

**U.S. Fish & Wildlife Service, International Affairs
Public Law 102-440 October 23, 1992
Wild Exotic Bird Conservation,
Great Lakes Fish and Wildlife Tissue Bank,
Fish and Wildlife Conservation,
African Elephant Conservation
106 STAT. 2224 PUBLIC LAW 102-440-OCT. 23,1992**

**PUBLIC LAW 102-440
102d Congress
An Act
October 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.

(9) The Convention recognizes that trade in species that are threatened with extinction, or that may become so, should be subject to strict regulations.

(10) The necessary population assessments, monitoring programs, 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.

16 USC 4902 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.

16 USC 4903 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, Dromaiinae, 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 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.

Federal Register publications

(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 Determination.- In making a determination required under the 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.

Federal Register publications

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 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 facility.

16 USC 4907 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 exists.

16 USC 4908

Federal Register publication

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.

16 USC 4909

Federal Register publications

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 shall-

- (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 105 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.

16 USC 4912 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-

(1) 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. 115. MARKING AND RECORD KEEPING.

(a) In General.- The Secretary is authorized to promulgate regulations to require marking or record keeping 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 Deterrence of Breeding.- The Secretary shall seek to ensure that regulations promulgated under this section will not have the effect of deterring captive breeding of exotic birds.

16 USC 4915 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.

16 USC 4916 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):

Aug 11, considered and passed House.

Sept 30, considered and passed Senate, amended.

Oct. 5, House concurred in Senate amendments.