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AUTHOR: Bordallo

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

IN THE HOUSE OF REPRESENTATIVES

January 26, 2009

Ms. BORDALLO (for herself, Mr. GEORGE MILLER of California, Mr. ABERCROMBIE, Mr. HASTINGS of Florida, Mr. KIND, Mr. MCGOVERN, Mrs. NAPOLITANO, Mr. GRIJALVA, Mr. KLEIN of Florida, and Mr. KILDEE) 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 other animal species' or human 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 other animal species' health or human 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- The regulations promulgated under subsection (a) shall include consideration of--

(1) the identity of the organism to the species level, including to the extent possible specific information on its

subspecies and genetic identity;

(2) the native range of the species;

(3) whether the species has established or spread, or caused harm to the economy, the environment, or other animal species or human health in ecosystems in or ecosystems that are similar to those in the United States;

(4) the likelihood that environmental conditions suitable for the establishment or spread of the species exist 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 native species that are rare or native species that have been listed as threatened species or endangered species in the United States under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

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

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

(11) other factors important to assessing the risks associated with the species, consistent with the purpose under section 2.

(c) Notice- In promulgating the regulations under subsection (a), the Secretary shall provide notice to States, Indian tribes, other stakeholders concerned with environmental, humane, public health, economic, trade, and other relevant issues, the Aquatic Nuisance Species Task Force, the National Invasive Species Council, the Department of Agriculture, and the Centers for Disease Control and Prevention.

(d) Transparency- The Secretary shall ensure that the risk assessment process established by the regulations under subsection (a) is based on sound science and is consistent with sections 4 and 5.

(e) Deadlines- The Secretary shall--

(1) publish in the Federal Register proposed regulations under subsection (a) and a proposed preliminary list of approved species 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), a final preliminary list of approved species 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 with respect to nonnative wildlife species under the final regulations promulgated under subsection (a), and publish notice thereof, by not later than 37 months after the date of the enactment of this Act.

(f) Animals Owned Lawfully 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 any species if such individual animal was legally owned by the person before the risk assessment is begun pursuant to subsection (e)(3), 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 of Approved Species-

(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 into the United States.

(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 Federal law or regulation of the United States due to the likelihood of causing harm to the economy, the environment, or other animal species or human health.

(3) REVISION- The Secretary may revise the list issued under this section based on available scientific and commercial information.

(b) Preliminary List-

(1) IN GENERAL- The Secretary shall include in the preliminary list under this section nonnative wildlife species that the Secretary finds, consistent with the factors described in section 3(b) and based on scientific and commercial information that is provided in a proposal under paragraph (2) or otherwise available to the Secretary--

(A) are not harmful to the United States' economy, the environment, or other animal species' or human health; or

(B) may be harmful to the United States' economy, the environment, or other animal species' or human health, but already are so widespread in the United States that it is clear to the Secretary that any import prohibitions or restrictions would have no practical utility for the United States.

(2) PROPOSALS FOR INCLUSION IN PRELIMINARY 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 a publically available Federal Internet site, a request for submission, by any interested persons (including persons that import or that intend to import nonnative wildlife species), of proposals of nonnative wildlife species to be included in the preliminary 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 preliminary list.

(3) PUBLIC NOTICE AND COMMENT- Before issuing the final preliminary list of approved species under this subsection, the Secretary shall--

(A) publish in the Federal Register and make available on a publicly available Federal Internet site, the proposed preliminary list; and

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

(4) PUBLICATION OF LIST- The Secretary shall publish in the Federal Register and make available on a publicly available Federal Internet site, the final preliminary list under this subsection.

(c) Proposal for Inclusion on the Approved List-

(1) SUBMISSION OF PROPOSALS-

(A) IN GENERAL- After publication of the final preliminary list under subsection (b)--

(i) any interested person may submit to the Secretary in accordance with subparagraph (B) a proposal to include a nonnative wildlife species in the approved list under this section (including a request to import such a species that is not in the list published under this section and section 5, respectively); and

(ii) upon receipt of a complete proposal under clause (i), the Secretary shall publish notice of the proposal in the Federal Register and provide an opportunity for 30 days of public comment on the proposal.

(B) INFORMATION REQUIRED- Any proposal under this paragraph must include sufficient scientific and commercial information to allow the Secretary to evaluate whether the proposed nonnative wildlife species is likely to cause economic or environmental harm or harm to other animal species' or human health.

(2) DETERMINATION- Based on scientific and commercial information provided in a proposal under paragraph (1) or otherwise available to the Secretary, the Secretary shall make one of the following determinations regarding such a proposal in a reasonable period of time and in accordance with the regulations issued under section 3:

(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.

(C) The Secretary has insufficient scientific and commercial information to make a determination under subparagraph (A) or (B).

(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 include the nonnative wildlife species in the list of unapproved species under section 5.

(4) NOTICE OF DETERMINATION- The Secretary shall publish in the Federal Register notice of the determination made under paragraph (2) and make available on a publicly available Federal Internet site or through other appropriate means, the basis for the determination.

SEC. 5. LIST OF UNAPPROVED SPECIES.

(a) Requirement To Issue List of Unapproved Species-

(1) IN GENERAL- The Secretary shall publish in the Federal Register a list of nonnative wildlife species that are prohibited from importation into the United States except as provided in section 7.

(2) INCLUDED SPECIES- The list under this subsection shall include--

(A) those species listed as injurious wildlife under section 42 of title 18, United States Code, or under regulations under that section, as of the date of enactment of this Act; and

(B) any other species the Secretary determines under section 4(c)(2)(B) is not approved for importation.

(b) Proposal for Inclusion on the List of Unapproved Species-

(1) PROPOSAL-

(A) IN GENERAL- Any person may submit to the Secretary a proposal to add to the list under this section any nonnative wildlife species.

(B) INFORMATION REQUIRED- Any proposal under this subsection must include sufficient scientific and

commercial information to allow the Secretary to evaluate whether the proposed nonnative wildlife species is likely to cause economic or environmental harm or harm to other animal species' or human health.

(2) NOTICE- The Secretary shall publish notice of a complete proposal in the Federal Register and provide an opportunity for 30 days of public comment on the proposal.

(3) DETERMINATION- Based on scientific and commercial information provided in a proposal under paragraph (1) or otherwise available to the Secretary, the Secretary shall make one of the following determinations regarding such a proposal in a reasonable period of time and in accordance with regulations issued under section 3:

(A) The nonnative wildlife species is not approved for importation except as provided in section 7, and is added to the list of unapproved species under this section.

(B) The nonnative wildlife species is approved for importation.

(C) The Secretary has insufficient scientific and commercial information to make a determination under subparagraph (A) or (B).

(4) TREATMENT OF APPROVED SPECIES- If the Secretary makes a determination under paragraph (3)(B) that a nonnative wildlife species is approved for importation, the Secretary shall include the nonnative wildlife species in the list of approved species under section 4.

(5) NOTICE OF DETERMINATION- The Secretary shall publish in the Federal Register notice of the determination made under paragraph (3) and make available on a publicly available Federal Internet site or through other appropriate means the basis for the determination.

(c) Revision- The Secretary may revise the list issued under this section based on any scientific and commercial information available to the Secretary.

(d) Emergency Authority and Temporary Prohibition-

(1) IN GENERAL- If the Secretary determines that an emergency exists because a nonnative wildlife species poses an imminent threat of harm to the United States economy, the environment, or human or animal species' health, the Secretary may temporarily include the nonnative wildlife species in the list of unapproved species under this section and, as appropriate, remove the species from the list of approved species under section 4.

(2) NOTICE OF TEMPORARY LISTING- The Secretary shall publish in the Federal Register notice of each temporary listing under this subsection and make available on a publicly available Federal Internet site or through other appropriate means the basis for the temporary listing.

(3) DETERMINATION- Within 180 days after temporarily including a nonnative wildlife species in the unapproved species list under this section, the Secretary shall make a final determination under subsection (b)(3) regarding the species, publish in the Federal Register notice of the final determination, and make available on a publicly available Federal Internet site or through other appropriate means the basis for the final determination.

(4) LIMITATION ON PROCEDURES- The procedures under section 4(c)(1)(A)(ii), subsection (b)(2) of this section, and section 553 of title 5, United States Code, shall not apply to determinations under this subsection.

SEC. 6. PROHIBITIONS AND PENALTIES.

(a) Prohibitions- Except as provided in this section or in section 7, it is unlawful for any person subject to the jurisdiction of the United States to--

(1) import into or export from the United States any nonnative wildlife species that is not included in the list of approved species issued under section 4;

(2) transport between any State by any means whatsoever any nonnative wildlife species that is not included in the list of approved species issued under section 4;

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

(4) 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);

(5) release into the wild any nonnative wildlife species that is prohibited from being imported under paragraph (1); or

(6) breed any nonnative wildlife species that is prohibited from being imported under paragraph (1), or provide any such species to another person for breeding purposes.

(b) Penalties and Enforcement- Any person who violates subsection (a) 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-

(1) IN GENERAL- The prohibitions in subsection (a) shall not apply to--

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

(B) any action by Federal or State officials to prevent the introduction or establishment of nonnative wildlife species.

(2) IMPORTATION AND TRANSPORTATION BY FEDERAL AGENCIES- Nothing in this Act shall restrict the import or transportation between any States of nonnative wildlife species by a Federal agency for its own use, if the nonnative wildlife species remains in the possession of a Federal agency.

(d) Effective Date- This section shall take effect upon the publication of notice under section 3(e)(3).

SEC. 7. PERMITS.

(a) In General- The Secretary may issue a permit authorizing importation otherwise prohibited under section 6(a)(1), for scientific research, medical, accredited zoological or aquarium display purposes, or for educational purposes that are specifically reviewed, approved, and verified by the Secretary, if the Secretary finds that there has been a proper showing by the permittee of responsibility for the specimen and continued protection of the public interest and health with respect to the specimen.

(b) Terms and Conditions- The Secretary may include in a permit under subsection (a) terms and conditions to minimize the risk of introduction or establishment of the nonnative wildlife species in the United States.

SEC. 8. FEES.

(a) Fee for Proposal To Include Species in List-

(1) IN GENERAL- The Secretary shall establish in the regulations under section 3, and collect, a fee from any person that after publication of the final preliminary list under section 4(b) submits to the Secretary--

(A) a proposal under section 4(c) to include a nonnative wildlife species to the list of approved species under section 4; or

(B) a proposal under section 5(b) to include a nonnative wildlife species to the list of unapproved species under section 5.

(2) PURPOSE- The fee shall be to recover 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 all amounts received by the United States as fees under this section or as fines for violations of this Act and its implementing regulations.

(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, transportation, possession, sale, purchase, release, or breeding of, or bartering for, any nonnative wildlife species.

(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. REQUIREMENT TO ISSUE REGULATIONS.

The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this Act.

SEC. 12. RELATIONSHIP TO OTHER FEDERAL LAWS.

Except as provided in section 13, nothing in this Act shall be construed--

(1) as repealing, superseding, or modifying any provision of the Public Health Service Act (42 U.S.C. 201 et seq.) or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or

(2) as authorizing any action with respect to the importation of any plant pest as defined in the Federal Plant Pest Act (7 U.S.C. 150aa et seq.), insofar as such importation is subject to regulation under that Act.

SEC. 13. REDESIGNATION OF INVASIVE SPECIES COUNCIL AS NATIONAL INVASIVE SPECIES COUNCIL.

(a) Redesignation- The Invasive Species Council established by Executive Order 13112 on February 8, 1999 (64 Fed. Reg. 6183) is redesignated as the National Invasive Species Council.

(b) References- Any reference in a law, map, regulation, document, paper, or other record of the United States to the council referred to in subsection (a) is deemed to be a reference to the National Invasive Species Council.

SEC. 14. 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) IMPORT- The term `import' means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the Government of the United States, whether or not such landing, bringing into, or introduction constitutes an importation within the meaning of the customs laws of the Government of the United States.

(3) NATIONAL INVASIVE SPECIES COUNCIL- The term `National Invasive Species Council' means the National Invasive Species Council established by Executive Order 13112 on February 8, 1999 (64 Fed. Reg. 6183), as redesignated by section 13.

(4) 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 intentional or unintentional introduction by humans.

(5) NONNATIVE WILDLIFE SPECIES- The term `nonnative wildlife species'--

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

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

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

(ii) any viable egg, sperm, gamete, or other reproductive material or offspring thereof;

(C) does not include any species that is--

(i) specifically defined or regulated as a plant pest or approved for biological control purposes under the Plant Protection Act (7 U.S.C. 7701 et seq.); or

(ii) defined or regulated as a threat to livestock or poultry under the Animal Health Protection Act (7 U.S.C. 8301 et seq.); and

(D) does not include any cat (*Felis catus*), cattle or oxen (*Bos taurus*), chicken (*Gallus gallus domesticus*), dog (*Canis lupus familiaris*), donkey or ass (*Equus asinus*), domesticated members of the family Anatidae (geese), duck (domesticated *Anas* spp.), goat (*Capra aegagrus hircus*), goldfish (*Carassius auratus auratus*), horse (*Equus caballus*), llama (*Lama glama*), mule or hinny (*Equus caballus* x *E. asinus*), pig or hog (*Sus scrofa domestica*), domesticated varieties of rabbit (*Oryctolagus cuniculus*), or sheep (*Ovis aries*), or any other species or variety of species that is determined by the Secretary to be common and clearly domesticated.

(6) PERSON- The term `person' means--

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

(B) any officer, employee, agent, department, or instrumentality of the Federal Government, or of any State, municipality, or political subdivision of a State, or of any foreign government; and

(C) any other entity subject to the jurisdiction of the Government of the United States.

(7) SECRETARY- The term `Secretary' means the Secretary of the Interior.

(8) STATE- The term `State' includes the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Virgin Islands, and any other territory or possession of the United States.

(9) UNITED STATES- The term `United States' means the several States of the United States, the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands, any possession of the United States, and any waters, including the territorial sea and the Exclusive Economic Zone, within the jurisdiction or sovereignty of the Government of the United States.