

110TH CONGRESS
2D SESSION

S. 3366

To protect, conserve, and restore native fish, wildlife, and their natural habitats at national wildlife refuges through cooperative, incentive-based grants to control, mitigate, and eradicate harmful nonnative plant species, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2008

Mr. NELSON of Florida (for himself, Ms. STABENOW, Ms. COLLINS, Mr. CARDIN, and Mr. MARTINEZ) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To protect, conserve, and restore native fish, wildlife, and their natural habitats at national wildlife refuges through cooperative, incentive-based grants to control, mitigate, and eradicate harmful nonnative plant species, 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 “Refuge Ecology Pro-
5 tection, Assistance, and Immediate Response Act”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) The National Wildlife Refuge System is the
4 premier land conservation system in the world.

5 (2) Harmful nonnative species are the leading
6 cause of habitat destruction in national wildlife ref-
7 uges.

8 (3) More than 675 known harmful nonnative
9 species are found in the National Wildlife Refuge
10 System.

11 (4) Nearly 8,000,000 acres of the National
12 Wildlife Refuge System contain harmful nonnative
13 species.

14 (5) The cost of early identification and removal
15 of harmful nonnative species is dramatically lower
16 than removing an established invasive population.

17 (6) The cost of the backlog of harmful non-
18 native species control projects that need to be car-
19 ried out in the National Wildlife Refuge System is
20 over \$361,000,000, and the failure to carry out such
21 projects threatens the ability of the System to fulfill
22 its basic mission.

23 (b) PURPOSE.—The purpose of this Act is to encour-
24 age partnerships among the United States Fish and Wild-
25 life Service, other Federal agencies, States, Indian tribes,
26 and other interests for the following objectives:

1 (1) To protect, enhance, restore, and manage a
2 diversity of habitats for native fish and wildlife re-
3 sources within the National Wildlife Refuge System
4 through monitoring and management of harmful
5 nonnative species, including control of harmful non-
6 native plant species.

7 (2) To promote the development of voluntary
8 State assessments to establish priorities for control-
9 ling harmful nonnative plant and animal species that
10 threaten or negatively impact refuge resources.

11 (3) To promote greater cooperation among Fed-
12 eral, State, and local land and water managers, and
13 owners of private land, water rights, or other inter-
14 ests, to implement ecologically based strategies to
15 eradicate, mitigate, and control harmful nonnative
16 plant species that threaten or negatively impact ref-
17 uge resources through a voluntary and incentive-
18 based financial assistance grant program.

19 (4) To establish an immediate response capa-
20 bility to combat incipient harmful nonnative plant
21 species invasions.

22 **SEC. 3. DEFINITIONS.**

23 For the purposes of this Act:

24 (1) **APPROPRIATE COMMITTEES.**—The term
25 “appropriate Committees” means the Committee on

1 Natural Resources of the House of Representatives
2 and the Committee on Environment and Public
3 Works of the Senate.

4 (2) CONTROL.—The term “control” means, as
5 appropriate, eradicating, suppressing, reducing, or
6 managing harmful nonnative species from areas
7 where they are present; taking steps to detect early
8 infestations on at-risk native habitats; and restoring
9 native species and habitats to reduce the effects of
10 harmful nonnative species.

11 (3) ENVIRONMENTAL SOUNDNESS.—The term
12 “environmental soundness” means the extent of in-
13 clusion of methods, efforts, actions, or programs to
14 prevent or control infestations of harmful nonnative
15 species, that—

16 (A) minimize adverse impacts to the struc-
17 ture and function of an ecosystem and adverse
18 effects on nontarget species and ecosystems;
19 and

20 (B) emphasize integrated management
21 techniques.

22 (4) HARMFUL NONNATIVE SPECIES.—The term
23 “harmful nonnative species” means, with respect to
24 a particular ecosystem in a particular region, any
25 species, including its seeds, eggs, spores, or other bi-

1 ological material capable of propagating that species,
2 that is not native to that ecosystem and has a de-
3 monstrable or potentially demonstrable negative en-
4 vironmental or economic impact in that region.

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

9 (6) NATIONAL MANAGEMENT PLAN.—The term
10 “National Management Plan” means the manage-
11 ment plan referred to in section 5 of Executive
12 Order No. 13112 of February 3, 1999, and entitled
13 “Meeting the Invasive Species Challenge”.

14 (7) REFUGE RESOURCES.—The term “refuge
15 resources” means all land and water, including the
16 fish and wildlife species and the ecosystems and
17 habitats therein, that are owned, leased, managed
18 through easement or cooperative agreement, or oth-
19 erwise managed by the by the Federal Government
20 through the United States Fish and Wildlife Service
21 and located within the National Wildlife Refuge Sys-
22 tem administered under the National Wildlife Ref-
23 uge Administration Act of 1966 (16 U.S.C. 668dd
24 et seq.), including any waterfowl production area.

1 (8) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior, acting through the Di-
3 rector of the United States Fish and Wildlife Serv-
4 ice.

5 (9) STATE.—The term “State” means each of
6 the several States of the United States, the District
7 of Columbia, the Commonwealth of Puerto Rico, the
8 Virgin Islands, Guam, American Samoa, the Com-
9 monwealth of the Northern Mariana Islands, any
10 other territory or possession of the United States,
11 and any Indian tribe.

12 **SEC. 4. REFUGE ECOLOGY PROTECTION, ASSISTANCE, AND**
13 **IMMEDIATE RESPONSE (REPAIR) GRANT PRO-**
14 **GRAM.**

15 (a) IN GENERAL.—The Secretary may provide—

16 (1) a grant to any eligible applicant to carry
17 out a qualified plant control project in accordance
18 with this section; and

19 (2) a grant to any State to carry out an assess-
20 ment project consistent with relevant State plans
21 that have been developed in whole or in part for the
22 conservation of native fish, wildlife, and their habi-
23 tats, and in accordance with this section, to—

1 (A) identify harmful nonnative plant and
2 animal species that occur in the State that
3 threaten or negatively impact refuge resources;

4 (B) assess the needs to restore, manage, or
5 enhance native fish and wildlife and their nat-
6 ural habitats and processes in the State to com-
7 pliment activities to control, mitigate, or eradi-
8 cate harmful nonnative plant and animal spe-
9 cies negatively impacting refuge resources;

10 (C) identify priorities for actions to ad-
11 dress such needs;

12 (D) identify mechanisms to increase capac-
13 ity building in a State or across State lines to
14 conserve and protect native fish and wildlife
15 and their habitats and to detect and control
16 harmful nonnative plant and animal species
17 that might threaten or negatively impact refuge
18 resources within the State; and

19 (E) incorporate, where applicable and to
20 the extent consistent with this Act, the guide-
21 lines of the National Management Plan.

22 The grant program under this section shall be known as
23 the “Refuge Ecology Protection, Assistance, and Imme-
24 diate Response Grant Program” or the “REPAIR Pro-
25 gram”.

1 (b) FUNCTIONS OF THE SECRETARY.—

2 (1) IN GENERAL.—The Secretary shall—

3 (A) publish guidelines for and solicit appli-
4 cations for grants under this section not later
5 than 6 months after the date of enactment of
6 this Act; and

7 (B) receive, review, evaluate, and approve
8 applications for grants under this section.

9 (2) DELEGATION OF AUTHORITY.—The Sec-
10 retary may delegate to another Federal instrumen-
11 tality the authority of the Secretary under this sec-
12 tion, other than the authority to approve applica-
13 tions for grants and make grants.

14 (c) ELIGIBLE APPLICANT.—To be an eligible appli-
15 cant for purposes of subsection (a)(1), an applicant
16 shall—

17 (1) be a State, local government, interstate or
18 regional agency, university, conservation organiza-
19 tion, or private person;

20 (2) have adequate personnel, funding, and au-
21 thority to carry out and monitor or maintain a con-
22 trol project; and

23 (3) have entered into an agreement with the
24 Secretary or a designee of the Secretary, for a na-
25 tional wildlife refuge or refuge complex.

1 (d) QUALIFIED CONTROL PROJECT.—

2 (1) IN GENERAL.—To be a qualified control
3 project under this section, a project shall—

4 (A) control harmful nonnative plant spe-
5 cies on the lands or waters on which it is con-
6 ducted;

7 (B) include a plan for monitoring the
8 project area and maintaining effective control of
9 harmful nonnative plant species after the com-
10 pletion of the project, that is consistent with
11 standards for monitoring developed under sub-
12 section (i);

13 (C) be conducted in partnership with a na-
14 tional wildlife refuge or refuge complex;

15 (D) be conducted on land or water, other
16 than national wildlife refuge land or water,
17 that, for purposes of carrying out the project,
18 are under the control of the eligible applicant
19 applying for the grant under this section, on
20 land or water on which the eligible applicant
21 has permission to conduct the project, or on ad-
22 jacent national wildlife refuge land or water ad-
23 ministered by the United States Fish and Wild-
24 life Service referred to in subparagraph (C);
25 and

1 (E) encourage public notice and outreach
2 on control project activities in the affected com-
3 munity.

4 (2) OTHER FACTORS FOR SELECTION OF
5 PROJECTS.—In ranking qualified control projects,
6 the Director may consider the following:

7 (A) The extent to which a project would
8 address the operational and maintenance back-
9 log attributed to harmful nonnative plant spe-
10 cies on refuge resources.

11 (B) Whether a project will encourage in-
12 creased coordination and cooperation among
13 one or more Federal agencies and State or local
14 government agencies or nongovernmental or
15 other private entities to control harmful non-
16 native plant species threatening or negatively
17 impacting refuge resources.

18 (C) Whether a project fosters public-pri-
19 vate partnerships and uses Federal resources to
20 encourage increased private sector involvement,
21 including consideration of the amount of private
22 funds or in-kind contributions to control harm-
23 ful nonnative species or national wildlife refuge
24 lands or non-Federal lands in proximity to ref-
25 uge resources.

1 (D) The extent to which a project would
2 aid the conservation of species that are listed
3 under the Endangered Species Act of 1973 (16
4 U.S.C. 1531 et seq.).

5 (E) The extent to which a project would
6 aid the conservation of—

7 (i) species listed by the United States
8 Fish and Wildlife Service as birds of man-
9 agement concern; and

10 (ii) species identified by the Director
11 of the United States Fish and Wildlife
12 Service as imperiled or at-risk species.

13 (F) The extent to which a project would
14 aid the conservation of species identified as a
15 “Species of Greatest Conservation Need” in a
16 comprehensive wildlife conservation plan devel-
17 oped under the State wildlife grants program.

18 (G) The extent to which a project would
19 contribute to the restoration and protection of
20 terrestrial, freshwater aquatic, estuarine, coast-
21 al, and marine ecosystems, such as the Ever-
22 glades, the Great Lakes, and the Mississippi
23 River, that are determined to be priorities by
24 the Director of the United States Fish and
25 Wildlife Service.

1 (H) Whether a project includes pilot test-
2 ing or a demonstration of an innovative tech-
3 nology having the potential for improved cost-
4 effectiveness and reduced environmental risks
5 when controlling harmful nonnative plant spe-
6 cies.

7 (I) The extent to which a project mini-
8 mizes adverse impacts of control methods on
9 ecosystems affected by the project.

10 (J) Whether a project includes a com-
11 prehensive plan to prevent reintroduction of
12 harmful nonnative plant species controlled by
13 the project.

14 (e) DISTRIBUTION OF CONTROL GRANT AWARDS.—
15 In making grants for control projects under this section
16 the Secretary shall, to the greatest extent practicable, en-
17 sure—

18 (1) a balance of smaller and larger projects
19 conducted with grants under this section; and

20 (2) an equitable geographic distribution of
21 projects carried out with grants under this section,
22 among all regions and States within which such
23 projects are proposed to be conducted.

24 (f) GRANT DURATION.—

1 (1) IN GENERAL.—Each grant under this sec-
2 tion shall be to provide funding for the Federal
3 share of the cost of a project carried out with the
4 grant for up to 2 fiscal years.

5 (2) RENEWAL.—

6 (A) IN GENERAL.—If the Secretary, after
7 reviewing the reports under subsection (g) re-
8 garding a control project, finds that the project
9 is making satisfactory progress, the Secretary
10 may renew a grant under this section for the
11 project for an additional 3 fiscal years.

12 (B) MONITORING AND MAINTENANCE
13 PLAN.—The Secretary may renew a grant
14 under this section to implement the monitoring
15 and maintenance plan required for a control
16 project under subsection (d)(1)(B) for up to 5
17 fiscal years after the project is otherwise com-
18 pleted.

19 (g) REPORTING BY GRANTEE.—

20 (1) CONTROL PROJECTS; ASSESSMENT
21 PROJECTS.—

22 (A) CONTROL PROJECTS.—A grantee car-
23 rying out a control project with a grant under
24 this section shall report to the Secretary every

1 24 months or at the expiration of the grant,
2 whichever is of shorter duration.

3 (B) ASSESSMENT PROJECTS.—A State car-
4 rying out an assessment project with a grant
5 under this section shall submit the assessment
6 pursuant to subsection (a)(2) to the Secretary
7 no later than 24 months after the date on
8 which the grant is awarded.

9 (2) REPORT CONTENTS.—Each report under
10 this subsection shall include the following informa-
11 tion with respect to each project covered by the re-
12 port:

13 (A) In the case of a control project—

14 (i) the information described in sub-
15 paragraphs (B), (D), and (F) of subsection
16 (j)(2);

17 (ii) specific information on the meth-
18 ods and techniques used to control harmful
19 nonnative plant species in the project area;
20 and

21 (iii) specific information on the meth-
22 ods and techniques used to restore native
23 fish, wildlife, or their habitats in the
24 project area.

1 (B) A detailed report of the funding for
2 the grant and the expenditures made.

3 (3) INTERIM UPDATE.—Each grantee under
4 paragraph (1)(A) shall also submit annually to the
5 Secretary a brief synopsis and chronological list of
6 projects showing progress as a percentage of comple-
7 tion and use of awarded funds.

8 (h) COST SHARING FOR PROJECTS.—

9 (1) FEDERAL SHARE.—Except as provided in
10 paragraphs (2) and (3), the Federal share of the
11 cost of a project carried out with a grant under this
12 section shall not exceed 75 percent of such cost.

13 (2) INNOVATIVE TECHNOLOGY COSTS.—The
14 Federal share of the incremental additional cost of
15 including in a control project any pilot testing or a
16 demonstration of an innovative technology described
17 in subsection (d)(2)(H) shall be 85 percent.

18 (3) PROJECTS ON REFUGE LANDS OR WA-
19 TERS.—The Federal share of the cost of the portion
20 of a control project funded with a grant under this
21 section that is carried out on national wildlife refuge
22 lands or waters, including the cost of acquisition by
23 the Federal Government of lands or waters for use
24 for such a project, shall be 100 percent.

1 (4) APPLICATION OF IN-KIND CONTRIBU-
2 TIONS.—The Secretary may apply to the non-Fed-
3 eral share of costs of a control project carried out
4 with a grant under this section the fair market value
5 of services or any other form of in-kind contribution
6 to the project made by non-Federal interests that
7 the Secretary determines to be an appropriate con-
8 tribution equivalent to the monetary amount re-
9 quired for the non-Federal share of the activity.

10 (5) DERIVATION OF NON-FEDERAL SHARE.—
11 The non-Federal share of the cost of a control
12 project carried out with a grant under this section
13 may not be derived from a Federal grant program
14 or other Federal funds.

15 (i) MONITORING AND MAINTENANCE OF CONTROL
16 GRANT PROJECTS.—

17 (1) REQUIREMENTS.—The Secretary shall de-
18 velop requirements for the monitoring and mainte-
19 nance of a control project to ensure that the require-
20 ments under subparagraphs (A) and (B) of sub-
21 section (d)(1) are achieved.

22 (2) DATABASE OF GRANT PROJECT INFORMA-
23 TION.—The Secretary shall develop and maintain an
24 appropriate database of information concerning con-
25 trol projects carried out with grants under this sub-

1 section, including information on project techniques,
2 project completion, monitoring data, and other rel-
3 evant information.

4 (3) USE OF EXISTING PROGRAMS.—The Sec-
5 retary shall use existing programs within the De-
6 partment of the Interior to create and maintain the
7 database required under this subsection.

8 (4) PUBLIC AVAILABILITY.—The Secretary
9 shall make the information collected and maintained
10 under this subsection available to the public.

11 (j) REPORTING BY THE SECRETARY.—

12 (1) IN GENERAL.—The Secretary shall, by not
13 later than 3 years after the date of the enactment
14 of this Act and biennially thereafter in the report
15 under section 8, report to the appropriate Commit-
16 tees on the implementation of this section.

17 (2) REPORT CONTENTS.—A report under para-
18 graph (1) shall include an assessment of—

19 (A) trends in the population size and dis-
20 tribution of harmful nonnative plant species in
21 the project area for each control project carried
22 out with a grant under this section, and in the
23 adjacent areas as defined by the Secretary;

24 (B) data on the number of acres of refuge
25 resources and native fish and wildlife habitat

1 restored, protected, or enhanced under this sec-
2 tion, including descriptions of, and partners in-
3 volved with, control projects selected, in
4 progress, and completed under this section;

5 (C) trends in the population size and dis-
6 tribution in the project areas of native species
7 targeted for restoration, and in areas in prox-
8 imity to refuge resources as defined by the Sec-
9 retary;

10 (D) an estimate of the long-term success of
11 varying conservation techniques used in car-
12 rying out control projects with grants under
13 this section;

14 (E) an assessment of the status of control
15 projects carried out with grants under this sec-
16 tion, including an accounting of expenditures by
17 the United States Fish and Wildlife Service,
18 State, regional, and local government agencies,
19 and other entities to carry out such projects;

20 (F) a review of the environmental sound-
21 ness of the control projects carried out with
22 grants under this section;

23 (G) a review of efforts made to maintain
24 an appropriate database of grants under this
25 section; and

1 (H) a review of the geographical distribu-
2 tion of Federal money, matching funds, and in-
3 kind contributions for control projects carried
4 out with grants under this section.

5 (k) COOPERATION OF NON-FEDERAL INTERESTS.—
6 The Secretary may not make a grant under this section
7 for a control project on national wildlife refuge lands or
8 lands in proximity to refuge resources before a non-Fed-
9 eral interest has entered into a written agreement with
10 a national wildlife refuge or refuge complex under which
11 the non-Federal interest agrees to—

12 (1) monitor and maintain the control project in
13 accordance with the plan required under subsection
14 (d)(1)(B); and

15 (2) provide any other items of cooperation the
16 Secretary considers necessary to carry out the
17 project.

18 **SEC. 5. CREATION OF AN IMMEDIATE RESPONSE CAPA-**
19 **BILITY TO HARMFUL NONNATIVE SPECIES.**

20 (a) ESTABLISHMENT.—The Secretary may provide fi-
21 nancial assistance for a period of not more than 3 fiscal
22 years to enable an immediate response to outbreaks of
23 harmful nonnative plant species that threaten or may neg-
24 atively impact refuge resources that are at a stage at
25 which rapid eradication or control is possible, and ensure

1 eradication or immediate control of the harmful nonnative
2 plant species.

3 (b) REQUIREMENTS FOR ASSISTANCE.—The Sec-
4 retary, after consulting with the Governor of the State,
5 shall provide assistance under this section to local and
6 State agencies, universities, or nongovernmental entities
7 for the eradication of an immediate harmful nonnative
8 plant species threat only if—

9 (1) there is a demonstrated need for the assist-
10 ance;

11 (2) the harmful nonnative plant species is con-
12 sidered to be an immediate threat to refuge re-
13 sources, as determined by the Secretary; and

14 (3) the proposed response to such threat—

15 (A) is technically feasible; and

16 (B) minimizes adverse impacts to the
17 structure and function of national wildlife ref-
18 uge ecosystems and adverse effects on nontar-
19 get species.

20 (c) AMOUNT OF FINANCIAL ASSISTANCE.—The Sec-
21 retary shall determine the amount of financial assistance
22 to be provided under this section with respect to an out-
23 break of a harmful nonnative species, subject to the avail-
24 ability of appropriations.

1 (d) COST SHARE.—The Federal share of the cost of
2 any activity carried out with assistance under this section
3 may be up to 100 percent.

4 (e) MONITORING AND REPORTING.—The Secretary
5 shall require that persons receiving assistance under this
6 section monitor and report on activities carried out with
7 assistance under this section in accordance with the re-
8 quirements that apply with respect to control projects car-
9 ried out with assistance under section 4.

10 **SEC. 6. COOPERATIVE VOLUNTEER HARMFUL NONNATIVE**
11 **SPECIES MONITORING AND CONTROL PRO-**
12 **GRAM.**

13 (a) IN GENERAL.—Consistent with the National
14 Wildlife Refuge System Volunteer and Community Part-
15 nership Enhancement Act of 1998 (Public Law 105–242),
16 the Secretary shall establish a cooperative volunteer moni-
17 toring and control program to administer and coordinate
18 projects implemented by partner organizations concerned
19 with national wildlife refuges to address harmful non-
20 native species that threaten national wildlife refuges or ad-
21 jacent lands.

22 (b) ELIGIBLE ACTIVITIES.—Each project adminis-
23 tered and coordinated under this section shall include 1
24 of the following activities:

25 (1) Habitat surveys.

1 (2) Detection and identification of new intro-
2 ductions or infestations of harmful nonnative plant
3 and animal species.

4 (3) Harmful nonnative plant species control
5 projects.

6 (4) Public education and outreach to increase
7 awareness concerning harmful nonnative species and
8 their threat to the refuge system.

9 **SEC. 7. RELATIONSHIP TO OTHER AUTHORITIES.**

10 (a) **AUTHORITIES, ETC. OF SECRETARY.**—Nothing in
11 this Act affects authorities, responsibilities, obligations, or
12 powers of the Secretary under any other statute.

13 (b) **STATE AUTHORITY.**—Nothing in this Act pre-
14 empts any provision or enforcement of State statute or
15 regulation relating to the management of fish and wildlife
16 resources within such State.

17 **SEC. 8. BIENNIAL REPORT.**

18 Not later than 2 years after the date of enactment
19 of this Act and biennially thereafter, the Secretary shall
20 prepare and submit to Congress and the National Invasive
21 Species Council—

22 (1) a comprehensive report summarizing all
23 grant activities relating to invasive species initiated
24 under this Act including—

25 (A) State assessment projects;

- 1 (B) qualified control projects;
- 2 (C) immediate response activities; and
- 3 (D) projects identified in the Refuge Oper-
- 4 ations Needs database or the Service Asset and
- 5 Maintenance Management System database of
- 6 the United States Fish and Wildlife Service;
- 7 (2) a list of grant priorities, ranked in high,
- 8 medium, and low categories, for future grant activi-
- 9 ties in the areas of—
- 10 (A) early detection and rapid response;
- 11 (B) control, management, and restoration;
- 12 (C) research and monitoring;
- 13 (D) information management; and
- 14 (E) public outreach and partnership ef-
- 15 forts; and
- 16 (3) information required to be included under
- 17 section 4(k).

18 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) IN GENERAL.—There are authorized to be appro-

20 priated to carry out this Act such sums as may be nec-

21 essary.

22 (b) ALLOWANCE FOR IMMEDIATE RESPONSE.—Of

23 the amounts appropriated to carry out this Act no more

24 than 25 percent shall be available in any fiscal year for

25 financial assistance under section 5.

1 (c) CONTINUING AVAILABILITY.—Amounts appro-
2 priated under this Act may remain available until ex-
3 pended.

4 (d) ADMINISTRATIVE EXPENSES.—Of amounts avail-
5 able each fiscal year to carry out this Act, the Secretary
6 may expend not more than 3 percent or up to \$100,000,
7 whichever is greater, to pay the administrative expenses
8 necessary to carry out this Act.

○