

The Wild Bird Conservation Act of 1992: Its Impact in 1995

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The Wild Bird Conservation Act of 1992 ("WBCA", HR 5013) became law on October 23, 1992. Passage of the act dramatically reduced the role of the United States in the international trade in wild-caught birds intended for pets. I was AAV's representative to the Cooperative Working Group on Bird Trade ("CWGBT"), a group convened by the World Wildlife Fund to study the US bird trade and propose solutions to problems. This group agreed upon and drafted the first proposed bill, the Exotic Bird Conservation Act ("EBCA"). I am proud of the role I, and AAV, played in reducing the unsustainable, and often inhumane aspects of US bird imports. I am disappointed, however, in many aspects of the direction that the WBCA, and regulations promulgated to enforce the Act, have taken. The agreements of the CWGBT, which were supported by AAV, and the intent of Congress in passage of the WBCA, have clearly been superseded by the United States Fish and Wildlife Service ("USFWS") and various humane and animal rights interests. In this paper I will summarize the progress in implementation of the Act including potential problems. It is my opinion that proposed regulations promulgated by USFWS to enforce the Act are excessively restrictive and may ultimately be detrimental to captive breeding of birds, both in the US and abroad, and possibly to the conservation of wild populations.

The House Committee on Merchant Marine and Fisheries, under the late Chairman Mr. Walter Jones of North Carolina, was the committee to which the original Exotic Bird Conservation Act was assigned. As you may recall, several humane and animal rights groups broke away from the CWGBT—breaking their agreement to the EBCA—and formed with other groups a coalition which prepared the Wild Bird Protection Act. Both bills were introduced to Congress, and in the ensuing month the House Committee developed a compromise bill, the WBCA.

Since enactment, USFWS has placed numerous publications in the Federal Register regarding implementation.

Upon passage of the act, an immediate moratorium, effective October 23, 1992, was established on the importation of 10 species of wild birds of particular concern that are listed in Appendix II of CITES (two moved to Appendix I at the March, 1992 CITES conference). On December 4, 1992, a notice was published announcing the effects of the Act including the implementation of an importation quota for all species of exotic birds (as defined by the Act) listed in the Appendices to CITES. This notice initially allowed for importation of CITES Appendix III-listed species as long as they didn't originate in the country which listed them in Appendix III. A coalition of humane and animal rights groups brought suit against USFWS and won, thereby halting all imports of Appendix III species.

During the year from October, 1992 to October 22, 1993, a maximum number of individuals (quota) of any CITES-listed species were imported. The quota was equal to the number imported during the last year for which USFWS had data (1991). On April 16, 1993, a notice was published listing species for which the quota was filled. Effective October 22, 1993, imports of all CITES listed birds were prohibited.

On August 12, 1993, the proposed rule was published, outlining regulations implementing prohibitions and exemptions for imports for scientific research, zoological display, and personal pets.

On November 5, 1993, two notices of petition were published. One petition proposed imposing a moratorium on imports of wild birds from Indonesia. The second proposed imposing a moratorium on imports of wild birds from Senegal. A later publication involved Guyana.

A proposed rule was published on March 17, 1994 to implement procedures for approval of foreign captive breeding facilities and establishment of an approved list of species listed in the CITES Appendices.

On April 10, 1994, the USFWS held a public meeting regarding section 115: marking, voluntary registration programs, and funding for conservation programs in countries of origin.

* To date, the author knows of no final rules which have been published regarding regulations promulgated to implement the Act
Nov-16-1993 - Research, Zoological + Cooperative Breeding Program
Dec-2-1994 - Approved list
Following is a summary of pertinent portions of the bill, as well as excerpts from proposed rules outlining the requirements for applicants for permits under the Act. The Act in its entirety follows this paper.

Section 102: Findings

The law was specifically intended to regulate the trade in wild caught birds, not captive-bred birds. The justification for regulation of trade in captive-bred birds was to prevent laundering of wild-caught birds as captive-bred. See the Act for further information.

Section 103: Statement of Purpose

The stated purpose of the Act is to promote the conservation of exotic birds by assisting conservation and management programs in countries of origin, ensuring that trade involving the United States is sustainable and not detrimental, and limiting or prohibiting imports when necessary to ensure that populations are not harmed and birds in trade are not subject to inhumane treatment. The act also encourages and supports effective implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES").

The intent is for the WBCA to complement CITES by regulating imports into the US. Such domestic legislation is referred to as "Stricter Domestic Measures" by CITES, and is common in party nations. The bill was designed to allow the continued or sustainable use of exotic birds as a means of creating potential economic value in the birds to contribute to the conservation of their habitats.

Section 104: Definitions

A number of families of birds which were not traded in large numbers prior to the Act, primarily game birds, poultry, and zoo species, are listed as exempt from the act. See the act for further information.

Section 106: List of Approved Species

The Secretary of the Interior is given the authority to develop lists of species which are found in the CITES Appendices, which will not be subject to regulation under the act. (This list was required to be published within

one year, but was not published until March 17, 1994.) Species can be included on the list if the Secretary determines that (1) the species is regularly bred in captivity and no wild-caught birds of the species are in trade, or (2) the species is bred in a qualifying facility.

The proposed regulations regarding approval of foreign facilities for export of captive-bred birds to the US are especially restrictive (see Proposed Rule, Federal Register, vol 59, no 52, March 17, 1994). USFWS included in the proposed rules for this section, the words "legal or illegal". The proposed rule reads as follows: "All Specimens of the species known to be in trade (legal or illegal) are captive-bred." This would effectively preclude the importation of virtually all species, as in the past, smuggling by persons outside of the law did occur. This inclusion is an example of an excessively restrictive interpretation of the Act by USFWS.

Congress states in "legislative history" that "captive-bred birds of species for which no wild caught birds are in trade can be listed without reference to country or breeding facility." No mention was made of excluding all specimens of a species if any evidence of historical smuggling in the species is known to have occurred. As an example of the impact, some Central American countries are trying to establish facilities for trade in captive-bred Amazons (Yellow Naped). They could be excluded from trading their birds with the US because of the history of illegal trade in the species, despite not taking part in that trade.

Congress also states in "legislative history" that "section 6(b) directs the Secretary to include species of exotic birds on the list of species that may be imported if the species is regularly bred in captivity and not taken from the wild for the pet trade." A similar provision is contained in the New York State Law which prohibits the sale of wild-caught birds and only permits the sale of birds that have been bred in captivity. It is the intent of the Committee that the Secretary use the standards, adopted by the State of New York with respect to the importation of captive-bred species, and include such species on the approved list under this section which states "the State of New York does not prohibit the importation of any bona fide captive-bred birds, regardless of the species." Congress tried to accommodate captive breeding, but USFWS proposed regulations again were more restrictive.

Section 107: Qualifying Facilities (For Export of Captive-Bred Birds to the United States)

Upon submission of a petition (under section 110) by any person, the Secretary shall determine whether an exotic bird breeding facility is a qualifying facility. Such determination shall be effective for a period specified by the Secretary, which may not exceed three years. The Secretary shall, from time to time, publish a list of qualifying facilities in the Federal Register.

Criteria

1. The facility has demonstrated the capability of producing captive-bred birds of the species in numbers to be imported into the United States from that facility
2. The facility is operated in a manner that is not detrimental to the survival of the species in the wild.
3. The facility is operated in a humane manner.
4. The appropriate governmental authority of the country in which the facility is located has certified in writing, and the Secretary is satisfied, that the facility has the capability of breeding the species in captivity.

5. The country in which the facility is located in a Party to the Convention.
6. All the birds exported from the facility are bred at the facility.

Currently, the USFWS is granting permits for the export of captive-bred CITES-listed birds from the US, but does not extend the same courtesy to foreign breeders under the WBCA. While thousands (or hundreds of thousands) of legitimate captive breeders exist in countries around the world, there are at this time (to the best of the author's knowledge) no foreign facilities which have been approved. Congressional intent is clear that trade in captive-bred birds should be allowed; however, the proposed rules go far beyond the stated law and the intent of Congress.

The proposed rule requires that the breeder applying for approval under the WBCA make the following statements:

1. Name, address, etc.
2. Certification from the management authority of the country that the facility has the capability of breeding the species in captivity in numbers desired for export.
3. Summary of legislation implementing CITES in that country.
4. Relevant experience of persons involved in operation of the facility.
5. Current stock of the facility, including total number, ages, sexes, and numbers of breeding pairs.
6. Production levels that have been achieved at the facility, at least for the past two complete calendar years, including number of eggs produced, chicks hatched, and chicks reared to independence.
7. Anticipated future production.
8. A breeding protocol, including a genetic management plan and a description of breeding methods. Breeding methods shall include whether breeding is continuous or seasonal (descriptions of photo period manipulations used to stimulate or control breeding, if any, should be included) and whether breeding birds are induced to produce multiple clutches by the removal of eggs for artificial incubation.
9. Descriptions of incubation and rearing methods, as well as any other methods used to enhance production, including artificial insemination when applicable.
10. A statement demonstrating that the facility is operating in a manner that is not detrimental to the survival of the species in the wild.
11. The number and origin of original breeding stock.
12. A statement from the scientific authority of the Country in which the facility is located attesting that the parental stock was established in a manner that was not detrimental to the survival of the species in the wild.
13. If any parental breeding stock was wild-caught, a statement as to the country of origin, date of acquisition, and certification by the management authority in the country in which the facility is located that the parental breeding stock was legally acquired.

14. Certification from the management authority in the country in which the facility is located that adequate controls, including inspections, are in place to prevent the use of the facility for the export of wild-caught stock.
15. A statement of any anticipated need for augmentation of breeding stock with specimens from other sources; if augmentation is to be from the wild, an explanation as to why the removal of additional specimens from the wild shall be included. This explanation must address whether other captive-bred stock is available and describe breeding strategies employed at the facility to avoid deleterious inbreeding so that the need for augmentation from the wild is minimized.
16. A statement describing the facility and demonstrating that it is operated in a humane and healthful manner.
17. Diagrams or photographs of the facility.
18. Descriptions of enclosures, including dimensions, construction materials, substrates, availability of water, lighting, ventilation, the need for supplemental heat or cooling and how these are provided, and shading.
19. Densities of birds in enclosures.
20. Internal features of enclosures, including perches, nest boxes, and planting.
21. A description of any facility features designed to satisfy unique requirements of the particular species.
22. A description of the care and maintenance practices of the facility.
23. Husbandry practices, feeding regimes (number of feedings per day), and diet.
24. Hygienic practices, including methods and frequency of cleaning and disinfection of equipment and facilities.
25. A statement as to the availability of routine professional veterinary care, including annual flock inspection or examination, and medication/vaccination schedules.
26. Records of mortality and disease outbreaks for both adults and chicks for at least the past two years. Episodes of high mortality or disease should be explained, and measures taken to prevent similar mortality or disease outbreaks in the future should be described.
27. Qualifications and experience of the personnel who will be responsible for the care of the exotic birds.
28. A statement that all birds exported or to be exported from the facility are bred at the facility and are marked with closed leg bands or an electronic marking system.
29. Details on the system of record keeping and tracking of birds and their progeny hatched at the facility.
30. Documentation that the facility maintains records of all birds traded from the facility, including both within the country in which the facility is located and internationally.
31. Documentation that the facility maintains records on hatch dates and band numbers of all birds produced at the facility.

32. Copies of these production and trade data shall be included with the application for the past two calendar years.
33. A statement documenting that adequate enforcement controls are in place in the country and at the facility to prevent the use of the facility for the export or re-export of wild-caught stock, including a statement on security at the facility and any prior losses due to theft.

The Secretary must use 13 criteria to determine if the application can be approved. Approval must be obtained separately for each species which the applicant wishes to export. Approval is for three years as long as the facility remains in compliance and submits an annual report. Each application will be published in the Federal register and is subject to comment.

The USFWS received in excess of 5000 letters protesting the proposed rules. At the time of writing the final rule on this section has not been published.

Legislative history states that it is the intent of the "bill" to encourage captive breeding both in the United States and elsewhere. Concern has been expressed that small scale breeders may wish to ship birds to the United States via larger scale breeders, but may be precluded from doing so under this Act. It is not the intent of the (Congressional) Committee to prohibit such transfers, and the Committee believes that the Secretary has sufficient discretion to allow them under this bill. It is also the intent of the Committee that the paperwork burden required of participating captive breeding facilities be minimized, especially as it applies to small facilities that employ few people.

It is clear that such regulation is not consistent with the act or the intent of Congress.

Section 112: Exemptions From the Act

Notwithstanding any prohibitions, suspension, or quota under this title on the importation of a species of exotic bird, the Secretary may, through the issuance of import permits, authorize the importation of birds of the species if the Secretary determines that such importation is not detrimental to the survival of the species, and the birds are being imported exclusively for any of the following purposes;

1. Scientific purposes
2. As a personally owned pet of an individual who is returning to the United States after being continuously out of the country for a minimum of one year, except that an individual may not import more than two exotic birds under this paragraph in any one year.
3. Zoological breeding or display programs.
4. Cooperative breeding programs that are
 - a. Designed to promote the conservation of the species and maintain the species in the wild by enhancing the propagation and survival of the species, and
 - b. developed and administered by, or in conjunction with, an avicultural conservation or zoological organization that meets standards developed by the Secretary.

Requirements of Proposed Rule, Published August 12, 1993

Permit applications for imports for Scientific Research must include:

*Final Rule Public
Nov 16 '93*

1. Species of birds to be imported.
2. Whether birds are still in the wild or were bred in captivity.
3. Information on the birds' removal from the wild if still in the wild or removed from the wild within the last year:
 - a. the country and specific location where the removal occurred,
 - b. a description of the manner of taking of each bird,
 - c. the names and qualifications of persons who will capture or captured the birds,
 - d. a description of the status of the species in the area of capture, and
 - e. a copy of any foreign collecting permit or authorizing letter.
4. If bred in captivity, information on the breeding history:
 - a. Documentation that the bird was bred in captivity,
 - b. If the applicant is not the breeder, copies of breeding records.
5. Description of the scientific research to be conducted including a research protocol, a statement of the reasons the applicant is justified in obtaining a permit, and a complete description of the scientific research to be conducted.
6. Formal research proposal with timetable and details on funding.
7. Relationship of the research to the conservation of the species.
8. Planned disposition of exotic birds and any progeny upon completion of the research project.
9. Qualification of the principal investigator and other scientific personnel, including
 - a. applicable educational experience, and
 - b. description of relevant past research conducted and any published, or unpublished results of research.
11. Evidence of professional affiliation with an accredited research institution, and three letters from other scientists as to the adequacy of the proposed research. If the research requires the removal of the exotic bird from the wild, one of these letters shall be from the CITES Scientific Authority in the country from which the exotic bird is going to be or was removed from the wild.

12. Description of the proposed care and maintenance of the exotic bird:
 - a. description of the shipping methods and enclosures to be used to transport the bird, and
 - b. feeding and care of the birds during transit.
13. The name and address as well as photographs or diagrams of the facility where the exotic bird will be housed,
14. Dimensions of existing enclosures for the birds to be imported and number of birds to be housed in each.
15. Qualifications and experience of the personnel who will be responsible for the care of the exotic bird.
16. A description, including photographs or diagrams, of the shipping methods and enclosures to be used to transport the exotic bird, including but limited to feeding and care during transport.

The Service will consider the following questions in evaluation of applications:

1. Are the research hypothesis and objectives clearly stated?
2. Is the research question valid?
3. Are the techniques and sampling design appropriate, adequate and humane?
4. Is the sample size appropriate?
5. Is the research feasible?
6. How does the research relate to previous work? Is it duplicative?
7. How will the research benefit the species?
8. Did previously conducted research under previously issued permits accomplish stated objectives?
9. Have the results of previous research been adequately disseminated?
10. Is the purpose of the scientific research adequate to justify removal of the bird from the wild?
11. Will the proposed import be detrimental to the survival of the exotic bird species in the wild (including whether the exotic bird was bred in captivity or was taken from the wild)?
12. Does the research have scientific merit (is not unnecessarily duplicative)?
13. What are the opinions or views of scientists or other persons or organizations having expertise concerning the exotic bird or other matters germane to the application?
14. Do the expertise, facilities, or other resources available to the applicant appear adequate for proper care and maintenance of the exotic bird and successful accomplishment of the research objectives stated in the application?

15. Will the exotic bird will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment?

Permit applications will be published in the Federal register for public comment.

Permit application for imports for Zoological Display must include:

1. Information on the exotic birds to be imported.
2. Are they still in the wild or are they in captivity? If in the wild, information on the birds' removal from the wild:
 - a. the country and specific location where the removal occurred,
 - 9C b. a description of the manner of taking of each bird,
 - 9C c. the names and qualifications of persons who will capture or captured the birds,
 - d. a description of the status of the species in the area of capture, and,
 - e. a copy of any foreign collecting permit or authorizing letter.
3. If held in captivity for more than one year,
 - 9C a. the country and specific location where removal occurred
 - 9C b. the date and purpose of removal, and,
 - 9C c. any other information which may apply.
4. If the exotic birds were bred in captivity,
 - 9C a. information on their breeding history,
 - 9C b. a description of the breeding or display program and protocol, and
 - c. documents or other evidence that the birds were bred in captivity, identifying the parental birds, hatch date, name and address of the breeder.
if bred by other - record of transactions
5. A statement of the reasons the applicant is justified in obtaining a permit, including a complete description of the breeding or display program to be conducted with the exotic bird.
6. A breeding or educational protocol that provides information on conservation educational materials provided to the general public.
7. Plans, if any, for developing or maintaining a self-sustaining population of the exotic bird species in captivity.
8. Statements on efforts to obtain birds from alternate sources or sources within the US.

9. Details on record keeping and veterinary care.
10. The relationship of such a breeding or display program to promoting the conservation of the species in the wild.
11. Planned disposition of any of the exotic birds and any progeny.
12. A description of the care and maintenance of the exotic bird, and how the facility meets professionally recognized standards of the public display community, including
- a. the name and address of the facility,
 - b. diagrams or photos of the facility,
 - c. dimensions of existing enclosures,
 - d. husbandry practices, and
 - e. qualifications of the personnel who will be responsible for care.
13. A history of the zoological facilities breeding programs with the same or similar species including
- a. participation in cooperative breeding programs,
 - b. breeding and inventory records for the last two years including hatching, survival and mortality records, and
 - c. causes of any mortalities and efforts made to correct any problems.
14. A qualification statement for the principal investigator who will be overseeing the breeding or display program. This statement should include information on the personnel's husbandry experience with the same or similar bird species.
15. Three letters of endorsement are required for the breeding or display program. If the program involves removal of the bird from the wild, one of these letters shall be from the scientific authority in the country from which the exotic bird will be removed.
16. A description, including photographs or diagrams, of the shipping methods and enclosure to be used to transport the bird including feeding and care during transport.

The Service will consider the following when evaluating applications:

1. Determine whether the zoological breeding or display program would enhance the conservation of the species— if it is adequate to justify removing the bird from the wild.
2. Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild, including whether the bird was captive-bred or was removed from the wild.

whether display program is adequate to justify removing the exotic bird from wild

- the survival of the pop from which we
3. Whether the permit, if issued, would conflict with any known program intended to enhance or promote the conservation of the exotic bird species in the wild or whether the display program, if permitted, would be likely to promote conservation through education efforts for the bird or its habitat.
 4. The opinions or views of scientists or other persons or organizations having expertise concerning the exotic bird or other matters germane to the application.
whether zoological display program has conservation merit
 5. Whether the expertise, facilities, or other resources available to the applicant appear adequate for proper care and maintenance.
 6. Whether the exotic birds will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment.

Duration on face but not more than 1 year.
The application will be published in the Federal Register for public comment.

Permit applications for imports for cooperative breeding programs must include:

1. Persons desiring to import prohibited species for cooperative breeding programs must first be affiliated with a cooperative breeding program approved by the Service.
2. Information about the birds to be imported.
3. Whether the birds are still in the wild or have been removed from the wild or were bred in captivity.
4. Information about the birds' removal from the wild. *Country + region where they will be removed, status in region*
5. If bred in captivity, information about the birds' breeding history. *Foreign collecting permit*
6. Information regarding the breeding protocol. *evidence bird was bred in captivity, identity of parents, hatch date.*
7. The relationship of the applicant to the approved program.
8. Information about the applicant's facility and qualifications.

The detailed information that is required is similar to those requirements for scientific or zoological exemptions, but also qualifying statements on each person in the cooperative program with all applicable details, resumes, and experience will be necessary.

Member of _____ program

The cooperative breeding program must be approved prior to any member submitting an application. Application for a cooperative breeding program must include:

2 entities - Not necessarily US Fed

1. Description of the exotic birds to be imported including common name, scientific name, number, age, and sex ratio.
2. Statement of the reasons the applicant is justified in obtaining this approval, including a description of the cooperative breeding program requested, breeding protocol (including genetic management plan and breeding methods), and a statement on the plans for developing and maintaining a self-sustaining population in captivity of the exotic bird species

3. Details on the system of record keeping and tracking of birds and their progeny.
4. A statement on the relationship of such a breeding program to the conservation of the exotic bird species in the wild.
5. Details on funding the program.
6. Planned disposition of the exotic birds and any progeny.
7. A qualification statement for each individual who will be overseeing the cooperative breeding program. This statement should include information on the individual's prior experience with the same or similar species. Individuals overseeing the program will be required to demonstrate a professional affiliation with the appropriate avicultural, conservation, or zoological organization.
8. Three letters of endorsement are required for the cooperative breeding program. If the program requires removal of any exotic birds from the wild, at least one of these letters shall be from the scientific authority in the country from which the birds will be removed.
9. A statement of oversight of the program by the avicultural, zoological or conservation organization, including their monitoring of participation in the program, criteria for acceptance of individuals in the program, and the relationship of the cooperative breeding program to enhancing the propagation and survival of the species.
10. A history of the cooperative breeding program, including an annual report for the last three years, mortality records, breeding records, and a studbook if one has been developed. if applicable

The Service will consider the following in evaluation of permit applications.

1. Whether the cooperative breeding program for which the approval is requested is adequate to justify removing the exotic bird from the wild or otherwise changing its status.
2. Whether the granting of this approval would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic birds were bred in captivity or will be taken from the wild.
3. Whether the granting of this approval would conflict with any known program intended to enhance the survival of the population from which the exotic bird species was or would be removed.
4. Whether the cooperative breeding program would be likely to enhance or assist the conservation of the exotic bird species in the wild, enhance the propagation and survival of the species, and result in self-sustaining population of the species in captivity.
5. Whether the expertise or other resources available to the program appear adequate to successfully accomplish the objectives stated in the application.

Applications will be published in the Federal Register for public comment.

Cooperative programs will be approved for two years, at which time the applicant may apply for renewal.

The stated intent of congress was that the breeder show that there are no birds of the desired species available in the United States, and that the breeder intends to keep track of the offspring produced by the imported wild-caught birds.

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	Received	Denied	Approved	Pending	
Scientific Research	7	2	2	3	
Wild Breeding	27				
Coop Breeding Programs	11	2	22	3	1 AI
Coop Breeding Import	8		5	3	
			5	3	

Association of Avian Veterinarians

Pet Birds

630

528

76

16

673

562

At the time of writing (2 1/2 years after passage of the act), there are no approved cooperative breeding programs that deal with pet-trade species of exotic birds. The regulations make it impossible to obtain approval of a program which would supply the pet trade, even though this is clearly the intent of Congress. The only programs that have been approved are for one for an eagle, two for falcons, and one very restrictive one for toucans.

Section 115: Marking and Record Keeping

A public hearing was held in Arlington VA on April 10, 1994, to discuss this section of the Act.

Section 115(b) of the act, "Avoiding Deterrence of Breeding" states that "the Secretary shall seek to ensure that regulations promulgated under this section will not have the effect of deterring captive breeding of exotic birds."

Summary

The intent of Congress was clearly to limit the importation of wild-caught birds that were taken out of their natural habitat and imported into the United States. It was also clearly stated in the Act that the Act should not deter captive breeding. The impact of the act, however, does not appear to be consistent with the Congressional intent.

"The working group concluded that 'the international trade of wild-caught birds for use as pets is contributing to the decline of some species in the wild.' They recommended that the United States, the principal market for wild-caught birds for the pet trade, reduce its reliance on wild-bird populations and, within five years, replace the wild-caught birds with captive-bred birds for the purposes of the pet trade..."

Under the proposed and final regulations promulgated by the USFWS, the above goal is ^{difficult} impossible. The replacement of wild-caught birds for the pet trade by those that are captive-bred would require legal importation of captive-bred birds for use as breeding stock, both in official and loose-knit cooperative breeding situations. Restrictive rules are not conducive to the development of long term, self sustaining, captive populations of birds. Prohibiting the import of captive-bred birds is clearly not the intent of Congress; however, it may be the intent of USFWS.

The WBCA has not accomplished the goals of:

1. Providing assistance to countries of origin of exotic birds. - No money
2. Establishing programs aimed at the conservation of birds in their native habitats - Pending Propo R
3. Reducing illegal trade in birds (worldwide), and therefore it has not reduced inhumane treatment and transportation of exotic birds.

USFWS enforcement of the WBCA has:

1. ^{Limited} ~~Stopped~~ all legal trade (into the US) in CITES listed species.
2. Assigned restrictions to the trade in captive-bred birds which were intended for wild-caught birds.
3. Added words to the regulations (not included in the act) which make it virtually impossible to import captive-bred birds.

4. Ignored congressional intent to "not deter captive breeding."
5. Ignored Congressional intent that "paperwork burden required of participating captive breeding facilities be minimized."
6. Virtually prohibited the importation of legitimate captive-bred birds or wild-caught birds under the exemptions for scientific research, zoological display, or cooperative breeding programs by making application and compliance difficult if ~~not impossible~~ for most citizens.
7. Not complied with timely promulgation of regulations to enforce the Act.

The WBCA will be re-authorized in 1995. At the time of writing (April, 1995) avicultural organizations are spearheading a letter writing campaign to influence Congress for amendment or repeal.

Oct. 23, 1992
[H. R. 5013]

To promote the conservation of wild exotic birds, to provide for the Great Lakes Fish and Wildlife Tissue Bank, to reauthorize the Fish and Wildlife Conservation Act of 1980, to reauthorize the African Elephant Conservation Act, and for other purposes.

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

Wild Bird
Conservation
Act of 1992.

TITLE I—WILD EXOTIC BIRD CONSERVATION

16 USC 4901
note.

SEC. 101. SHORT TITLE.

This title may be cited as the "Wild Bird Conservation Act of 1992".

16 USC 4901.

SEC. 102. FINDINGS.

The Congress finds the following:

- (1) In addition to habitat loss and local use, the international pet trade in wild-caught exotic birds is contributing to the decline of species in the wild, and the mortality associated with the trade remains unacceptably high.
- (2) The United States, as the world's largest importer of exotic birds and as a Party to the Convention, should play a substantial role in finding effective solutions to these problems, including assisting countries of origin in implementing programs of wild bird conservation, and ensuring that the market in the United States for exotic birds does not operate to the detriment of the survival of species in the wild.
- (3) Sustainable utilization of exotic birds has the potential to create economic value in them and their habitats, which will contribute to their conservation and promote the maintenance of biological diversity generally.
- (4) Utilization of exotic birds that is not sustainable should not be allowed.
- (5) Broad international attention has focused on the serious conservation and welfare problems which currently exist in the trade in wild-caught animals, including exotic birds.
- (6) Many countries have chosen not to export their wild birds for the pet trade. Their decisions should be respected and their efforts should be supported.
- (7) Several countries that allow for the export of their wild birds often lack the means to develop or effectively implement scientifically based management plans, and these countries should be assisted in developing and implementing management plans to enable them to ensure that their wild bird trade is conducted humanely and at sustainable levels.
- (8) The major exotic bird exporting countries are Parties to the Convention.

plans, and appropriate remedial measures for species listed in Appendix II of the Convention are not always being undertaken in order to maintain species at levels above which they might become eligible for inclusion in Appendix I of the Convention.

(11) Resolutions adopted pursuant to the Convention recommend that the Parties to the Convention take appropriate measures regarding trade in species of exotic birds that have significantly high mortality rates in transport, including suspension of trade for commercial purposes between Parties when appropriate.

(12) Article XIV provides that the Convention in no way affects the right of any Party to the Convention to adopt stricter domestic measures for the regulation of trade in all species, whether or not listed in an Appendix to the Convention.

(13) The United States prohibits the export of all birds native to the United States that are caught in the wild.

(14) This title provides a series of nondiscriminatory measures that are necessary for the conservation of exotic birds, and furthers the obligations of the United States under the Convention.

SEC. 103. STATEMENT OF PURPOSE.

The purpose of this title is to promote the conservation of exotic birds by—

- (1) assisting wild bird conservation and management programs in the countries of origin of wild birds;
- (2) ensuring that all trade in species of exotic birds involving the United States is biologically sustainable and is not detrimental to the species;
- (3) limiting or prohibiting imports of exotic birds when necessary to ensure that—
 - (A) wild exotic bird populations are not harmed by removal of exotic birds from the wild for the trade; or
 - (B) exotic birds in trade are not subject to inhumane treatment; and
 - (4) encouraging and supporting effective implementation of the Convention.

SEC. 104. DEFINITIONS.

In this title—

(1) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, as amended, signed in Washington on March 3, 1973, and the Appendices thereto.

(2) The term "exotic bird"—

- (A) means any live or dead member of the class Aves that is not indigenous to the 50 States or the District of Columbia, including any egg or offspring thereof; and
- (B) does not include—
 - (i) domestic poultry, dead sport-hunted birds, dead museum specimens, dead scientific specimens, or products manufactured from such birds; or

(ii) birds in the following families: Phasianidae, Numididae, Cracidae, Meleagrididae, Megapodiidae, Anatidae, Struthionidae, Rheidae, Dromatidae, and Gruidae.

(3) Each of the terms "import" and "importation" 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 United States.

(4) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

(5) The term "qualifying facility" means an exotic bird breeding facility that is included in a list published by the Secretary under section 107.

(6) The term "Secretary" means the Secretary of the Interior or a designee of the Secretary of the Interior.

(7) The term "species" —
(A) means any species, any subspecies, or any distinct population segment of a species or subspecies; and
(B) includes hybrids of any species or subspecies.

(8) The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

16 USC 4904 SEC. 105. MORATORIA ON IMPORTS OF EXOTIC BIRDS COVERED BY CONVENTION.

(a) IMMEDIATE MORATORIUM.—

(1) ESTABLISHMENT OF MORATORIUM.—The importation of any exotic bird of a species identified as a category B species in the report entitled "Report of the Animals Committee," adopted by the 8th meeting of the Conference of the Parties to the Convention, is prohibited.

(2) TERMINATION OF MORATORIUM.—A species of exotic birds shall be subject to the prohibition on importation established by paragraph (1) until the Secretary, after notice and an opportunity for public comment—

(A) determines that appropriate remedial measures have been taken in the countries of origin for that species, so as to eliminate the threat of trade to the conservation of the species; and

(B) makes the findings described in section 106(c) for the species and includes the species in the list published under section 106(a).

(b) EMERGENCY AUTHORITY TO SUSPEND IMPORTS OF LISTED SPECIES.—

(1) AUTHORITY TO SUSPEND IMPORTS.—The Secretary is authorized to suspend the importation of exotic birds of any species that is listed in any Appendix to the Convention, and if applicable remove the species from the list under section 106(a), if the Secretary determines that—

(A)(i) trade in that species is detrimental to the species,

(ii) there is not sufficient information available on which to base a judgment that the species is not detrimentally affected by trade in that species, or

(iii) remedial measures have been recommended by the Standing Committee of the Convention that have not been implemented; and

(B) the suspension might be necessary for the conservation of the species.

(2) TERMINATION OF SUSPENSION.—A species of exotic birds shall be subject to a suspension of importation under paragraph (1) until the Secretary, after notice and an opportunity for public comment, makes the findings described in section 106(c) and includes the species in the list published under section 106(a).

(c) MORATORIUM AFTER ONE YEAR FOR OTHER SPECIES LISTED IN APPENDICES.—Effective on the date that is one year after the date of the enactment of this Act, the importation of any exotic bird of a species that is listed in any Appendix to the Convention is prohibited unless the Secretary makes the findings described in section 106(c) and includes the species in the list published under section 106(a).

(d) LIMITATION ON NUMBER IMPORTED DURING FIRST YEAR.—Notwithstanding any other provision of this Act, the Secretary shall prohibit the importation, during the 1-year period beginning on the date of the enactment of this Act, of exotic birds of each species that is listed under any Appendix to the Convention in excess of the number of that species that were imported during the most recent year for which the Secretary has complete import data.

16 USC 4905 SEC. 106. LIST OF APPROVED SPECIES.

(a) LISTING.—

(1) IN GENERAL.—One year after the date of enactment of this Act and periodically thereafter, the Secretary shall, after notice and an opportunity for public comment, publish in the Federal Register a list of species of exotic birds that are listed in an Appendix to the Convention and that are not subject to a prohibition or suspension of importation otherwise applicable under section 105 (a), (b), or (c).

(2) MANNER OF LISTING.—The Secretary shall list a species under paragraph (1) with respect to—

(A) the countries of origin from which the species may be imported; and

(B) if appropriate, the qualifying facilities in those countries from which the species may be imported.

(3) BASES FOR DETERMINATIONS.—In making a determination required under this subsection, the Secretary shall—

(A) use the best scientific information available; and

(B) consider the adequacy of regulatory and enforcement mechanisms in all countries of origin for the species, including such mechanisms for control of illegal trade.

(b) CAPTIVE BRED SPECIES.—The Secretary shall include a species of exotic birds in the list under subsection (a) if the Secretary determines that—

(1) the species is regularly bred in captivity and no wild-caught birds of the species are in trade; or

(2) the species is bred in a qualifying facility.

(c) **NON-CAPTIVE BRED SPECIES.**—The Secretary shall include in the list under subsection (a) a species of exotic birds that is listed in an Appendix to the Convention if the Secretary finds the Convention is being effectively implemented with respect to that species because of each of the following:

- (1) Each country of origin for which the species is listed is effectively implementing the Convention, particularly with respect to—
 - (A) the establishment of a scientific authority or other equivalent authority;
 - (B) the requirements of Article IV of the Convention with respect to that species; and
 - (C) remedial measures recommended by the Parties to the Convention with respect to that species.
- (2) A scientifically-based management plan for the species has been developed which—

- (A) provides for the conservation of the species and its habitat and includes incentives for conservation;
 - (B) ensures that the use of the species is biologically sustainable and maintained throughout the range of the species in the country to which the plan applies at a level that is consistent with the role of the species in the ecosystem and is well above the level at which the species might become threatened with extinction; and
 - (C) addresses factors relevant to the conservation of the species, including illegal trade, domestic trade, subsistence use, disease, and habitat loss.
- (3) The management plan is implemented and enforced.
 - (4) The methods of capture, transport, and maintenance of the species minimizes the risk of injury or damage to health, including inhumane treatment.

16 USC 4906.

SEC. 107. QUALIFYING FACILITIES.

(a) **DETERMINATION.**—Upon submission of a petition under section 110 by any person, the Secretary shall determine whether an exotic bird breeding facility is a qualifying facility. Such determination shall be effective for a period specified by the Secretary, which may not exceed 3 years. The Secretary shall, from time to time, publish a list of qualifying facilities in the Federal Register.

(b) **CRITERIA.**—The Secretary shall determine under subsection (a) that a facility is a qualifying facility for a species of exotic birds if the Secretary finds each of the following:

- (1) The facility has demonstrated the capability of producing captive bred birds of the species in the numbers to be imported into the United States from that facility.
- (2) The facility is operated in a manner that is not detrimental to the survival of the species in the wild.
- (3) The facility is operated in a humane manner.
- (4) The appropriate governmental authority of the country in which the facility is located has certified in writing, and the Secretary is satisfied, that the facility has the capability of breeding the species in captivity.
- (5) The country in which the facility is located is a Party to the Convention.
- (6) All birds exported from the facility are bred at the

Federal
Register,
publication

16 USC 1907

SEC. 108. MORATORIA FOR SPECIES NOT COVERED BY CONVENTION.

(a) **IN GENERAL.**—The Secretary shall—

- (1) review periodically the trade in species of exotic birds that are not listed in any Appendix to the Convention; and
- (2) after notice and an opportunity for public comment, establish a moratorium or quota on—

(A) importation of any species of exotic birds from one or more countries of origin for the species, if the Secretary determines that—

- (i) the findings described in section 106(c) (2), (3), and (4) cannot be made with respect to the species; and

(ii) the moratorium or quota is necessary for the conservation of the species or is otherwise consistent with the purpose of this title; or

(B) the importation of all species of exotic birds from a particular country, if—

- (i) the country has not developed and implemented a management program for exotic birds in trade generally, that ensures both the conservation and the humane treatment of exotic birds during capture, transport, and maintenance; and

(ii) the Secretary finds that the moratorium or quota is necessary for the conservation of the species or is otherwise consistent with the purpose of this title.

(b) **TERMINATION OF QUOTA OR MORATORIUM.**—The Secretary shall terminate a quota or moratorium established under subsection (a) if the Secretary finds that the reasons for establishing the quota or moratorium no longer exist.

SEC. 109. CALL FOR INFORMATION.

Within one month after the date of the enactment of this Act, the Secretary shall issue a call for information on the wild bird conservation program of each country that exports exotic birds, by—

- (1) publishing a notice in the Federal Register requesting submission of such information to the Secretary by all interested persons; and

(2) submitting a written request for such information through the Secretary of State to each country that exports exotic birds.

SEC. 110. PETITIONS.

(a) **IN GENERAL.**—Any person may at any time submit to the Secretary a petition in writing requesting that the Secretary exercise authority of the Secretary under this title to—

- (1) establish, modify, or terminate any prohibition, suspension, or quota under this title on importation of any species of exotic bird;
- (2) add a species of exotic bird to, or remove such a species from, a list under section 106; or
- (3) determine under section 107 whether an exotic bird breeding facility is a qualifying facility.

(b) **CONSIDERATION AND RULING.**—For each petition submitted to the Secretary in accordance with subsection (a), the Secretary

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16 USC 1909

(1) within 90 days after receiving the petition, issue and publish in the Federal Register a preliminary ruling regarding whether the petition presents sufficient information indicating that the action requested in the petition might be warranted; and

(2) for each petition determined to present such sufficient information—

(A) provide an opportunity for the submission of public comment on the petition; and

(B) issue and publish in the Federal Register a final ruling on the petition, by not later than 90 days after the end of the period for public comment.

16 USC 4910.

SEC. 111. PROHIBITED ACTS.

(a) PROHIBITIONS.—

(1) IN GENERAL.—Subject to paragraph (2), it is unlawful for any person to—

(A) import any exotic bird in violation of any prohibition, suspension, or quota on importation under section 106 or 108;

(B) import an exotic bird of a species that pursuant to section 106(a)(2)(B) is included in a list under section 106, if the bird was not captive bred at a qualifying facility; or

(C) violate any regulation promulgated by the Secretary pursuant to authority provided by this title.

(2) LIMITATION.—Paragraph (1) (A) and (B) does not apply to importations made incident to the transit of exotic birds through the United States to foreign countries if the applicable requirements of the Convention have been satisfied with respect to the trade in those exotic birds.

(b) BURDEN OF PROOF FOR EXEMPTIONS.—Any person claiming the benefit of any exemption or permit under this title shall have the burden of proving that the exemption or permit is applicable or has been granted, and was valid and in force at the time of the alleged violation.

16 USC 4911.

SEC. 112. EXEMPTIONS.

Notwithstanding any prohibition, suspension, or quota under this title on the importation of a species of exotic bird, the Secretary may, through the issuance of import permits, authorize the importation of a bird of the species if the Secretary determines that such importation is not detrimental to the survival of the species and the bird is being imported exclusively for any of the following purposes:

(1) Scientific research.

(2) As a personally owned pet of an individual who is returning to the United States after being continuously out of the country for a minimum of one year, except that an individual may not import more than 2 exotic birds under this paragraph in any year.

(3) Zoological breeding or display programs.

(4) Cooperative breeding programs that are—
(A) designed to promote the conservation of the species and maintain the species in the wild by enhancing the propagation and survival of the species; and

(B) developed and administered by, or in conjunction with, an avicultural, conservation, or zoological organization that meets standards developed by the Secretary.

SEC. 113. PENALTIES AND REGULATIONS.

(a) PENALTIES.—

(1) CIVIL PENALTIES.—

(A) Any person who knowingly violates, and any person engaged in business as an importer of exotic birds who violates, section 111(a) (1) or (2) or any permit issued under section 112 may be assessed a civil penalty by the Secretary of not more than \$25,000 for each violation.

(B) Any person who knowingly violates, and any person engaged in business as an importer of exotic birds who violates, section 111(a)(3) may be assessed a civil penalty by the Secretary of not more than \$12,000 for each such violation.

(C) Any person who otherwise violates section 111(a) or any permit issued under section 112 may be assessed a civil penalty by the Secretary of not more than \$500 for each such violation.

(D) A civil penalty under this section shall be assessed, and may be collected, in the manner in which a civil penalty under the Act of December 28, 1973 (Public Law 93-205), may be assessed and collected under section 111(a) of that Act.

(2) CRIMINAL PENALTIES.—

(A) Any person who knowingly violates, and any person engaged in business as an importer of exotic birds who violates, section 111(a) (1) or (2) or any permit issued under section 112 shall be fined under title 18, United States Code, or imprisoned for not more than 2 years, or both.

(B) Any person who knowingly violates section 111(a)(3) shall be fined under title 18, United States Code, imprisoned not more than 6 months, or both.

(b) DISTRICT COURT JURISDICTION.—The several district courts of the United States, including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any action arising under this title. For the purposes of this title, American Samoa shall be included in the Judicial District of the District Court of the United States for the District of Hawaii, and the Trust Territory of Palau and the Northern Marianas shall be included in the Judicial District of the District Court of the United States for the District of Guam.

(c) OTHER ENFORCEMENT.—The importation of an exotic bird is deemed to be transportation of wildlife for purposes of section 3(a) of the Lacey Act Amendments of 1981 (16 U.S.C. 3372(a)).

(d) REGULATIONS.—The Secretary shall prescribe regulations that are necessary and appropriate to carry out the purposes of this title.

(e) SAVINGS PROVISIONS.—The authority of the Secretary under this title is in addition to and shall not affect the authority of the Secretary under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or diminish the authority of the Secretary under the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.). Nothing

in this title shall be construed as repealing, superseding, or modifying any provision of Federal law.

16 USC 4913

SEC. 114. EXOTIC BIRD CONSERVATION ASSISTANCE.

(a) ASSISTANCE.—The Secretary, subject to the availability of appropriations, shall use amounts in the Exotic Bird Conservation Fund established by subsection (b) to provide financial and technical assistance for projects to conserve exotic birds in their native countries. In selecting projects for assistance, the Secretary shall give particular attention to species that are subject to an import moratorium or quota under this title, in order to assist those countries in the development and implementation of conservation management programs, or law enforcement, or both.

(b) FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury a separate account, which shall be known as the "Exotic Bird Conservation Fund".

(2) CONTENTS.—The Fund shall consist of—

(A) all amounts received by the United States in the form of penalties, fines, or forfeiture of property collected under this title in excess of the cost of paying rewards under section 113(c);

(B) donations received by the Secretary for exotic bird conservation; and

(C) such amounts as are appropriated to the Secretary for conserving exotic birds.

(c) REVIEW AND REPORT ON OTHER CONSERVATION OPPORTUNITIES.—The Secretary, in consultation with appropriate representatives of industry, the conservation community, the Secretariat of the Convention, and other national and international bodies, shall—

(i) review opportunities for a voluntary program of labeling exotic birds, certification of exotic bird breeding facilities and retail outlets, and provision of privately organized or funded technical assistance to other nations; and

(2) report to the Congress the results of this review within 2 years after the date of enactment of this Act.

Regulations.
16 USC 4914

SEC. 116. MARKING AND RECORDKEEPING.

(a) IN GENERAL.—The Secretary is authorized to promulgate regulations to require marking or recordkeeping that the Secretary determines will contribute significantly to the ability of the Secretary to ensure compliance with the prohibitions of section 111, for—

(1) any exotic bird that is imported after the date of enactment of this Act; or

(2) any other exotic bird that is—

(A) hatched after the date of the enactment of this Act;

(B) offered for sale; and

(C) of a species—

(i) the export of which from any country of origin is prohibited; and

(ii) that is subject to a high level of illegal trade.

(b) AVOIDING DEFERENCE OF BREEDING.—The Secretary shall seek to ensure that regulations promulgated under this section will not have the effect of deterring exotic breeding of exotic

SEC. 116. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary \$5,000,000 for each of the fiscal years 1993, 1994, and 1995 to carry out this title, to remain available until expended.

SEC. 117. RELATIONSHIP TO STATE LAW.

Nothing in this title may be construed as precluding the regulation under State law of the sale, transfer, or possession of exotic birds if such regulation—

(1) does not authorize any sale, transfer, or possession of exotic birds that is prohibited under this title; and

(2) is consistent with the international obligations of the United States.

LEGISLATIVE HISTORY—H.R. 5013.

HOUSE REPORTS: No. 102-749, Pt. 1 (Comm. on Merchant Marine and Fisheries) and Pt. 2 (Comm. on Ways and Means).
CONGRESSIONAL RECORD, Vol. 138 (1992):
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