 4 Nothing in this Act restricts the importation of a
 5 dead natural history specimen for a museum or sci-
 6 entific collection if the dead natural history specimen
 7 is properly preserved in a manner that minimizes, to
 8 the maximum extent practicable, the risk of expo-
 9 sure from any harmful wildlife pathogen or parasite.

10 **SEC. 8. PERMITS.**

11 (a) IN GENERAL.—The Director may issue to a quali-
 12 fied institution a permit that authorizes the import into
 13 the United States or transport between States of wildlife
 14 designated as an injurious wildlife taxon or taxa for sci-
 15 entific, zoological, medical research, or educational pur-
 16 poses if the Director finds that qualified institution prop-
 17 erly demonstrates—

18 (1) responsibility; and

19 (2) continued protection of—

20 (A) human beings;

21 (B) the interests of—

22 (i) agriculture;

23 (ii) horticulture; and

24 (iii) forestry; and

25 (C) wildlife and wildlife resources.

1 (b) MULTI-YEAR PERMIT.—At the request of the
 2 qualified institution, a permit issued under subsection (a)
 3 shall be a multi-year permit of not more than 3 years if
 4 the permit is for a zoological, public display, conservation,
 5 or educational outreach purpose.

6 (c) TERMS AND CONDITIONS.—The Director may in-
 7 clude in a permit issued under subsection (a) any terms
 8 and conditions designed to minimize the risk of introduc-
 9 tion, establishment, and transport between States of any
 10 wildlife designated as an injurious wildlife taxon or taxa,
 11 as determined by the Director.

12 (d) TERMINATION.—The Director shall immediately
 13 terminate a permit issued under this section if the Direc-
 14 tor determines that the holder of a multi-year permit
 15 issued under this section does not meet—

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

18 (e) RECORDKEEPING AND REPORTING.—

19 (1) RECORDKEEPING.—A qualified institution
 20 that is issued a permit under subsection (a) shall
 21 maintain records, subject to annual inspection by the
 22 Director, of the importation into the United States,
 23 transportation between States, possession, or breed-
 24 ing of any wildlife designated as an injurious wildlife
 25 taxon or taxa.

1 (2) REPORT.—Not later than March 1 of the
 2 first calendar year beginning after the date on which
 3 a permit is issued under subsection (a), and each
 4 March 1 thereafter for the duration of the permit,
 5 each qualified institution shall submit to the Direc-
 6 tor a report on the importation, interstate transport,
 7 possession, or breeding by the qualified institution of
 8 any wildlife designated as an injurious wildlife taxon
 9 or taxa during the preceding calendar year.

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

12 (1) promulgate regulations to implement this
 13 section; and

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

18 (g) STREAMLINING PERMIT APPLICATIONS.—The
 19 Director may develop and implement an electronic system
 20 for the submission of permit applications under this sec-
 21 tion.

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

23 (a) DEFINITION OF LIVE WILDLIFE SHIPMENT.—In
 24 this section, the term “live wildlife shipment” does not in-
 25 clude a shipment made by a qualified institution for sci-

1 entific, zoological, medical research, or educational pur-
2 poses.

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

8 (1) improving the information available on the
9 importation into the United States and transport be-
10 tween States of wildlife;

11 (2) monitoring the import information described
12 in section 5;

13 (3) conducting scientific risk assessments and
14 risk management determinations for wildlife taxa
15 under section 4(b);

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

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

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

1 (1) the date on which the user fee regulation
2 described in that subsection is fully implemented;
3 and

4 (2) the amounts of the user fees received have
5 been appropriated to the Fund established in section
6 13(a) for not less than 1 full fiscal year.

7 (d) FEE LIMIT.—

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

10 (A) set by the Director only after consid-
11 ering public comments on the proposed user fee
12 regulation; and

13 (B) charged—

14 (i) broadly and fairly across the live
15 wildlife import industry; and

16 (ii) at the lowest level practicable to
17 achieve the cost recovery purpose described
18 in subsection (c).

19 (2) ANNUAL TOTAL FEE REVENUE.—In setting
20 the user fee under this section, the Director shall
21 seek to set a user fee amount that ensures that the
22 annual total user fee revenue is not more than the
23 amount of the annual total fee revenue of the fees
24 charged by the Director under the inspection pro-

1 gram of the Director to oversee the importation of
2 live wildlife carried out pursuant to—

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

5 (B) subpart I of part 14 of title 50, Code
6 of Federal Regulations (or successor regula-
7 tions).

8 (e) SEPARATION FROM OTHER FEES.—The Sec-
9 retary shall keep the user fees collected in accordance with
10 this section separate from any other fees that the Sec-
11 retary collects for any other law enforcement or inspection
12 activity.

13 **SEC. 10. PENALTIES AND SANCTIONS.**

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

16 (1) shall enforce the provisions of this Act, in-
17 cluding any regulations or permits issued under this
18 Act; and

19 (2) may require the furnishing of an appro-
20 priate bond, if desirable to ensure compliance with
21 those provisions.

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

1 (c) CIVIL PENALTIES.—

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

8 (2) NOTICE AND OPPORTUNITY FOR A HEAR-
 9 ING.—

10 (A) IN GENERAL.—No civil penalty may be
 11 assessed under this subsection for a violation
 12 under this Act unless a person described in
 13 paragraph (1) is given notice and opportunity
 14 for a hearing with respect to the violation.

15 (B) HEARING.—

16 (i) IN GENERAL.—A hearing described
 17 in subparagraph (A) shall be conducted in
 18 accordance with section 554 of title 5,
 19 United States Code.

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

22 (I) issue a subpoena for—

23 (aa) the attendance or testi-
 24 mony of a witness; or

1 (bb) the production of rel-
2 evant papers, books, or docu-
3 ments; and

4 (II) administer an oath.

5 (iii) FEES AND MILEAGE.—Any wit-
6 ness summoned under clause (ii) shall be
7 paid the same fees and mileage that are
8 paid to a witness in a court of the United
9 States.

10 (iv) CONTUMACY OR FAILURE TO
11 OBEY A SUBPOENA.—

12 (I) IN GENERAL.—In the case of
13 contumacy or failure to obey a sub-
14 poena issued under clause (ii), the dis-
15 trict court of the United States for
16 the district in which the subpoenaed
17 person is found, resides, or transacts
18 business, on application by the United
19 States and after notice to the subpoe-
20 naed person, may issue an order re-
21 quiring the person—

22 (aa) to appear and give tes-
23 timony before the Secretary; or

1 (bb) to appear and produce
2 documentary evidence before the
3 Secretary.

4 (II) FAILURE TO OBEY ORDER.—
5 Any failure to obey an order issued
6 under subclause (I) may be punished
7 by the court described in that sub-
8 clause as contempt of that court.

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

11 (4) REMISSION OR MITIGATION.—The Secretary
12 may remit or mitigate any civil penalty assessed
13 under this subsection.

14 (5) FAILURE TO PAY.—

15 (A) IN GENERAL.—If a person assessed a
16 civil penalty under paragraph (1) fails to pay
17 the civil penalty, the Secretary may request
18 that the Attorney General institute a civil ac-
19 tion to collect the penalty in a district court of
20 the United States for any district in which the
21 person is found, resides, or transacts business,
22 and that court shall have jurisdiction to hear
23 and decide the action.

1 (B) RECORD; SUBSTANTIAL EVIDENCE.—

2 The court described in subparagraph (A)
3 shall—

4 (i) hear the action described in that
5 subparagraph on the record made before
6 the Secretary in a hearing under para-
7 graph (2)(B); and

8 (ii) sustain the decision of the Sec-
9 retary if that decision is supported by sub-
10 stantial evidence in the record, considered
11 as a whole.

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

16 (e) NATURAL RESOURCE DAMAGES.—Any costs re-
17 lating to the mitigation of injury caused by a violation of
18 this Act shall be borne by the person who violated this
19 Act.

20 (f) FORFEITURE.—

21 (1) IN GENERAL.—

22 (A) WILDLIFE.—Any wildlife that is im-
23 ported, transported, possessed, or released into
24 the wild in violation of this Act or a permit or
25 regulation issued under this Act, or any wildlife

1 that any person has attempted to import, trans-
2 port, possess, or release into the wild in viola-
3 tion of this Act or a permit or regulation issued
4 under this Act, shall be promptly exported or
5 destroyed at the expense of the importer, con-
6 signee, or recipient.

7 (B) EQUIPMENT.—Any vessel, vehicle, air-
8 craft, or other equipment used to aid in the im-
9 porting, transporting, possessing, or releasing
10 into the wild, or in the attempt to import,
11 transport, possess, or release into the wild, of
12 wildlife in a criminal violation of this Act shall
13 be subject to forfeiture to the United States if
14 the owner of the vessel, vehicle, aircraft, or
15 equipment was, at the time of the alleged illegal
16 act, a consenting party or privy to the alleged
17 illegal act or in the exercise of due care should
18 have known that the vessel, vehicle, aircraft, or
19 equipment would be used in a criminal violation
20 of this Act.

21 (2) APPLICATION OF CUSTOMS LAW.—

22 (A) IN GENERAL.—Subject to subpara-
23 graph (B), all provisions of law relating to the
24 seizure, forfeiture, and condemnation of prop-
25 erty for violation of customs law, the disposition

1 of that property or the proceeds from the sale
2 of that property, and the remission or mitiga-
3 tion of that forfeiture, shall apply to the sei-
4 zures and forfeitures incurred, or alleged to
5 have been incurred, under this Act if those pro-
6 visions of law are not inconsistent with this Act.

7 (B) EXCEPTION.—Any power, right, or
8 duty conferred or imposed by customs law on
9 any officer or employee of the Department of
10 Homeland Security may, for the purposes of
11 this Act, be exercised or performed by the Sec-
12 retary, or by such persons as the Secretary may
13 designate, only if a warrant for the search or
14 seizure is issued in accordance with Rule 41 of
15 the Federal Rules of Criminal Procedure.

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

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

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

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

5 (b) REPEAL.—

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

8 (A) by striking “(a)(1) The” and all that
9 follows through “(c) The Secretary” and insert-
10 ing “The Secretary”; and

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

13 (2) EFFECT.—The amendment made by para-
14 graph (1) shall not affect any right or duty that ma-
15 tured, any penalty that was incurred, or any pro-
16 ceeding begun, under subsection (a) or (b) of section
17 42 of title 18, United States Code (as in effect on
18 the day before the date of enactment of this Act),
19 before the date of enactment of this Act.

20 (c) RELATIONSHIP TO OTHER FEDERAL LAWS.—
21 Nothing in this Act—

22 (1) repeals, supersedes, or modifies—

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

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

1 (C) the Plant Protection Act (7 U.S.C.
2 7701 et seq.);

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

5 (E) the Animal Welfare Act (7 U.S.C.
6 2131 et seq.);

7 (F) the Endangered Species Act of 1973
8 (16 U.S.C. 1531 et seq.);

9 (G) any other provision of Federal law
10 other than the provision described in subsection
11 (b); or

12 (H) any right, privilege, or immunity
13 granted, reserved, or established pursuant to a
14 treaty, statute, or an Executive order relating
15 to any Indian tribe;

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

19 (3) authorizes any action with respect to the
20 importation of any plant pest, including any biological
21 control agent, under the Plant Protection Act (7
22 U.S.C. 7701 et seq.) to the extent that the importa-
23 tion of the plant pest, including a biological control
24 agent, is subject to regulation under that Act.

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

2 The Secretary—

3 (1) shall promulgate the regulations required by
4 this Act; and

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

7 **SEC. 13. ESTABLISHMENT OF FUNDS AND AUTHORIZATION**
8 **OF APPROPRIATIONS.**

9 (a) INJURIOUS WILDLIFE PREVENTION FUND.—

10 (1) ESTABLISHMENT.—The Secretary of the
11 Treasury shall establish in the Treasury of the
12 United States a fund, to be known as the “Injurious
13 Wildlife Prevention Fund”.

14 (2) DEPOSITS.—Beginning with the first fiscal
15 year beginning after the date of enactment of this
16 Act, and for each fiscal year thereafter, the Sec-
17 retary and the Secretary of the Treasury shall de-
18 posit in the Fund all revenues received by the Sec-
19 retary and the Secretary of the Treasury from user
20 fees under section 9 and civil and criminal penalties
21 under section 10.

22 (3) ADMINISTRATION.—The Secretary shall ad-
23 minister the Fund.

24 (4) OBLIGATIONS.—

25 (A) IN GENERAL.—The Secretary and the
26 Director, as appropriate, may obligate amounts

1 in the Fund to carry out this Act, without fur-
 2 ther appropriation.

3 (B) AVAILABILITY.—Amounts available for
 4 obligation under this section shall remain avail-
 5 able without fiscal year limitation.

6 (b) USE OF FUNDS.—

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

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

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

14 (2) NATURAL RESOURCE ASSISTANCE
 15 GRANTS.—

16 (A) IN GENERAL.—The Secretary shall es-
 17 tablish a program to make natural resource as-
 18 sistance grants to States and Indian tribes for
 19 use in supporting best practices and capacity
 20 building by States and Indian tribes, consistent
 21 with the purposes of this Act, for—

22 (i) inspecting and monitoring inter-
 23 state transport of wildlife between States;
 24 and

1 (ii) conducting assessments of risk as-
2 sociated with the intentional importation of
3 any wildlife.

4 (B) FUNDING.—Of the amounts described
5 in paragraph (1)(B), 10 percent shall be avail-
6 able to the Director for the implementation of
7 the program established under subparagraph
8 (A).

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

12 (d) ANNUAL REPORTS.—

13 (1) IN GENERAL.—Not later than 60 days after
14 the end of each fiscal year beginning with fiscal year
15 2019, the Director shall submit to the Committees
16 on Appropriations and Environment and Public
17 Works of the Senate and the Committees on Appro-
18 priations and Natural Resources of the House of
19 Representatives a report that describes the operation
20 of the Fund during the preceding fiscal year.

21 (2) CONTENTS.—A report described in para-
22 graph (1) shall include, for the fiscal year covered by
23 the report—

24 (A) a statement of the amounts deposited
25 in the Fund;

1 (B) a description of any expenditure made
2 from the Fund for the fiscal year, including the
3 purpose of the expenditure;

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

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

8 (e) SEPARATE APPROPRIATIONS ACCOUNT.—Section
9 1105(a) of title 31, United States Code, is amended by
10 adding at the end the following:

11 “(40) a separate statement for the Injurious
12 Wildlife Prevention Fund established under section
13 13(a) of the Invasive Fish and Wildlife Prevention
14 Act, that includes the estimated amount of deposits
15 in the Fund, obligations, and outlays from the
16 Fund.”.

17 (f) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to carry out this Act
19 such sums as may be necessary, to remain available until
20 expended.

21 **SEC. 14. SEVERABILITY.**

22 If any provision of this Act, an amendment made by
23 this Act, or the application of such a provision or amend-
24 ment to any person or circumstance is held to be unconsti-
25 tutional, the remainder of this Act and the amendments

1 made by this Act, and the application of the provision or
2 amendment to any other person or circumstance, shall not
3 be affected.

