

110TH CONGRESS
2^D SESSION

H. R. 6311

To prevent the introduction and establishment of nonnative wildlife species that negatively impact the economy, environment, or human or animal species' health, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2008

Ms. BORDALLO (for herself, Mr. HASTINGS of Florida, Mr. ABERCROMBIE, Mr. KILDEE, Mr. KLEIN of Florida, Ms. MCCOLLUM of Minnesota, and Mr. KIND) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To prevent the introduction and establishment of nonnative wildlife species that negatively impact the economy, environment, or human or animal species' health, and for other purposes.

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 "Nonnative Wildlife In-
5 vasion Prevention Act".

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to establish a risk assess-
3 ment process to prevent the introduction into, and estab-
4 lishment in, the United States of nonnative wildlife species
5 that will cause or are likely to cause economic or environ-
6 mental harm or harm to human or animal species' health.

7 **SEC. 3. RISK ASSESSMENT PROCESS FOR IMPORTATION OF**
8 **NONNATIVE WILDLIFE SPECIES.**

9 (a) IN GENERAL.—The Secretary of the Interior, act-
10 ing through the United States Fish and Wildlife Service,
11 shall promulgate regulations that establish a process for
12 assessing the risk of all nonnative wildlife species proposed
13 for importation into the United States, other than non-
14 native wildlife species that are included in the list of ap-
15 proved species issued under section 4.

16 (b) FACTORS TO BE CONSIDERED.—Regulations
17 under this section shall provide that in assessing the risk
18 of a nonnative wildlife species the Secretary shall consider
19 at a minimum—

20 (1) the identity of the organism to the species
21 level, including to the extent possible more specific
22 information on its subspecies and genetic identity;

23 (2) the geographic source of the species and the
24 conditions under which it was captured or bred;

25 (3) whether the species has established or
26 spread, or caused harm to the economy or the envi-

1 ronment or the health of humans or of wildlife, in
2 ecosystems that are similar to those in the United
3 States but are located outside the United States;

4 (4) the likelihood that environmental conditions
5 suitable for the establishment or spread of the spe-
6 cies exist anywhere in the United States;

7 (5) the likelihood of establishment of the species
8 in the United States;

9 (6) the likelihood of spread of the species in the
10 United States;

11 (7) the likelihood that the species would harm
12 wildlife resources in the United States;

13 (8) the likelihood that the species would harm
14 rare, threatened, or endangered species in the
15 United States;

16 (9) the likelihood that the species would harm
17 habitats or ecosystems in the United States;

18 (10) the likelihood that pathogenic species,
19 parasitic species, or free-living species may accom-
20 pany the species proposed for importation; and

21 (11) other factors important to the risks associ-
22 ated with the species.

23 (c) CONSULTATION.—In promulgating the regula-
24 tions, the Secretary shall consult with States, Indian

1 tribes, other stakeholders, the Aquatic Nuisance Species
2 Task Force, and the Invasive Species Council.

3 (d) TRANSPARENCY.—The Secretary shall ensure
4 that the risk assessment process established by the regula-
5 tions is scientifically credible and is consistent with sec-
6 tions 4 and 5.

7 (e) DEADLINES.—The Secretary shall—

8 (1) propose regulations under subsection (a)
9 and an initial list under section 4(b), by not later
10 than 2 years after the date of the enactment of this
11 Act;

12 (2) publish in the Federal Register final regula-
13 tions under subsection (a), an initial list under sec-
14 tion 4(b), and a notice of the prohibitions under this
15 Act, by not later than 30 days before the date on
16 which the Secretary begins assessing risk under the
17 regulations; and

18 (3) begin assessing risk under the regulations
19 by not later than 37 months after the date of the
20 enactment of this Act.

21 (f) ANIMALS IMPORTED PRIOR TO PROHIBITION OF
22 IMPORTATION.—This Act and regulations issued under
23 this Act shall not interfere with the ability of any person
24 to possess an individual animal of a species that was im-
25 ported legally, even if such species is later prohibited from

1 being imported under the regulations issued under this
2 Act.

3 **SEC. 4. LIST OF APPROVED SPECIES.**

4 (a) REQUIREMENT TO ISSUE LIST.—

5 (1) IN GENERAL.—Not later than 36 months
6 after the date of enactment of this Act, the Sec-
7 retary shall publish in the Federal Register a list of
8 nonnative wildlife species approved for importation.

9 (2) EXCLUSION OF CERTAIN SPECIES.—The
10 Secretary shall not include in the list—

11 (A) any species included in the list of pro-
12 hibited species under section 5; or

13 (B) any species, the importation of which
14 is prohibited by any other law or regulation.

15 (3) REVISION.—The Secretary may revise the
16 list issued under this subsection.

17 (b) INITIAL LIST.—

18 (1) IN GENERAL.—The Secretary shall include
19 in the initial list under this section nonnative wildlife
20 species that the Secretary finds—

21 (A) based on the best scientific and com-
22 mercial data available, are not harmful to the
23 United States' economy, the environment, or
24 human or other animal species' health; or

1 (B) may be harmful in some respects, but
2 already are so widespread in the United States
3 that future import prohibitions or restrictions
4 would have no practical utility.

5 (2) PROPOSALS FOR INCLUSION IN INITIAL
6 LIST.—The Secretary—

7 (A) shall, by not later than 60 days after
8 the date of enactment of this Act, publish in
9 the Federal Register and make available on the
10 Internet a request for submission, by persons
11 that import or that intend to import nonnative
12 wildlife species, of proposals of nonnative wild-
13 life species to be included in the initial list
14 under this subsection and supporting docu-
15 mentation for such proposals;

16 (B) shall accept such proposals for 10
17 months after the date the Secretary publishes
18 the request for submissions; and

19 (C) may propose a nonnative wildlife spe-
20 cies for inclusion in the list.

21 (3) PUBLIC NOTICE AND COMMENT.—Before
22 issuing the initial list under this subsection, the Sec-
23 retary shall—

1 (A) publish in the Federal Register and
2 make available on the Internet the proposed ini-
3 tial list; and

4 (B) provide for, a period of not less than
5 60 days, an opportunity to submit public com-
6 ments on the proposed list.

7 (4) DEADLINE.—The Secretary shall publish in
8 the Federal Register and make available on the
9 Internet an initial list under this subsection.

10 (c) PROPOSAL FOR INCLUSION ON THE APPROVED
11 LIST.—

12 (1) REQUEST FOR INFORMATION.—After publi-
13 cation of the list under this section, upon receipt of
14 a proposal for, or proposing, inclusion of a nonnative
15 wildlife species on the list (including a request to im-
16 port such a species that is not on the list published
17 under this section and section 5, respectively), the
18 Secretary shall provide notice of the proposal and an
19 opportunity to comment to the head of each agency
20 and each interested person with information relevant
21 to the process for assessing the risk established
22 under section 3.

23 (2) DETERMINATION.—The Secretary shall
24 make one of the following determinations regarding
25 such a proposal in a reasonable period of time and

1 in accordance with the factors to be considered
2 under section 3(b):

3 (A) The nonnative wildlife species is ap-
4 proved for importation, and is added to the list
5 of approved species under this section.

6 (B) The nonnative wildlife species is not
7 approved for importation, unless permitted
8 under section 7.

9 (3) TREATMENT OF UNAPPROVED SPECIES.—If
10 the Secretary makes a determination under para-
11 graph (2)(B) that a nonnative wildlife species is not
12 approved for importation, the Secretary shall—

13 (A) include the nonnative wildlife species
14 on the list of unapproved species under section
15 5; or

16 (B) request the person who submitted a
17 proposal for which the determination is made to
18 submit additional information, tests, or data
19 needed to make a definitive determination
20 under this section.

21 (d) NOTICE OF DETERMINATION.—The Secretary
22 shall publish in the Federal Register and make available
23 on the Internet or other appropriate means, the deter-
24 minations made with respect to proposals considered
25 under this section.

1 **SEC. 5. LIST OF UNAPPROVED SPECIES.**

2 (a) REQUIREMENT TO ISSUE LIST.—

3 (1) IN GENERAL.—The Secretary shall publish
4 in the Federal Register a list of nonnative wildlife
5 species that are prohibited or restricted from enter-
6 ing the United States.

7 (2) INCLUDED SPECIES.—The list under this
8 subsection shall include—

9 (A) those species listed by Federal regula-
10 tion as injurious wildlife under section 42 of
11 title 18, United States Code, as of the date of
12 enactment of this Act; and

13 (B) any other species the Secretary has de-
14 termined under section 4(c) is not approved for
15 importation.

16 (b) PETITION PROCESS TO ADD OR REMOVE SPE-
17 CIES FROM UNAPPROVED LIST.—

18 (1) IN GENERAL.—Any person may petition the
19 Secretary to add to or remove from the list under
20 this section any nonnative wildlife species, consistent
21 with regulations established under this Act.

22 (2) NOTICE.—The Secretary shall publish no-
23 tice of the petition and provide an opportunity for
24 public comment.

25 (3) ACTION ON PETITION.—The Secretary
26 shall—

1 (A) determine whether or not to add or re-
2 move the nonnative wildlife species from the
3 list, as applicable, pursuant to the petition,
4 within a reasonable time and based on informa-
5 tion that is provided by the petition or other-
6 wise readily available;

7 (B) notify the petitioner of such deter-
8 mination; and

9 (C) publish such determination in the Fed-
10 eral Register.

11 (c) EMERGENCY AUTHORITY AND TEMPORARY PRO-
12 HIBITION.—

13 (1) IN GENERAL.—If the Secretary determines
14 that an emergency exists because a nonnative wild-
15 life species in the United States poses a serious
16 threat of harm to the United States economy, the
17 environment, or human or animal species' health,
18 the Secretary may temporarily place the nonnative
19 wildlife species on the list of unapproved species.

20 (2) DETERMINATION.—The Secretary shall
21 publish in the Federal Register and make available
22 to the public through the Internet or other appro-
23 priate means a final determination of whether to
24 maintain the nonnative wildlife species on the list of
25 unapproved species, within 180 days after tempo-

1 rarely adding the nonnative wildlife species to such
2 list.

3 **SEC. 6. PROHIBITIONS AND PENALTIES.**

4 (a) PROHIBITIONS.—No person shall—

5 (1) import into the United States any nonnative
6 wildlife species or viable eggs of such species that is
7 not included in the list of approved species issued
8 under section 4, except as authorized by a permit
9 under section 7;

10 (2) violate any term or condition of a permit
11 issued under section 7;

12 (3) knowingly possess (except as provided in
13 section 3(f)), sell or offer to sell, purchase or offer
14 to purchase, or barter for or offer to barter for, any
15 nonnative wildlife species that is prohibited from
16 being imported under paragraph (1), any descend-
17 ants of such a species, or viable eggs of such a spe-
18 cies;

19 (4) knowingly release any nonnative wildlife
20 species imported in violation of paragraph (1), or
21 any viable eggs or descendants of such a species;

22 (5) knowingly breed any nonnative wildlife spe-
23 cies imported in violation of paragraph (1), or pro-
24 vide any such species to others for breeding pur-
25 poses; or

1 (6) knowingly sell or offer to sell, purchase or
2 offer to purchase, barter or offer to barter for or
3 offer to barter for, release, or breed any nonnative
4 wildlife species referred to in section 3(f).

5 (b) PENALTIES AND ENFORCEMENT.—Any person
6 who violates subsection (a) of this section shall be subject
7 to the civil penalties and criminal penalties described in
8 section 4 of the Lacey Act Amendments of 1981 (16
9 U.S.C. 3373). Sections 4(b), 4(e), 5, and 6 of that Act
10 shall apply to such a violation in the same manner as they
11 apply to a violation of that Act.

12 (c) LIMITATION ON APPLICATION.—Subsection (a)
13 shall not apply to any action by law enforcement personnel
14 engaged in enforcement of this section.

15 (d) EFFECTIVE DATE.—This section shall take effect
16 37 months after the date of the enactment of this Act.

17 **SEC. 7. PERMITS.**

18 The Secretary may issue a permit authorizing impor-
19 tation otherwise prohibited by section 6(a)(1) for edu-
20 cational, scientific research, or accredited zoological or
21 aquarium display purposes.

22 **SEC. 8. FEES.**

23 (a) IN GENERAL.—The Secretary shall establish and
24 collect a fee to recover, to the maximum extent practicable,

1 costs of assessing risk of nonnative wildlife species under
2 the regulations issued under section 3.

3 (b) NONNATIVE WILDLIFE INVASION PREVENTION
4 FUND.—

5 (1) ESTABLISHMENT.—There is established in
6 the Treasury a separate account which shall be
7 known as the Nonnative Wildlife Invasion Preven-
8 tion Fund.

9 (2) CONTENTS.—There shall be deposited into
10 the account amounts received by the United States
11 as fees under this section.

12 (3) USE.—Amounts in the account shall be
13 available to the Secretary, subject to the availability
14 of appropriations, for the purposes of implementing
15 this Act.

16 **SEC. 9. TREATMENT OF NONNATIVE WILDLIFE SPECIES AS**
17 **NONMAILABLE MATTER.**

18 Nonnative wildlife species included in the list of ap-
19 proved species issued under section 4 shall be considered
20 and treated as nonmailable matter under section 3015 of
21 title 39, United States Code.

22 **SEC. 10. RELATIONSHIP TO STATE LAW.**

23 (a) IN GENERAL.—Nothing in this Act preempts or
24 otherwise affects the application of any State law that es-
25 tablishes stricter requirements for importation, possession,

1 sale, purchase, release, or breeding of, or bartering for,
2 any nonnative wildlife species, except to the extent that
3 State law is inconsistent with this Act.

4 (b) LIMITATION ON APPLICATION OF PROHIBITIONS
5 AND PENALTIES TO PREVENT RELEASE.—The Secretary
6 may limit the application of any provision of section 6 to
7 facilitate implementation of any State program that en-
8 courages voluntary surrender to a State of nonnative wild-
9 life species, if the Secretary determines that such limita-
10 tion will prevent release of such species.

11 **SEC. 11. DEFINITIONS.**

12 For the purposes of this Act:

13 (1) AQUATIC NUISANCE SPECIES TASK
14 FORCE.—The term “Aquatic Nuisance Species Task
15 Force” means the Aquatic Nuisance Species Task
16 Force established under section 1201 of the Non-
17 indigenous Aquatic Nuisance Prevention and Control
18 Act of 1990 (16 U.S.C. 4702).

19 (2) INVASIVE SPECIES COUNCIL.—The term
20 “Invasive Species Council” means the Invasive Spe-
21 cies Council established by Executive Order 13112
22 on February 8, 1999 (64 Fed. Reg. 6183).

23 (3) NATIVE SPECIES.—The term “native spe-
24 cies” means a species that historically occurred or

1 currently occurs in the United States, other than as
2 a result of an introduction by humans.

3 (4) NONNATIVE WILDLIFE SPECIES.—The term
4 “nonnative wildlife species”—

5 (A) except as provided in subparagraph
6 (C), means any species of animal that is not a
7 native species, whether or not raised in cap-
8 tivity;

9 (B) except as provided in subparagraph
10 (C), includes—

11 (i) any such species of mammal, bird,
12 fish, reptile, amphibian, insect, mollusk
13 and crustacean, arthropod, coelenterate, or
14 other invertebrate, and

15 (ii) any egg or offspring thereof; and

16 (C) does not include any species specifi-
17 cally defined or regulated as a plant pest under
18 the Plant Protection Act (7 U.S.C. 7701 et
19 seq.) or as a threat to livestock or poultry
20 under the Animal Health Protection Act (7
21 U.S.C. 8301 et seq.).

22 (5) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior.

24 (6) STATE.—The term “State” means any
25 State of the United States, the District of Columbia,

1 American Samoa, Guam, the Commonwealth of the
2 Northern Mariana Islands, Puerto Rico, and the
3 Virgin Islands.

4 (7) UNITED STATES.—The term “United
5 States”, when used in a geographic sense, means
6 any State of the United States, the District of Co-
7 lumbia, American Samoa, Guam, the Commonwealth
8 of the Northern Mariana Islands, Puerto Rico, the
9 Virgin Islands, any possession of the United States,
10 and any waters within the jurisdiction of the United
11 States.

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