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1ST SESSION

S. 1153

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

JUNE 12, 2013

Mrs. GILLIBRAND (for herself, Mr. NELSON, and Mr. LEVIN) 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”.

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

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

21 (iii) does not propagate animals regulated
22 under this Act; and

23 (B) meets any additional criteria that the
24 Service determines are necessary and consistent
25 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) DIRECTOR.—The term “Director” means
8 the Director of the United States Fish and Wildlife
9 Service.

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

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

20 (6) 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 (7) NATIONAL INVASIVE SPECIES COUNCIL.—
25 The term “National Invasive Species Council”

1 means the National Invasive Species Council estab-
2 lished by Executive Order 13112 on February 8,
3 1999 (64 Fed. Reg. 6183).

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

9 (9) NONNATIVE WILDLIFE TAXON.—

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

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

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

22 (i) any taxon that is—

23 (I) specifically defined or regu-
24 lated as a plant pest or approved for
25 biological control purposes under the

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

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

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

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

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

11 (III) chicken (*Gallus gallus*
12 *domesticus*);

13 (IV) common canary (*Serinus*
14 *canaria domesticus*);

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

16 (VI) donkey or ass (*Equus*
17 *asinus*);

18 (VII) domesticated members of
19 the family Anatidae (geese);

20 (VIII) duck (domesticated *Anas*
21 *spp.*);

22 (IX) domesticated ferret
23 (*Mustela furo*);

24 (X) gerbil (*Meriones*
25 *unguiculatus*);

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

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

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

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

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

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

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

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

18 (XIX) domesticated varieties of
19 rabbit (*Oryctolagus cuniculus*);

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

21 (XXI) any other species or sub-
22 species that the Director determines
23 to be common and clearly domes-
24 ticated.

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

1 (A) an individual, corporation, partnership,
2 trust, association, or other private entity;

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

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

10 (11) QUALIFIED INSTITUTION.—The term
11 “qualified institution” means an institution that is
12 determined by the Director to be—

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

17 (B) an approved wildlife sanctuary.

18 (12) SECRETARY.—The term “Secretary”
19 means the Secretary of the Interior.

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 Direc-
18 tor, at the discretion of the Director, may propose the reg-
19 ulation 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 Direc-
22 tor to determine whether the taxon meets the criteria for
23 designation as Injurious I or Injurious II under section
24 5(a)(1)(A).

25 (c) PUBLIC AND AGENCY COMMENT.—

1 (1) IN GENERAL.—Upon receipt of a proposal
2 that the Director determines to be complete, and for
3 any proposal the Director elects to prepare, the Di-
4 rector shall publish notice of the proposal in the
5 Federal Register and provide an opportunity for at
6 least 60 days of public comment.

7 (2) REGULATIONS FOR COMPLETE PRO-
8 POSALS.—Not later than 180 days after the date of
9 enactment of this Act, the Secretary, acting through
10 the Director, shall promulgate regulations on the cri-
11 teria for complete proposals.

12 (d) DETERMINATION.—Not later than 180 days after
13 the date of publication of a proposal under subsection (c),
14 or as soon thereafter as is feasible, the Director shall make
15 a determination as to whether the proposal should be ap-
16 proved or disapproved.

17 (e) NOTICE OF DETERMINATION.—The Director
18 shall—

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

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

23 **SEC. 5. SCIENTIFIC RISK ASSESSMENT AND RISK DETER-**
24 **MINATION REGULATIONS.**

25 (a) ASSESSMENT AND DETERMINATION.—

1 (1) IN GENERAL.—The Secretary, acting
2 through the Director, shall promulgate regulations—

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

5 (i) an Injurious I taxon, which shall
6 be a taxon—

7 (I) that the Director deter-
8 mines—

9 (aa) to be injurious to
10 human beings, the interests of
11 agriculture, horticulture, or for-
12 estry, or wildlife or wildlife re-
13 sources of the United States; and

14 (bb) to have a high degree
15 of potential harm and is a taxon
16 with which qualified institutions
17 have not previously had signifi-
18 cant experience in maintaining
19 successfully in captivity and pre-
20 venting escapes or releases; and

21 (II) except as provided in section
22 12, the importation and transpor-
23 tation of which in interstate commerce
24 shall be conducted only pursuant to a

1 permit issued under section 12 to a
2 qualified institution; or

3 (ii) an Injurious II taxon, which shall
4 be a taxon—

5 (I) that the Director deter-
6 mines—

7 (aa) to be injurious to
8 human beings, the interests of
9 agriculture, horticulture, or for-
10 estry, or wildlife or wildlife re-
11 sources of the United States; but

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

21 (II) for which no permit is re-
22 quired if the taxon is—

23 (aa) imported to a qualified
24 institution;

1 (bb) transported in inter-
2 state commerce and intrastate
3 commerce to and among qualified
4 institutions; or

5 (cc) held by a qualified insti-
6 tution;

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

12 (C) that may also provide for cases in
13 which exceptions or additions to the Injurious I
14 taxon or Injurious II taxon criteria may be nec-
15 essary to address extraordinary risks.

16 (2) BASIS, AVAILABILITY, AND REVIEW.—The
17 Director shall—

18 (A) ensure that the risk assessment and
19 risk determination processes conducted under
20 this section are based on sound science; and

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

23 (3) PREVIOUSLY LISTED TAXA.—Each wildlife
24 taxon previously designated by statute or by the Sec-
25 retary as injurious under section 42(a) of title 18,

1 United States Code (including under any regulation
2 promulgated under that authority), shall, after the
3 effective date of the final regulations promulgated
4 under this subsection, be promptly designated by the
5 Director as an Injurious I taxon or Injurious II
6 taxon under this subsection, based on a determina-
7 tion by the Director of whether the taxon meets the
8 criteria described in clause (i) or (ii), respectively, of
9 paragraph (1)(A).

10 (4) DEADLINES.—

11 (A) PROPOSED REGULATIONS.—Not later
12 than 1 year after the date of enactment of this
13 Act, the Secretary shall publish in the Federal
14 Register a proposed version of the regulations
15 required under this subsection.

16 (B) FINAL REGULATIONS.—Not later than
17 18 months after the date of enactment of this
18 Act, the Secretary shall promulgate final regu-
19 lations required under this subsection, including
20 a public notification of the process for submis-
21 sion of a proposal under section 4(a).

22 (C) ADDITIONAL REQUIREMENT OF PRE-
23 IMPORT RISK SCREENING FOR ALL TAXA NOVEL
24 TO THE UNITED STATES.—

1 (i) IN GENERAL.—Not later than 3
2 years after the date of enactment of this
3 Act, the Secretary shall by regulation—

4 (I) define the phrase “non-native
5 wildlife taxa novel to the United
6 States” for the purpose of this sec-
7 tion; and

8 (II) set forth a process to ensure
9 that all unregulated non-native wild-
10 life taxa novel to the United States
11 are thereafter reviewed by the Direc-
12 tor prior to allowance of their impor-
13 tation to the United States to deter-
14 mine whether they should be regu-
15 lated under any of clause (i) or (ii) of
16 paragraph (1)(A).

17 (ii) AVOIDANCE OF NEW INCEN-
18 TIVES.—In promulgating the regulation
19 under clause (i), the Secretary shall seek
20 to avoid creating a new incentive for ani-
21 mal importers to import novel taxa prior to
22 the effective date of the regulation.

23 (iii) NEW REGULATION FOR IMPORTS
24 OF TAXA NOVEL TO THE UNITED
25 STATES.—Not later than 1 year after the

1 date of promulgation of the regulation
2 under clause (i), the Secretary shall imple-
3 ment the regulation.

4 (b) SCIENTIFIC RISK ASSESSMENT.—The regulations
5 promulgated under subsection (a) shall require consider-
6 ation, in an initial scientific risk assessment of a taxon,
7 of at least—

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

10 (2) whether the taxon has established or
11 spread, or caused harm to the economy, the environ-
12 ment, or the health of other animal species in the
13 United States or in an ecosystem similar to an eco-
14 system in the United States;

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

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

20 (5) whether the taxon will cause harm to
21 human beings, to the interests of agriculture, horti-
22 culture, forestry, or to wildlife or the wildlife re-
23 sources of the United States;

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

4 (7) the best available scientific risk screening
5 systems or predictive models that apply to the taxon;
6 and

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

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

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

16 (2) at a minimum—

17 (A) the capabilities and any efforts of
18 States, local governments, and Indian tribes to
19 address the risks, if any, identified by the Di-
20 rector with respect to the taxon, including the
21 results of any risk assessments conducted for
22 the taxon that are available to the Director;

23 (B) the potential for reduction, mitigation,
24 control, and management of any risks identi-
25 fied; and

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

4 (d) DISCRETIONARY ANALYSIS.—

5 (1) IN GENERAL.—In preparing the risk deter-
6 mination for a taxon, the Director may consider the
7 economic, social, and cultural impacts of a decision
8 on whether to regulate the taxon.

9 (2) OTHER REQUIREMENTS.—This section shall
10 satisfy the requirements of, and apply in lieu of any
11 other requirement to complete an analysis under,
12 any other law (including a regulation or Executive
13 order) on economic, social, or cultural impact.

14 (e) NOTICE AND CONSULTATION.—In promulgating
15 regulations under subsection (a), the Director shall notify
16 and consult with, at a minimum—

17 (1) affected States, Indian tribes, qualified in-
18 stitutions, and other stakeholders;

19 (2) the Aquatic Nuisance Species Task Force;

20 (3) the National Invasive Species Council;

21 (4) the Department of Agriculture;

22 (5) the Centers for Disease Control and Preven-
23 tion; and

24 (6) the National Oceanic and Atmospheric Ad-
25 ministration.

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

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

9 (b) NOTICE OF TEMPORARY DESIGNATION.—The Di-
10 rector shall promptly—

11 (1) publish in the Federal Register notice of
12 each temporary designation under this subsection;
13 and

14 (2) make the basis for the designation available
15 on a publicly available Federal Internet site and
16 through other appropriate means.

17 (c) DETERMINATION.—Not later than 1 year after
18 temporarily designating a nonnative wildlife taxon using
19 the emergency authority under this section, the Director
20 shall—

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

24 (2) publish notice of that final determination in
25 the Federal Register; and

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

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

7 (e) **STATE REQUESTS.**—If the Governor of a State
8 requests a temporary emergency designation under this
9 section, the Director shall respond promptly with a written
10 determination on the request.

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

12 (a) **IMPROVED INFORMATION.**—The Director shall—

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

20 (2) not later than 30 days after the date of im-
21 portation of wildlife described in paragraph (1),
22 make the information described in that paragraph
23 (other than confidential business information associ-
24 ated with those imports that is protected under

1 other Federal law) available on a publicly available
2 Federal Internet site.

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

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

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

14 (c) MONITORING IMPORT INFORMATION.—In con-
15 sultation with inspection, customs, and border officials in
16 the Departments of Agriculture and Homeland Security,
17 the Director shall regularly—

18 (1) monitor the identities and quantities of non-
19 native wildlife taxa being imported, with particular
20 emphasis on wildlife newly in the import trade to the
21 United States; and

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

1 **SEC. 8. INJURIOUS WILDLIFE DETERMINATIONS.**

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

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

9 (1) shall use the best available scientific risk
10 screening systems or predictive models that apply to
11 the taxon under consideration;

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

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

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

19 This Act and the regulations promulgated under this
20 Act shall take precedence over any conflicting regulation
21 promulgated under section 42 of title 18, United States
22 Code.

23 **SEC. 10. PREVENTION OF WILDLIFE PATHOGENS AND**
24 **PARASITES.**

25 (a) IN GENERAL.—The Secretary shall have the pri-
26 mary authority to prevent, and the primary responsibility

1 for preventing, the importation of, and interstate com-
2 merce in, wildlife pathogens and harmful parasites.

3 (b) REGULATIONS.—

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

7 (A) to minimize the likelihood of introduc-
8 tion or dissemination of any disease or harmful
9 parasite of native or nonnative wildlife; and

10 (B) to impose any additional necessary im-
11 port restrictions, including management meas-
12 ures, health certifications, quarantine require-
13 ments, specifications for conveyances, holding
14 water, and associated materials, shipment and
15 handling requirements, and other measures that
16 the Secretary determines to be necessary—

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

20 (ii) to address—

21 (I) a particular taxon;

22 (II) the place of origin of a par-
23 ticular taxon; and

1 (III) the conveyance and mate-
2 rials associated with wildlife trans-
3 port.

4 (c) RELATIONSHIP TO OTHER AUTHORITIES.—

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

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

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

17 (C) specifically defined or regulated by the
18 Department of Agriculture as a plant pest or
19 approved for biological control purposes under
20 the Plant Protection Act (7 U.S.C. 7701 et
21 seq.).

22 (2) EXCEPTION.—The Secretary may regulate a
23 pathogen, parasite, or host taxon described in any of
24 subparagraphs (A) through (C) of paragraph (1) to

1 the extent that the taxon also poses a wildlife dis-
2 ease risk.

3 (d) COORDINATION.—

4 (1) IN GENERAL.—In promulgating regulations
5 under and otherwise carrying out this section and
6 section 7, the Secretary shall consult and coordinate
7 with—

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

10 (B) State wildlife agencies;

11 (C) State veterinarians; and

12 (D) other officials with related authorities.

13 (2) CONSULTATION BY SECRETARY OF AGRICULTURE.—In any case in which the Secretary of
14 Agriculture participates in the World Organization
15 for Animal Health, the Secretary of Agriculture
16 shall confer and consult with the Secretary on any
17 matters relating to prevention of wildlife diseases
18 that may threaten the United States.
19

20 **SEC. 11. PROHIBITIONS.**

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

24 (1) to import into the United States any non-
25 native wildlife taxon the Director has designated as

1 Injurious I or Injurious II under section 5(a)(1)(A)
2 or under section 6, or to knowingly possess such an
3 animal, or the descendant of such an animal, that
4 was imported in violation of this subsection;

5 (2) to engage in interstate commerce for any
6 nonnative wildlife taxon described in paragraph (1),
7 or to knowingly possess such an animal, or the de-
8 scendant of an animal, that was transported in
9 interstate commerce in violation of this subsection;

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

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

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

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

22 (b) EXEMPTION FOR INTERSTATE TRANSPORTATION
23 OF ANIMALS OF LATER-REGULATED TAXA.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), an individual animal that was lawfully

1 owned prior to the taxa to which the animal belongs
2 being regulated by the Director under this Act as
3 Injurious II may be transported interstate without a
4 permit by any person for noncommercial purposes
5 only.

6 (2) EXCEPTION.—The exemption under para-
7 graph (1) does not apply to an animal of any taxa
8 designated by the Director as Injurious I.

9 (c) LIMITATION ON APPLICATION.—

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

12 (A) any action by Federal, State, tribal, or
13 local law enforcement personnel to enforce this
14 section; and

15 (B) any action by Federal, State, tribal, or
16 local officials to prevent the introduction or es-
17 tablishment of nonnative wildlife, or wildlife
18 pathogens or parasites, including actions to
19 transport, hold, and shelter animals of taxa reg-
20 ulated under this Act.

21 (2) IMPORTATION AND TRANSPORTATION BY
22 FEDERAL AGENCIES.—Nothing in this Act shall re-
23 strict the importation or transportation between any
24 States of nonnative wildlife by a Federal agency for

1 the use of the Federal agency if the nonnative wild-
2 life remains in the possession of a Federal agency.

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

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

8 (a) PERMITS.—The Director may issue to a qualified
9 institution a permit under this Act authorizing any of the
10 actions otherwise prohibited under section 11 for any wild-
11 life taxon designated under clause (i) or (ii) of section
12 5(a)(1)(A) or under section 6.

13 (b) TERMS AND CONDITIONS.—The Director may in-
14 clude in a permit under subsection (a) terms and condi-
15 tions to minimize the risk of introduction or establishment
16 of nonnative wildlife, pathogens, and parasites in the
17 United States.

18 (c) EXEMPTION AND REPORTING.—

19 (1) IN GENERAL.—No permit under this Act
20 shall be required for any qualified institution or any
21 live animal transportation company or other live ani-
22 mal transporter that is in temporary possession of
23 an animal delivering it to, or transporting it from,
24 a qualified institution, to import or transport (on an
25 interstate or intrastate basis), or possess or breed,

1 any taxon that the Director has designated as an In-
2 jurious II taxon under section 5(a)(1)(A)(ii).

3 (2) DISPLAY EXEMPTION.—No permit under
4 this Act shall be required for the import, interstate
5 or intrastate transportation, possession, or breeding
6 of an Injurious I taxon by a qualified zoo or aquar-
7 ium institution.

8 (3) EXCLUSIONS.—The exemptions described in
9 paragraphs (1) and (2) do not include the transfer
10 of ownership of an Injurious I taxon or the transfer
11 of ownership of an Injurious II taxon to any person
12 or entity other than to another qualified institution.

13 (4) RECORD.—Each qualified institution or live
14 animal transporter that imports, transports (on an
15 interstate or intrastate basis), possesses, or breeds
16 any taxa designated as Injurious I or II shall main-
17 tain records, subject to annual inspection by the Di-
18 rector, at the discretion of the Director, that sum-
19 marize the transactions of the qualified institution
20 or live animal transporter for the covered taxa.

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

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

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

4 (e) REPORT.—Not later than March 1 of each year,
5 a qualified zoo or aquarium shall submit to the Director
6 a report on the imports, interstate or intrastate transpor-
7 tation, possession, or breeding of any Injurious I taxon
8 by the qualified zoo or aquarium for the preceding cal-
9 endar year.

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, medical research,
15 education, conservation 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 costs to the Director for the services
11 listed in subsection (b), after such date as the user fee
12 regulation under subsection (b) is fully implemented and
13 the amounts of the fees received have been appropriated
14 to the Injurious Wildlife Prevention Fund pursuant to sec-
15 tion 16(b)(2)(A) for at least one full fiscal year.

16 (d) FEE LIMIT.—

17 (1) IN GENERAL.—The amount of the addi-
18 tional fee to be charged on any live wildlife shipment
19 under this section shall be set by the Secretary only
20 after fully considering public comments on the pro-
21 posed fee regulation and it shall be charged broadly
22 and fairly across the live wildlife import industry
23 and at the lowest level feasible to achieve the cost
24 recovery purpose in subsection (c).

1 (2) ANNUAL TOTAL FEE REVENUE.—The fees
2 shall be set so that the annual total fee revenue shall
3 not exceed the amount of the annual total fee rev-
4 enue of the fee charged by the Director under the
5 inspection program of the Director to oversee the
6 importation of live wildlife carried out pursuant to—

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

9 (B) subpart I of part 14 of title 50, Code
10 of Federal Regulations (or successor regula-
11 tions); and

12 (C) other applicable authority.

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

14 (a) POSSESSION OF LAWFULLY OBTAINED INJU-
15 RIOUS WILDLIFE TAXA.—For purposes of this Act, pos-
16 session of lawfully obtained injurious wildlife taxa within
17 a State shall—

18 (1) be a matter of State law; and

19 (2)(A) not be federally regulated; or

20 (B) not require a Federal permit under this
21 Act.

22 (b) REGULATIONS AND DETERMINATIONS.—Except
23 as provided in subsection (c), nothing in this Act, or in
24 the regulations and determinations to be promulgated or
25 issued by the Secretary or the Director under this Act,

1 preempts or otherwise affects the application of any State
2 law that establishes more stringent requirements for—

3 (1) the importation, transportation, possession,
4 sale, purchase, release, breeding of, or bartering for,
5 or any other transaction involving, any nonnative
6 wildlife taxon; or

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

9 (c) **LIMITATION ON APPLICATION OF PROHIBITIONS**
10 **TO PREVENT RELEASE.**—The Director may limit the ap-
11 plication of this Act to facilitate implementation of any
12 State, local, or tribal program that results in voluntary
13 surrender of regulated nonnative wildlife, if the Director
14 determines that the limitation will prevent the release of
15 that wildlife.

16 **SEC. 15. PENALTIES AND SANCTIONS.**

17 (a) **CIVIL PENALTIES.**—

18 (1) **CIVIL ADMINISTRATIVE PENALTIES.**—

19 (A) **IN GENERAL.**—Any person who is
20 found by the Secretary, after notice and oppor-
21 tunity for a hearing conducted in accordance
22 with section 554 of title 5, United States Code,
23 to have committed any act prohibited by section
24 11 shall be liable to the United States for a

1 civil penalty in an amount not to exceed
2 \$10,000 for each violation.

3 (B) SUBPOENA POWER.—For the purposes
4 of conducting any investigation or hearing
5 under this Act, the Secretary may—

6 (i) issue subpoenas for the attendance
7 and testimony of witnesses and the produc-
8 tion of relevant papers, books, and docu-
9 ments; and

10 (ii) administer oaths.

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

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

20 (c) NATURAL RESOURCE DAMAGES.—All costs relat-
21 ing to the mitigation of injury caused by a violation of
22 this Act shall be borne by the person that violated this
23 Act.

24 (d) ENFORCEMENT.—

1 (1) OTHER POWERS AND AUTHORITIES.—Any
2 person authorized by the Secretary to enforce this
3 Act shall have the same authorities as are described
4 in section 6 of the Lacey Act Amendments of 1981
5 (16 U.S.C. 3375).

6 (2) FORFEITURE.—

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

10 (i) any property, real or personal,
11 taken or retained in connection with or as
12 a result of the offense; and

13 (ii) any property, real or personal,
14 used or intended to be used to commit or
15 to facilitate the commission of the offense.

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

24 (e) APPLICATION OF CUSTOMS LAWS.—All powers,
25 rights, and duties conferred or imposed by the customs

1 laws upon any officer or employee of the Customs Service
2 may, for the purpose of this Act, be exercised or performed
3 by the Secretary, or by such officers or employees of the
4 United States as the Secretary may designate.

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

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

12 (b) TRANSFERS TO FUND.—

13 (1) IN GENERAL.—The Fund shall consist of
14 such amounts as are appropriated to the Fund
15 under paragraph (2).

16 (2) FEES AND PENALTIES.—There are appro-
17 priated to the Fund, out of funds of the Treasury
18 not otherwise appropriated, amounts equivalent to
19 amounts collected—

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

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

24 (C) as a civil penalty for any violation of
25 section 42 of title 18, United States Code (in-

1 including a regulation promulgated under that
2 section).

3 (c) USE OF FUNDS.—

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

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

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

11 (2) AID FOR STATE WILDLIFE RISK ASSESS-
12 MENTS.—

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

19 (i) inspecting and monitoring wildlife
20 imports and interstate commerce; and

21 (ii) conducting assessments of risk as-
22 sociated with the intentional importation of
23 nonnative wildlife taxa.

24 (B) ADMINISTRATION.—The program
25 under this paragraph shall be administered by

1 the Director under the Federal Aid to States
2 program of the Director.

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

6 (e) ANNUAL REPORTS.—

7 (1) IN GENERAL.—Not later than 60 days after
8 the end of each fiscal year beginning with fiscal year
9 2014, the Secretary shall submit to the Committee
10 on Appropriations of the House of Representatives,
11 the Committee on Appropriations of the Senate, the
12 Committee on Environment and Public Works of the
13 Senate, and the Committee on Natural Resources of
14 the House of Representatives a report on the oper-
15 ation of the Fund during the fiscal year.

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

18 (A) A statement of the amounts deposited
19 in the Fund.

20 (B) A description of the expenditures made
21 from the Fund for the fiscal year, including the
22 purpose of the expenditures.

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

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

3 (f) SEPARATE APPROPRIATIONS ACCOUNT.—Section
4 1105(a) of title 31, United States Code, is amended—

5 (1) by redesignating paragraphs (35) and (36)
6 as paragraphs (36) and (37), respectively;

7 (2) by redesignating the second paragraph (33)
8 (relating to obligational authority and outlays re-
9 quested for homeland security) as paragraph (35);
10 and

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

12 “(38) a separate statement for the Injurious
13 Wildlife Prevention Fund established by section
14 16(a) of the Invasive Wildlife Prevention Act of
15 2012, which shall include the estimated amount of
16 deposits in the Fund, obligations, and outlays from
17 the Fund.”.

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

19 Nothing in this Act—

20 (1) repeals, supersedes, or modifies any provi-
21 sion of—

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

24 (B) the Federal Food, Drug, and Cosmetic
25 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.); or

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

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

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

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

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