

110th  
CONGRESS  
2d 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.

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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

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## 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.

*Be it enacted by  
the Senate and  
House of  
Representatives  
of the United  
States of America  
in Congress*

*assembled,*

**SECTION 1. Short title.**

This Act may be cited as the "Nonnative Wildlife Invasion Prevention Act".

**SEC. 2. Purpose.**

The purpose of this Act is to establish a risk assessment process to prevent the introduction into, and establishment in, the United States of nonnative wildlife species that will cause or are likely to cause economic or environmental harm or harm to human or animal species' health.

**SEC. 3. Risk assessment process for importation of nonnative wildlife species.**

(a) In general.—The Secretary of the Interior, acting through the United States Fish and Wildlife Service, shall promulgate regulations that establish a process for assessing the risk of all nonnative wildlife species proposed for importation into the United States, other than nonnative wildlife species that are included in the list of approved species issued under section 4.

(b) Factors To be considered.—Regulations under this section shall provide that in assessing the risk of a nonnative wildlife species the Secretary shall consider at a minimum—

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

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

(3) whether the species has established or spread, or caused

harm to the economy or the environment or the health of humans or of wildlife, in ecosystems that are similar to those in the United States but are located outside the United States;

(4) the likelihood that environmental conditions suitable for the establishment or spread of the species exist anywhere in the United States;

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

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

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

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

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

(10) the likelihood that pathogenic species, parasitic species, or free-living species may accompany the species proposed for importation; and

(11) other factors important to the risks associated with the species.

(c) Consultation.—In promulgating the regulations, the Secretary shall consult with States, Indian tribes, other stakeholders, the Aquatic Nuisance Species Task Force, and the Invasive Species Council.

(d) Transparency.—The Secretary shall ensure that the risk assessment process established by the regulations is scientifically credible and is consistent with sections 4 and 5.

(e) Deadlines.—The Secretary shall—

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

(2) publish in the Federal Register final regulations under subsection (a), an initial list under section 4(b), and a notice of the prohibitions under this Act, by not later than 30 days before the date on which the Secretary begins assessing risk under the regulations; and

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

(f) Animals imported prior to prohibition of importation.—This Act and regulations issued under this Act shall not interfere with the ability of any person to possess an individual animal of a species that was imported legally, even if such species is later prohibited from being imported under the regulations issued under this Act.

**SEC. 4. List of approved species.**

(a) Requirement To issue list.—

(1) In general.—Not later than 36 months after the date of enactment of this Act, the Secretary shall publish in the Federal Register a list of nonnative wildlife species approved for importation.

(2) Exclusion of certain species.—The Secretary shall not include in the list—

(A) any species included in the list of prohibited species under section 5; or

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

(3) Revision.—The Secretary may revise the list issued under this subsection.

(b) Initial list.—

(1) In general.—The Secretary shall include in the initial list under this section nonnative wildlife species that the Secretary finds—

(A) based on the best scientific and commercial data available, are not harmful to the United States' economy, the environment, or human or other animal species' health; or

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

(2) Proposals for inclusion in initial list.—The Secretary—

(A) shall, by not later than 60 days after the date of enactment of this Act, publish in the Federal Register and make available on the Internet a request for submission, by persons that import or that intend to import nonnative wildlife species, of proposals of nonnative wildlife species to be included in the initial list under this subsection and supporting documentation for such proposals;

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

(C) may propose a nonnative wildlife species for inclusion in the list.

(3) Public notice and comment.—Before issuing the initial list under this subsection, the Secretary shall—

(A) publish in the Federal Register and make available on the Internet the proposed initial list; and

(B) provide for, a period of not less than 60 days, an opportunity to submit public comments on the proposed list.

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

(c) Proposal for inclusion on the approved list.—

(1) Request for information.—After publication of the list under this section, upon receipt of a proposal for, or proposing, inclusion of a nonnative wildlife species on the list (including a request to import such a species that is not on the list published under this section and section 5, respectively), the Secretary shall provide notice of the proposal and an opportunity to comment to the head of each agency and each interested person with information relevant to the process for assessing the risk established under section 3.

(2) Determination.—The Secretary shall make one of the following determinations regarding such a proposal in a reasonable period of time and in accordance with the factors to be considered under section 3(b):

(A) The nonnative wildlife species is approved for importation, and is added to the list of approved species under this section.

(B) The nonnative wildlife species is not approved for

importation, unless permitted under section 7.

(3) Treatment of unapproved species.—If the Secretary makes a determination under paragraph (2)(B) that a nonnative wildlife species is not approved for importation, the Secretary shall—

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

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

(d) Notice of determination.—The Secretary shall publish in the Federal Register and make available on the Internet or other appropriate means, the determinations made with respect to proposals considered under this section.

#### **SEC. 5. List of Unapproved Species.**

(a) Requirement To issue list.—

(1) In general.—The Secretary shall publish in the Federal Register a list of nonnative wildlife species that are prohibited or restricted from entering the United States.

(2) Included species.—The list under this subsection shall include—

(A) those species listed by Federal regulation as injurious wildlife under [section 42](#) of title 18, United States Code, as of the date of enactment of this Act; and

(B) any other species the Secretary has determined under section 4(c) is not approved for importation.

(b) Petition process To add or remove species from unapproved list.

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(1) In general.—Any person may petition the Secretary to add to or remove from the list under this section any nonnative wildlife species, consistent with regulations established under this Act.

(2) Notice.—The Secretary shall publish notice of the petition and provide an opportunity for public comment.

(3) Action on petition.—The Secretary shall—

(A) determine whether or not to add or remove the nonnative wildlife species from the list, as applicable, pursuant to the petition, within a reasonable time and based on information that is provided by the petition or otherwise readily available;

(B) notify the petitioner of such determination; and

(C) publish such determination in the Federal Register.

(c) Emergency authority and temporary prohibition.—

(1) In general.—If the Secretary determines that an emergency exists because a nonnative wildlife species in the United States poses a serious threat of harm to the United States economy, the environment, or human or animal species' health, the Secretary may temporarily place the nonnative wildlife species on the list of unapproved species.

(2) Determination.—The Secretary shall publish in the Federal Register and make available to the public through the Internet or other appropriate means a final determination of whether to maintain the nonnative wildlife species on the list of

unapproved species, within 180 days after temporarily adding the nonnative wildlife species to such list.

**SEC. 6. Prohibitions and penalties.**

(a) Prohibitions.—No person shall—

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

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

(3) knowingly possess (except as provided in section 3(f)), sell or offer to sell, purchase or offer to purchase, or barter for or offer to barter for, any nonnative wildlife species that is prohibited from being imported under paragraph (1), any descendants of such a species, or viable eggs of such a species;

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

(5) knowingly breed any nonnative wildlife species imported in violation of paragraph (1), or provide any such species to others for breeding purposes; or

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

(b) Penalties and enforcement.—Any person who violates subsection (a) of this section shall be subject to the civil penalties and criminal penalties described in section 4 of the Lacey Act Amendments of

1981 ([16 U.S.C. 3373](#)). Sections 4(b), 4(e), 5, and 6 of that Act shall apply to such a violation in the same manner as they apply to a violation of that Act.

(c) Limitation on application.—Subsection (a) shall not apply to any action by law enforcement personnel engaged in enforcement of this section.

(d) Effective date.—This section shall take effect 37 months after the date of the enactment of this Act.

### **SEC. 7. Permits.**

The Secretary may issue a permit authorizing importation otherwise prohibited by section 6(a)(1) for educational, scientific research, or accredited zoological or aquarium display purposes.

### **SEC. 8. Fees.**

(a) In general.—The Secretary shall establish and collect a fee to recover, to the maximum extent practicable, costs of assessing risk of nonnative wildlife species under the regulations issued under section 3.

(b) Nonnative Wildlife Invasion Prevention Fund.—

(1) Establishment.—There is established in the Treasury a separate account which shall be known as the Nonnative Wildlife Invasion Prevention Fund.

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

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

**SEC. 9. Treatment of nonnative wildlife species as nonmailable matter.**

Nonnative wildlife species included in the list of approved species issued under section 4 shall be considered and treated as nonmailable matter under [section 3015](#) of title 39, United States Code.

**SEC. 10. Relationship to State law.**

(a) In general.—Nothing in this Act preempts or otherwise affects the application of any State law that establishes stricter requirements for importation, possession, sale, purchase, release, or breeding of, or bartering for, any nonnative wildlife species, except to the extent that State law is inconsistent with this Act.

(b) Limitation on application of prohibitions and penalties To prevent release.—The Secretary may limit the application of any provision of section 6 to facilitate implementation of any State program that encourages voluntary surrender to a State of nonnative wildlife species, if the Secretary determines that such limitation will prevent release of such species.

**SEC. 11. Definitions.**

For the purposes of this Act:

(1) Aquatic Nuisance Species Task Force.—The term “Aquatic Nuisance Species Task Force” means the Aquatic Nuisance Species Task Force established under section 1201 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 ([16 U.S.C. 4702](#)).

(2) Invasive species council.—The term “Invasive Species Council” means the Invasive Species Council established by Executive Order 13112 on February 8, 1999 (64 Fed. Reg.

6183).

(3) Native species.—The term “native species” means a species that historically occurred or currently occurs in the United States, other than as a result of an introduction by humans.

(4) Nonnative wildlife species.—The term “nonnative wildlife species”—

(A) except as provided in subparagraph (C), means any species of animal that is not a native species, whether or not raised in captivity;

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

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

(ii) any egg or offspring thereof; and

(C) does not include any species specifically defined or regulated as a plant pest under the Plant Protection Act ([7 U.S.C. 7701 et seq.](#)) or as a threat to livestock or poultry under the Animal Health Protection Act ([7 U.S.C. 8301 et seq.](#)).

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

(6) State.—The term “State” means any State of the United States, the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

(7) United states.—The term “United States”, when used in a geographic sense, means any State of the United States, the

District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, the Virgin Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

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