

# Atlantic States Marine Fisheries Commission

## Horseshoe Crab Technical Committee

### Review of Importation of Asian HSC

February 5, 2013

Present: Tina Moore (NC DMF), Glenn Gauvry (IUCN), Larry DeLancey (SC DNR), Mike Millard (US FWS), Vin Malkoski (MA DMF), Chris Jones (MD DNR), Tiffany Black (FL FWS), Jordan Zimmerman (DE FW), Greg Breese (US FWS), Adam Kenyon (VMRC), Penny Howell (CT DEP), Mark Botton (IUCN), Rachel Sysak (NY DEC), Linda Stehlik (NOAA), Scott Olszewski (RI DFW), Marin Hawk (ASMFC)

The Horseshoe Crab Technical Committee had a conference call to review and discuss the importation of Asian horseshoe crabs for bait on the East Coast of the United States. The meeting began with an overview of the issue, followed by a discussion of each state's status. The TC discussed various concerns with the importation of Asian horseshoe crabs. Following these discussions, the TC discussed possible solutions or avenues to address the problem. The TC's discussions and recommendations are as follows.

#### Overview of the Issue

- In recent years, New York has experienced bait shortages and a wholesaler imported approximately 2,000 Asian horseshoe crabs in 2011
- With the implementation of the ARM Framework and the subsequent ban on harvest of females in the mid-Atlantic, it is likely that other states will see or are seeing bait shortages and/or prohibitive increases in price
- These bait shortages and price increases may be motivation to import Asian horseshoe crabs
- A dealer in Vietnam has reached out to horseshoe crab watermen and wholesalers with the goal of developing a market for Asian horseshoe crabs in the US

#### Status of Each State

- *Massachusetts*: no bait shortages and no known importation
- *New York*: ~2,000 *Tachypleus gigas* imported in 2011 to address bait shortages; the wholesaler plans to import horseshoe crabs whenever bait is unavailable
- *Connecticut*: fluctuating landings and apparent increased demand; no imports yet
- *Rhode Island*: the horseshoe crab fishery is exhausted within 2-3 weeks of opening and demand for bait remains high after the fishery is closed; unaware of anyone importing Asian horseshoe crabs
- *Delaware*: ban on harvest of females could lead to bait shortages; no known importation
- *Maryland*: same as Delaware

- *Virginia*: same as Delaware

### **Concerns with Importation of Asian Horseshoe Crabs**

- The horseshoe crabs that are imported may not be completely frozen, and it is unknown whether freezing the horseshoe crabs results in complete sterilization
  - This makes it more likely that invasive parasites, disease organisms, or epibionts will be introduced into US waters
  - This puts the US population of horseshoe crabs, and wildlife dependent upon horseshoe crabs, at significant risk
- One species of Asian horseshoe crab, *Carcinoscorpius rotundicauda*, is known to carry tetrodotoxin (TTX) which is harmful to humans if eaten
  - Since these horseshoe crabs are being used as bait, it is possible that the toxin is transferred to the target species, and then to humans when that target species is consumed
- Developing a US market for these species may foster unsustainable fisheries in their native waters, possibly resulting in their commercial extinction. A larger unmet demand for bait may then fall back onto local *L. polyphemus* populations with deleterious effects on red knots

### **Possible Solutions**

- Asian horseshoe crabs are under review for likely red listing and subsequent listing under CITES. If that happens, trade would be regulated or possibly prohibited
  - This process is likely to take more than a year
- US Fish & Wildlife has been reviewing their authority under the Lacey Act provisions for Injurious Wildlife. Currently this provision does not allow horseshoe crabs to be listed as Injurious Wildlife. However, this is up for re-authorization, and there is consideration for making its scope broader so that it could include horseshoe crabs.
  - The process to designate a species as Injurious under the Act would require analyses of threats to native wildlife and public comment periods, making it likely to take more than a year.
- If TTX does accumulate up the food chain, the Department of Commerce or the Food and Drug Administration might take action to ban the import of Asian horseshoe crabs
  - This process could also take an extended amount of time
- Delaware has a non-native wildlife clause that allows the state to ban imports of non-native species
  - Other states may have similar statutes or code that enable them to take action

### **ASMFC Management Recommendations**

The TC agrees that addressing this issue is necessary to reduce the risk of harm to the *Limulus polyphemus* population. Each committee member was tasked with finding out more information about their state's statutes concerning non-native species. In states where statutes or code exists to ban the import of non-native species, the TC recommends that the state ban imports of any Asian horseshoe crabs until more information is known about the effects of importation. The TC

also recommends that the Horseshoe Crab Management Board write a letter of support to the Committee on Environment and Public Works which is reviewing "The Invasive Fish and Wildlife Prevention Act of 2012" which would enable regulation of imports of non-native species (document attached).

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3606

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.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2012

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## 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 of 2012”.

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

18 (ii) is an educational entity;

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

22 (C) does not propagate animals regulated  
23 under this Act; and

24 (D) meets any additional criteria that the  
25 Service determines are necessary and consistent  
26 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) FUND.—The term “Fund” means the Inju-  
8 rious Wildlife Prevention Fund established by sec-  
9 tion 16(a).

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

17          (5) INDIAN TRIBE.—The term “Indian tribe”  
18 has the meaning given the term in section 4 of the  
19 Indian Self-Determination and Education Assistance  
20 Act (25 U.S.C. 450b).

21          (6) NATIONAL INVASIVE SPECIES COUNCIL.—  
22 The term “National Invasive Species Council”  
23 means the National Invasive Species Council estab-  
24 lished by Executive Order 13112 on February 8,  
25 1999 (64 Fed. Reg. 6183).

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

6           (8) NONNATIVE WILDLIFE TAXON.—

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

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

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

19           (i) any taxon that is—

20                   (I) specifically defined or regu-  
21 lated as a plant pest or approved for  
22 biological control purposes under the  
23 Plant Protection Act (7 U.S.C. 7701  
24 et seq.); or

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

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

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

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

9 (III) chicken (*Gallus gallus*  
10 *domesticus*);

11 (IV) common canary (*Serinus*  
12 *canaria domesticus*);

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

14 (VI) donkey or ass (*Equus*  
15 *asinus*);

16 (VII) domesticated members of  
17 the family Anatidae (geese);

18 (VIII) duck (domesticated *Anas*  
19 *spp.*);

20 (IX) domesticated ferret  
21 (*Mustela furo*);

22 (X) gerbil (*Meriones*  
23 *unguiculatus*);

24 (XI) goat (*Capra aegagrus*  
25 *hircus*);



1 (XII) guinea pig or Cavy (*Cavia*  
2 *porcellus*);

3 (XIII) goldfish (*Carassius*  
4 *auratus auratus*);

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

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

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

12 (XVII) mule or hinny (*Equus*  
13 *caballus* x *E. asinus*);

14 (XVIII) pig or hog (*Sus scrofa*  
15 *domestica*);

16 (XIX) domesticated varieties of  
17 rabbit (*Oryctolagus cuniculus*);

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

19 (XXI) any other species or sub-  
20 species that the Service determines to  
21 be common and clearly domesticated.

22 (9) PERSON.—The term “person” means—

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

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

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

8 (10) QUALIFIED INSTITUTION.—The term  
9 “qualified institution” means an institution that is  
10 determined by the Service to be—

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

15 (B) an approved wildlife sanctuary.

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

18 (12) SERVICE.—The term “Service” means the  
19 United States Fish and Wildlife Service.

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 Serv-  
18 ice, at the discretion of the Service, may propose the regu-  
19 lation 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 Serv-  
22 ice to determine whether the taxon meets the criteria for  
23 designation as Injurious I or Injurious II under section  
24 5(a)(1)(A).

1 (c) PUBLIC AND AGENCY COMMENT.—Upon receipt  
2 of a proposal that the Service determines to be complete,  
3 and for any proposal the Service elects to prepare, the  
4 Service shall publish notice of the proposal in the Federal  
5 Register and provide an opportunity for at least 60 days  
6 of public comment.

7 (d) DETERMINATION.—Not later than 180 days after  
8 the date of publication of a proposal under subsection (c),  
9 or as soon thereafter as is feasible, the Service shall make  
10 a determination as to whether the proposal should be ap-  
11 proved or disapproved.

12 (e) NOTICE OF DETERMINATION.—The Service  
13 shall—

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

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

18 **SEC. 5. SCIENTIFIC RISK ASSESSMENT AND RISK DETER-**  
19 **MINATION REGULATIONS.**

20 (a) ASSESSMENT AND DETERMINATION.—

21 (1) IN GENERAL.—The Secretary, acting  
22 through the Service, shall promulgate regulations—

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

1 (i) an Injurious I taxon, which shall  
2 be a taxon—

3 (I) that the Service determines—

4 (aa) to be injurious to  
5 human beings, the interests of  
6 agriculture, horticulture, or for-  
7 estry, or wildlife or wildlife re-  
8 sources of the United States; and

9 (bb) to have a high degree  
10 of potential harm and is a taxon  
11 with which qualified institutions  
12 have not previously had signifi-  
13 cant experience in maintaining  
14 successfully in captivity and pre-  
15 venting escapes or releases; and

16 (II) the importation and trans-  
17 portation of which in interstate com-  
18 merce shall be conducted only pursu-  
19 ant to a permit issued under section  
20 12 to a qualified institution; or

21 (ii) an Injurious II taxon, which shall  
22 be a taxon—

23 (I) that the Service determines—

24 (aa) to be injurious to  
25 human beings, the interests of

1 agriculture, horticulture, or for-  
2 estry, or wildlife or wildlife re-  
3 sources of the United States; but

4 (bb) to have a degree of po-  
5 tential for harm that is less than  
6 the degree of potential harm of  
7 an Injurious I taxon or is a taxon  
8 with which qualified institutions  
9 have previously had significant  
10 experience in maintaining suc-  
11 cessfully in captivity and pre-  
12 venting escapes or releases; and

13 (II) for which no permit is re-  
14 quired if the taxon is—

15 (aa) imported to a qualified  
16 institution;

17 (bb) transported in inter-  
18 state commerce and intrastate  
19 commerce to and among qualified  
20 institutions; or

21 (cc) held by a qualified insti-  
22 tution;

23 (B) to establish a process for assessing and  
24 analyzing the risks of taxa that may have been,  
25 or foreseeably could be, imported into, or found

1 in interstate commerce within, the United  
2 States; and

3 (C) that may also provide for cases in  
4 which exceptions or additions to the Injurious I  
5 taxon or Injurious II taxon criteria may be nec-  
6 essary to address extraordinary risks.

7 (2) BASIS, AVAILABILITY, AND REVIEW.—The  
8 Service shall—

9 (A) ensure that the risk assessment and  
10 risk determination processes conducted under  
11 this section are based on sound science; and

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

14 (3) PREVIOUSLY LISTED TAXA.—Each wildlife  
15 taxon previously designated by statute or by the Sec-  
16 retary as injurious under section 42(a) of title 18,  
17 United States Code (including under any regulation  
18 promulgated under that authority), shall, after the  
19 effective date of the final regulations promulgated  
20 under this subsection, be promptly designated by the  
21 Service as an Injurious I taxon or Injurious II taxon  
22 under this subsection, based on a determination by  
23 the Service of whether the taxon meets the criteria  
24 described in clause (i) or (ii), respectively, of para-  
25 graph (1)(A).

## 1 (4) DEADLINES.—

2 (A) PROPOSED REGULATIONS.—Not later  
3 than 1 year after the date of enactment of this  
4 Act, the Secretary shall publish in the Federal  
5 Register a proposed version of the regulations  
6 required under this subsection.

7 (B) FINAL REGULATIONS.—Not later than  
8 18 months after the date of enactment of this  
9 Act, the Secretary shall promulgate final regu-  
10 lations required under this subsection, including  
11 a public notification of the process for submis-  
12 sion of a proposal under section 4(a).

13 (C) ADDITIONAL REQUIREMENT OF PRE-  
14 IMPORT RISK SCREENING FOR ALL TAXA NOVEL  
15 TO THE UNITED STATES.—

16 (i) IN GENERAL.—Five years after the  
17 date of enactment of this Act, the Sec-  
18 retary shall by regulation—

19 (I) define the phrase “non-native  
20 wildlife taxa novel to the United  
21 States” for the purpose of this sec-  
22 tion; and

23 (II) set forth a process to ensure  
24 that all unregulated non-native wild-  
25 life taxa novel to the United States



1           are thereafter reviewed by the Service  
2           prior to allowance of their importation  
3           to the United States to determine  
4           whether they should be regulated  
5           under any of clause (i) or (ii) of para-  
6           graph (1)(A).

7           (ii) AVOIDANCE OF NEW INCEN-  
8           TIVES.—In promulgating the regulation  
9           under clause (i), the Secretary shall seek  
10          to avoid creating a new incentive for ani-  
11          mal importers to import novel taxa prior to  
12          the effective date of the regulation.

13          (iii) NEW REGULATION FOR IMPORTS  
14          OF TAXA NOVEL TO THE UNITED  
15          STATES.—Not later than 1 year after the  
16          date of promulgation of the regulation  
17          under clause (i), the Secretary shall imple-  
18          ment the regulation.

19          (b) SCIENTIFIC RISK ASSESSMENT.—The regulations  
20          promulgated under subsection (a) shall require consider-  
21          ation, in an initial scientific risk assessment of a taxon,  
22          of at least—

23               (1) the scientific name and native range of the  
24          taxon;

1           (2) whether the taxon has established or  
2 spread, or caused harm to the economy, the environ-  
3 ment, or the health of other animal species in the  
4 United States or in an ecosystem similar to an eco-  
5 system in the United States;

6           (3) whether environmental conditions suitable  
7 for the establishment or spread of the taxon exist or  
8 will exist in the United States;

9           (4) the likelihood of establishment and spread  
10 of the taxon;

11           (5) whether the taxon will cause harm to  
12 human beings, to the interests of agriculture, horti-  
13 culture, forestry, or to wildlife or the wildlife re-  
14 sources of the United States;

15           (6) whether the taxon will damage land, water,  
16 or facilities of the National Park System or other  
17 public land;

18           (7) the best available scientific risk screening  
19 systems or predictive models that apply to the taxon;  
20 and

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

24           (c) RISK DETERMINATION.—Prior to designating any  
25 nonnative wildlife taxon as an Injurious I taxon or Inju-

1 rious II taxon under subsection (a), after conducting a  
2 risk assessment, the Service shall prepare a risk deter-  
3 mination that takes into consideration—

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

5 (2) at a minimum—

6 (A) the capabilities and any efforts of  
7 States, local governments, and Indian tribes to  
8 address the risks, if any, identified by the Serv-  
9 ice with respect to the taxon, including the re-  
10 sults of any risk assessments conducted for the  
11 taxon that are available to the Service;

12 (B) the potential for reduction, mitigation,  
13 control, and management of any risks identi-  
14 fied; and

15 (C) whether any risks identified already  
16 are adequately addressed under other applicable  
17 law.

18 (d) DISCRETIONARY ANALYSIS.—

19 (1) IN GENERAL.—In preparing the risk deter-  
20 mination for a taxon, the Service may consider the  
21 economic, social, and cultural impacts of a decision  
22 on whether to regulate the taxon.

23 (2) OTHER REQUIREMENTS.—This section shall  
24 satisfy the requirements of, and apply in lieu of any  
25 other requirement to complete an analysis under,

1 any other law (including a regulation or Executive  
2 order) on economic, social, or cultural impact.

3 (e) NOTICE AND CONSULTATION.—In promulgating  
4 regulations under subsection (a), the Service shall notify  
5 and consult with, at a minimum—

6 (1) affected States, Indian tribes, and other  
7 stakeholders;

8 (2) the Aquatic Nuisance Species Task Force;

9 (3) the National Invasive Species Council;

10 (4) the Department of Agriculture;

11 (5) the Centers for Disease Control and Preven-  
12 tion; and

13 (6) the National Oceanic and Atmospheric Ad-  
14 ministration.

15 **SEC. 6. EMERGENCY TEMPORARY DESIGNATION.**

16 (a) IN GENERAL.—If the Service determines an  
17 emergency exists because an unregulated nonnative wild-  
18 life taxon poses an imminent threat of harm to individuals  
19 in or wildlife of the United States, or the economy or envi-  
20 ronment of the United States, the Service may imme-  
21 diately temporarily designate the nonnative wildlife taxon  
22 as Injurious I in accordance with section 5(a)(1)(A)(i).

23 (b) NOTICE OF TEMPORARY DESIGNATION.—The  
24 Service shall promptly—

1           (1) publish in the Federal Register notice of  
2 each temporary designation under this subsection;  
3 and

4           (2) make the basis for the designation available  
5 on a publicly available Federal Internet site and  
6 through other appropriate means.

7           (c) DETERMINATION.—Not later than 1 year after  
8 temporarily designating a nonnative wildlife taxon using  
9 the emergency authority under this section, the Service  
10 shall—

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

14           (2) publish notice of that final determination in  
15 the Federal Register; and

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

18           (d) LIMITATION ON PROCEDURES.—The procedures  
19 under sections 4 and 5 of this Act and section 553 of title  
20 5, United States Code, shall not apply to temporary des-  
21 ignations under this section.

22           (e) STATE REQUESTS.—If the Governor of a State  
23 requests a temporary emergency designation under this  
24 section, the Service shall respond promptly with a written  
25 determination on the request.

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

2 (a) IMPROVED INFORMATION.—The Service shall—

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

10 (2) not later than 30 days after the date of im-  
11 portation of wildlife described in paragraph (1),  
12 make the information described in that paragraph  
13 (other than confidential business information associ-  
14 ated with those imports that is protected under  
15 other Federal law) available on a publicly available  
16 Federal Internet site.

17 (b) ANNUAL REPORT OF INFORMATION.—Not later  
18 than 3 years after the date of enactment of this Act, and  
19 not later than each April 1 thereafter, the Service shall  
20 issue, including on a publicly available Federal Internet  
21 site, a report that includes, at a minimum, a description  
22 of—

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

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

3           (c) MONITORING IMPORT INFORMATION.—In con-  
4 sultation with inspection, customs, and border officials in  
5 the Departments of Agriculture and Homeland Security,  
6 the Service shall regularly—

7           (1) monitor the identities and quantities of non-  
8 native wildlife taxa being imported, with particular  
9 emphasis on wildlife newly in the import trade to the  
10 United States; and

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

15 **SEC. 8. INJURIOUS WILDLIFE DETERMINATIONS.**

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

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

23           (1) shall use the best available scientific risk  
24 screening systems or predictive models that apply to  
25 the taxon under consideration;





1 (B) to impose any additional necessary im-  
2 port restrictions, including management meas-  
3 ures, health certifications, quarantine require-  
4 ments, specifications for conveyances, holding  
5 water, and associated materials, shipment and  
6 handling requirements, and other measures that  
7 the Secretary determines to be necessary—

8 (i) to prevent the importation of, and  
9 interstate commerce in, wildlife pathogens  
10 and harmful parasites; and

11 (ii) to address—

12 (I) a particular taxon;

13 (II) the place of origin of a par-  
14 ticular taxon; and

15 (III) the conveyance and mate-  
16 rials associated with wildlife trans-  
17 port.

18 (c) RELATIONSHIP TO OTHER AUTHORITIES.—

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

23 (A) defined or regulated by the Depart-  
24 ment of Health and Human Services as a

1 threat to humans under section 361 of the Pub-  
2 lic Health Service Act (42 U.S.C. 264);

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

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

12 (2) EXCEPTION.—The Secretary may regulate a  
13 pathogen, parasite, or host taxon described in any of  
14 subparagraphs (A) through (C) of paragraph (1) to  
15 the extent that the taxon also poses a wildlife dis-  
16 ease risk.

17 (d) COORDINATION.—

18 (1) IN GENERAL.—In promulgating regulations  
19 under and otherwise carrying out this section and  
20 section 7, the Secretary shall consult and coordinate  
21 with—

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

24 (B) State wildlife agencies;

25 (C) State veterinarians; and

1 (D) other officials with related authorities.

2 (2) CONSULTATION BY SECRETARY OF AGRICULTURE.—In any case in which the Secretary of  
3 CULTURE.—In any case in which the Secretary of  
4 Agriculture participates in the World Organization  
5 for Animal Health, the Secretary of Agriculture  
6 shall confer and consult with the Secretary on any  
7 matters relating to prevention of wildlife diseases  
8 that may threaten the United States.

9 **SEC. 11. PROHIBITIONS.**

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

13 (1) to import into the United States any non-  
14 native wildlife taxon the Service has designated as  
15 Injurious I or Injurious II under section 5(a)(1)(A)  
16 or under section 6, or to knowingly possess such an  
17 animal, or the descendant of such an animal, that  
18 was imported in violation of this subsection;

19 (2) to engage in interstate commerce for any  
20 nonnative wildlife taxon described in paragraph (1),  
21 or to knowingly possess such an animal, or the de-  
22 scendant of an animal, that was transported in  
23 interstate commerce in violation of this subsection;

24 (3) to violate any term or condition of a permit  
25 issued to a qualified institution under section 12 for

1 a taxon designated as Injurious I under clause (i) of  
2 section 5(a)(1)(A) or under section 6;

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

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

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

11 (b) EXEMPTION FOR INTERSTATE TRANSPORTATION  
12 OF ANIMALS OF LATER-REGULATED TAXA.—

13 (1) IN GENERAL.—Except as provided in para-  
14 graph (2), an individual animal that was lawfully  
15 owned prior to the taxa to which the animal belongs  
16 being regulated by the Service under this Act as In-  
17 jurious II may be transported interstate without a  
18 permit by any person for noncommercial purposes  
19 only.

20 (2) EXCEPTION.—The exemption under para-  
21 graph (1) does not apply to an animal of any taxa  
22 designated by the Service as Injurious I.

23 (c) LIMITATION ON APPLICATION.—

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

1 (A) any action by Federal, State, tribal, or  
2 local law enforcement personnel to enforce this  
3 section; and

4 (B) any action by Federal, State, tribal, or  
5 local officials to prevent the introduction or es-  
6 tablishment of nonnative wildlife, or wildlife  
7 pathogens or parasites, including actions to  
8 transport, hold, and shelter animals of taxa reg-  
9 ulated under this Act.

10 (2) IMPORTATION AND TRANSPORTATION BY  
11 FEDERAL AGENCIES.—Nothing in this Act shall re-  
12 strict the importation or transportation between any  
13 States of nonnative wildlife by a Federal agency for  
14 the use of the Federal agency if the nonnative wild-  
15 life remains in the possession of a Federal agency.

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

19 **SEC. 12. PERMITS AND EXEMPTIONS FOR QUALIFIED INSTI-**  
20 **TUTIONS AND LIVE ANIMAL TRANSPORTERS.**

21 (a) PERMITS.—The Service may issue to a qualified  
22 institution a permit authorizing any of the actions other-  
23 wise prohibited under section 11 for any wildlife taxon  
24 designated under clause (i) or (ii) of section 5(a)(1)(A)  
25 or under section 6.

1 (b) TERMS AND CONDITIONS.—The Service may in-  
2 clude in a permit under subsection (a) terms and condi-  
3 tions to minimize the risk of introduction or establishment  
4 of nonnative wildlife, pathogens, and parasites in the  
5 United States.

6 (c) EXEMPTION AND REPORTING.—

7 (1) IN GENERAL.—No permit shall be required  
8 for any qualified institution or any live animal trans-  
9 portation company or other live animal transporter  
10 that is in temporary possession of an animal deliv-  
11 ering it to, or transporting it from, a qualified insti-  
12 tution, to import or transport (on an interstate or  
13 intrastate basis), or possess or breed, any taxon that  
14 the Service has designated as an Injurious II taxon  
15 under section 5(a)(1)(A)(ii).

16 (2) EXCLUSIONS.—The exemption described in  
17 paragraph (1) does not include the transfer of own-  
18 ership of an Injurious II taxon to any person or en-  
19 tity other than to another qualified institution.

20 (3) RECORD.—Each qualified institution or live  
21 animal transporter that imports, transports (on an  
22 interstate or intrastate basis), possesses, or breeds  
23 any taxa designated as Injurious II shall maintain  
24 records, subject to annual inspection by the Service,  
25 at the discretion of the Service, that summarize the

1 transactions of the qualified institution or live ani-  
2 mal transporter for the covered taxa.

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

5 (1) promulgate regulations to implement this  
6 section; and

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

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, education, con-  
15 servation 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 Service’s costs of the services it under-  
11          takes listed in subsection (b), after such date as the user  
12          fee regulation under subsection (b) is fully implemented  
13          and the amounts of the fees received have been appro-  
14          priated to the Injurious Wildlife Prevention Fund pursu-  
15          ant to section 16(b)(2)(A) for at least one full fiscal year.

16          (d) FEE LIMIT.—The amount of the additional fee  
17          to be charged on any live wildlife shipment under this sec-  
18          tion shall be set by the Secretary only after fully consid-  
19          ering public comments on the proposed fee regulation and  
20          it shall be charged broadly and fairly across the live wild-  
21          life import industry and at the lowest level feasible to  
22          achieve the cost recovery purpose in subsection (c). The  
23          fees shall be set so that the annual total fee revenue shall  
24          not exceed the amount of the annual total fee revenue of  
25          the fee charged by the Service under the inspection pro-



1 gram of the Service to oversee the importation of live wild-  
2 life carried out pursuant to—

3 (1) section 11(f) of the Endangered Species Act  
4 of 1973 (16 U.S.C. 1540(f));

5 (2) subpart I of part 14 of title 50, Code of  
6 Federal Regulations (or successor regulations); and

7 (3) other applicable authority.

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

9 (a) PURPOSE.—The general purpose of this Act is  
10 improving Federal regulation of international importation  
11 and interstate commerce in injurious wildlife taxa. Posses-  
12 sion of lawfully obtained injurious wildlife taxa within a  
13 State is intended to be a matter of State law and not to  
14 be Federally regulated or to require a Federal permit  
15 under this Act.

16 (b) IN GENERAL.—Except as provided in subsection  
17 (c), nothing in this Act, or in the regulations and deter-  
18 minations to be promulgated or issued by the Secretary  
19 or the Service under this Act, preempts or otherwise af-  
20 fects the application of any State law that establishes  
21 more stringent requirements for—

22 (1) the importation, transportation, possession,  
23 sale, purchase, release, breeding of, or bartering for,  
24 or any other transaction involving, any nonnative  
25 wildlife taxon; or

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

3           (c) **LIMITATION ON APPLICATION OF PROHIBITIONS**  
4 **TO PREVENT RELEASE.**—The Service may limit the appli-  
5 cation of this Act to facilitate implementation of any  
6 State, local, or tribal program that results in voluntary  
7 surrender of regulated nonnative wildlife, if the Service de-  
8 termines that the limitation will prevent the release of that  
9 wildlife.

10 **SEC. 15. PENALTIES AND SANCTIONS.**

11           (a) **CIVIL PENALTIES.**—

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

13                   (A) **IN GENERAL.**—Any person who is  
14                   found by the Secretary, after notice and oppor-  
15                   tunity for a hearing conducted in accordance  
16                   with section 554 of title 5, United States Code,  
17                   to have committed any act prohibited by section  
18                   11 shall be liable to the United States for a  
19                   civil penalty in an amount not to exceed  
20                   \$10,000 for each violation.

21                   (B) **SUBPOENA POWER.**—For the purposes  
22                   of conducting any investigation or hearing  
23                   under this Act, the Secretary may—

24                           (i) issue subpoenas for the attendance  
25                           and testimony of witnesses and the produc-

1                   tion of relevant papers, books, and docu-  
2                   ments; and

3                   (ii) administer oaths.

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

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

13                  (c) NATURAL RESOURCE DAMAGES.—All costs relat-  
14                  ing to the mitigation of injury caused by a violation of  
15                  this Act shall be borne by the person that violated this  
16                  Act.

17                  (d) ENFORCEMENT.—

18                  (1) OTHER POWERS AND AUTHORITIES.—Any  
19                  person authorized by the Secretary to enforce this  
20                  Act shall have the same authorities as are described  
21                  in section 6 of the Lacey Act Amendments of 1981  
22                  (16 U.S.C. 3375).

23                  (2) FORFEITURE.—

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

4                   (i) any property, real or personal,  
5                   taken or retained in connection with or as  
6                   a result of the offense; and

7                   (ii) any property, real or personal,  
8                   used or intended to be used to commit or  
9                   to facilitate the commission of the offense.

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

18           (e) APPLICATION OF CUSTOMS LAWS.—All powers,  
19           rights, and duties conferred or imposed by the customs  
20           laws upon any officer or employee of the Customs Service  
21           may, for the purpose of this Act, be exercised or performed  
22           by the Secretary, or by such officers or employees of the  
23           United States as the Secretary may designate.

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

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

8 (b) TRANSFERS TO FUND.—

9 (1) IN GENERAL.—The Fund shall consist of  
10 such amounts as are appropriated to the Fund  
11 under paragraph (2).

12 (2) FEES AND PENALTIES.—There are appro-  
13 priated to the Fund, out of funds of the Treasury  
14 not otherwise appropriated, amounts equivalent to  
15 amounts collected—

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

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

20 (C) as a civil penalty for any violation of  
21 section 42 of title 18, United States Code (in-  
22 cluding a regulation promulgated under that  
23 section).

24 (c) USE OF FUNDS.—

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

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

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

6 (2) AID FOR STATE WILDLIFE RISK ASSESS-  
7 MENTS.—

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

14 (i) inspecting and monitoring wildlife  
15 imports and interstate commerce; and

16 (ii) conducting assessments of risk as-  
17 sociated with the intentional importation of  
18 nonnative wildlife taxa.

19 (B) ADMINISTRATION.—The program  
20 under this paragraph shall be administered by  
21 the Service under the Federal Aid to States  
22 program of the Service.

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

1 (e) ANNUAL REPORTS.—

2 (1) IN GENERAL.—Not later than 60 days after  
3 the end of each fiscal year beginning with fiscal year  
4 2011, the Secretary shall submit to the Committee  
5 on Appropriations of the House of Representatives,  
6 the Committee on Appropriations of the Senate, the  
7 Committee on Environment and Public Works of the  
8 Senate, and the Committee on Natural Resources of  
9 the House of Representatives a report on the oper-  
10 ation of the Fund during the fiscal year.

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

13 (A) A statement of the amounts deposited  
14 in the Fund.

15 (B) A description of the expenditures made  
16 from the Fund for the fiscal year, including the  
17 purpose of the expenditures.

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

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

22 (f) SEPARATE APPROPRIATIONS ACCOUNT.—Section  
23 1105(a) of title 31, United States Code, is amended—

24 (1) by redesignating paragraphs (35) and (36)  
25 as paragraphs (36) and (37), respectively;

1           (2) by redesignating the second paragraph (33)  
2           (relating to obligational authority and outlays re-  
3           quested for homeland security) as paragraph (35);  
4           and

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

6           “(38) a separate statement for the Injurious  
7           Wildlife Prevention Fund established by section  
8           16(a) of the Invasive Wildlife Prevention Act of  
9           2012, which shall include the estimated amount of  
10          deposits in the Fund, obligations, and outlays from  
11          the Fund.”.

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

13          Nothing in this Act—

14           (1) repeals, supersedes, or modifies any provi-  
15          sion of—

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

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

20           (C) the Plant Protection Act (7 U.S.C.  
21          7701 et seq.); or

22           (D) the Animal Health Protection Act (7  
23          U.S.C. 8301 et seq.); or

24           (2) authorizes any action with respect to the  
25          importation of any plant pest, including a biological



1 control agent, under the Federal Plant Pest Act (7  
2 U.S.C. 150aa et seq.), to the extent that the impor-  
3 tation is subject to regulation under that Act.

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

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

○