

Quick-Reference Legal Summary

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Federal Wildlife and Related Laws Handbook; Chapter 4. Statute Summaries

WILD BIRD CONSERVATION ACT OF 1992

16 U.S.C. §§ 4901-4916, October 23, 1992.

Overview. This Act provides a series of measures to conserve exotic birds and fulfill the obligations of the U.S. under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Act includes provisions to limit or prohibit U.S. imports of exotic bird species covered by the Convention and authorizes moratoria on the importation of species not covered by the Convention. It also sets standards for qualifying bird breeding facilities and establishes the Exotic Bird Conservation Fund.

Findings/Policy. Congress finds that: 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; the U.S., as the world's largest importer of exotic birds and as a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, should play a substantial role in finding solutions to these problems, including assisting countries of origin to implement wild bird conservation programs and ensuring that the U.S. market does not operate to the detriment of the survival of species in the wild; 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; utilization of exotic birds that is not sustainable should not be allowed; broad international attention has focused on the serious conservation and welfare problems which exist in the trade in wild-caught animals, including exotic birds; a country's decision not to export its wild birds for the pet trade should be respected and its efforts supported; countries that allow export of their wild birds should be assisted in developing or implementing scientifically-based management plans; the major exotic bird exporting countries are parties to the Convention; the Convention recognizes that trade in species threatened with extinction should be subject to strict regulations; the necessary population assessments, monitoring programs and appropriate remedial measures for species listed in appendix II of the Convention are not always being undertaken to maintain species at levels above which they might become eligible for inclusion in appendix I; resolutions adopted pursuant to the Convention recommend that the parties 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; Article XIV provides that the Convention in no way affects the right of any party to adopt stricter domestic measures for regulating trade in all species, whether or not listed in an appendix to the Convention; the U.S. prohibits the export of birds native to the U.S. that are caught in the wild; the Act provides a series of nondiscriminatory measures for conserving exotic birds, and furthers the obligations of the U.S. under the Convention. § 4901

The purpose of the Act is to promote the conservation of exotic birds by: assisting wild bird conservation and management programs in the countries of origin of wild birds; ensuring that trade in species of exotic birds involving the U.S. is biologically sustainable and is not detrimental to the species; limiting or prohibiting imports of exotic birds when necessary to ensure that wild exotic bird populations are not harmed by removal of exotic birds from the wild for trade, or exotic birds in trade are not subject to inhumane treatment; encouraging and supporting effective implementation of the Convention. § 4902.

Selected Definitions. Convention: Convention on International Trade in Endangered Species of Wild Fauna and Flora. Exotic bird: 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 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 families *phasianidae*, *numididae*, *cracidae*, *meleagrididae*, *megapodiidae*, *antidae*, *struthionidae*, *rheidae*, *dromaiinae*, and *gruidae*. Import and importation: to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to U.S. jurisdiction. Person: any entity subject to U.S. jurisdiction. Qualifying facility: an exotic bird breeding facility that is included in a list published by the Secretary under the Act. Secretary: the Secretary of the Interior or a designee. Species: a species, subspecies, or distinct population segment of a species or subspecies, including hybrids of a species or subspecies. U.S.: 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. § 4903. ...continued



List of Approved Species. The Act directs the Secretary to publish, by October 1993, and periodically thereafter, a list of species of exotic birds that are listed in an appendix to the Convention and not subject to an import prohibition or suspension under the Act. The list is to include species that are regularly bred in captivity, with no wild-caught specimens in trade, or are bred in a qualifying facility and non-captive bred species for which the Secretary determines the Convention is being effectively implemented. For each non-captive bred species, the Secretary must find that: each country of origin for which the species is listed is effectively implementing the Convention; a scientifically-based management plan has been developed; the plan is being implemented and enforced; the methods of capture, transport and maintenance minimize the risk of injury and damage to health, including inhumane treatment. § 4905.

Moratoria on Imports of Exotic Birds Covered by Convention. The Act prohibits importing an exotic bird identified as a category B species in Report of the Animals Committee adopted by the 8th meeting of the Conference of the Parties to the Convention. A species is subject to the prohibition until the Secretary determines that the countries of origin have taken appropriate remedial measures to eliminate the threat of trade to the conservation of the species and includes the species on the Secretary's published list.

The Secretary may suspend the importation of exotic bird species listed in an appendix to the Convention and, if applicable, remove the species from the Secretary's published list if the Secretary determines that trade in the species is detrimental to the species, there is not sufficient information on which to base a judgment that the species is not detrimentally affected by trade in the species, or remedial measures recommended by the Standing Committee of the Convention have not been implemented and the suspension might be necessary for conservation of the species. A species is subject to the import suspension until it is included on the Secretary's list.

The Act prohibits importing an exotic bird of a species listed in an appendix to the Convention unless the Secretary includes the species on the published list. § 4904

Moratoria for Species Not Covered by the Convention. The Act requires the Secretary to review periodically the trade in species of exotic birds that are not listed in an appendix to the Convention. The Secretary is also required under specified circumstances to establish a moratorium or quota on importing a species of exotic birds from one or more countries of origin or on importing all species from a particular country. § 4907.

Qualifying Facilities. The Act requires the Secretary, upon petition, to determine whether an exotic bird breeding facility is a qualifying facility as defined in the Act. The determination is effective for up to three years. The Secretary must determine that a facility is a qualifying facility for a species of exotic birds under certain conditions, including the following: the facility has demonstrated the capability of producing captive bred birds of the species in the numbers to be imported into the U.S. from that facility; the facility is operated in a manner that is not detrimental to the survival of the species in the wild; the facility is operated in a humane manner. § 4906.

Call for Information. By November 23, 1992, the Secretary must issue a call for information on the wild bird conservation program of each country that exports exotic birds. § 4908.

Petitions. Any person may submit to the Secretary a petition requesting that the Secretary exercise authority to: establish, modify or terminate any prohibition, suspension or quota under the Act on importing any species of exotic bird; add or remove a species of exotic bird from the Secretary's published list; determine whether an exotic bird breeding facility is a qualifying facility. § 4909.

Prohibited Acts and Enforcement. It is unlawful to: import an exotic bird in violation of a prohibition, suspension or quota; import an exotic bird of a species that is included on the Secretary's published list, if the bird was not captive bred at a qualifying facility; violate any regulation promulgated by the Secretary pursuant to the Act. The Act provides for civil penalties involving fines or imprisonment, or both. The U.S. district courts have jurisdiction over all actions arising under the Act. §§ 4910 and 4912.

The Act authorizes the Secretary to promulgate regulations to carry out the purposes of the Act. It also authorizes regulations specifically to require marking or recordkeeping that will contribute significantly to the Secretary's ability to ensure compliance with the prohibitions. §§ 4912, 4914.

Exemptions. The Secretary may, through the issuance of import permits, authorize the importation of a bird of a species subject to a prohibition, suspension or quota, if the Secretary determines that: the importation is not detrimental to the survival of the species; the bird is being imported exclusively for scientific research, zoological breeding or display programs, cooperative breeding programs, with certain qualifications, or as a personally owned pet. § 4911.

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Exotic Bird Conservation Assistance. The Act establishes the Exotic Bird Conservation Fund, which is to consist of amounts received by the U.S. in the form of penalties and fines collected under the Act, donations for exotic bird conservation, and appropriated amounts. The Secretary is to use the Fund to provide financial assistance for projects to conserve exotic birds in their native countries. The Secretary is also directed to review opportunities for a voluntary program of labeling exotic species, certification of exotic bird breeding facilities and retail outlets, and provision of privately organized or funded technical assistance to other nations, and to report the results of the review to Congress by October 1994. § 4913.

Relationship to State Law. The Act does not preclude states from regulating the sale, transfer or possession of exotic birds if the state regulation does not authorize sale, transfer or possession of exotic birds prohibited under this Act and is consistent with the international obligations of the U.S. § 4916.

Appropriations Authorized. The Act authorizes to be appropriated \$5,000,000 for each of the fiscal years 1993, 1994 and 1995. § 4915.

Suggested in-text citation and full reference:

(16 U.S.C. 4901 et seq.)

16 U.S.C. §§ 4901-4916. Wild Bird Conservation Act of 1992. Pub. L. 102-440, title I, Sec. 102, Oct. 23, 1992, 106 Stat. 2224.

