

§ 4910. 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 4904 or 4907 of this title;

(B) import an exotic bird of a species that pursuant to section 4905(a)(2)(B) of this title is included in a list under section 4905 of this title, 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 chapter.

(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 chapter 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. (Pub. L. 102-440, title I, § 111, Oct. 23, 1992, 106 Stat. 2230.)

§ 4911. Exemptions

Notwithstanding any prohibition, suspension, or quota under this chapter 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.

(Pub. L. 102-440, title I, § 112, Oct. 23, 1992, 106 Stat. 2230.)

§ 4912. 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 4910(a)(1) or (2)¹ of this title or any permit issued under section 4911 of this title 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 4910(a)(3)² of this title 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 4910(a) of this title or any permit issued under section 4911 of this title 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) [16 U.S.C. 1531 et seq.], may be assessed and collected under section 111(a)³ of that Act [16 U.S.C. 1540(a)].

(2) Criminal penalties

(A) Any person who knowingly violates, and any person engaged in business as an importer of exotic birds who violates, section 4910(a)(1) or (2)¹ of this title or any permit issued under section 4911 of this title shall be fined under title 18 or imprisoned for not more than 2 years, or both.

(B) Any person who knowingly violates section 4910(a)(3)² of this title shall be fined under title 18, 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, shall have jurisdiction over any action arising under this chapter. For the purposes of this chapter, 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 chapter.

(e) Savings provisions

The authority of the Secretary under this chapter 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.

¹ So in original. Probably should be section “4910(a)(1)(A) or (B)”.

² So in original. Probably should be section “4910(a)(1)(C)”.

³ So in original. Probably should be section “11(a)”.

3371 et seq.). Nothing in this chapter shall be construed as repealing, superseding, or modifying any provision of Federal law.

(Pub. L. 102-440, title I, §113, Oct. 23, 1992, 106 Stat. 2231.)

REFERENCES IN TEXT

Act of December 28, 1973, referred to in subsec. (a)(1)(D), and the Endangered Species Act of 1973, referred to in subsec. (e), are Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Lacey Act Amendments of 1981, referred to in subsec. (e), is Pub. L. 97-79, Nov. 16, 1981, 95 Stat. 1073, which is classified principally to chapter 53 (§3371 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3371 of this title and Tables.

TERMINATION OF TRUST TERRITORY

For termination of Trust Territory of Palau and Northern Marianas, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 4913. 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) of this section 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 chapter, 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 chapter in excess of the cost of paying rewards under section 4912(c) of this title;

(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 October 23, 1992.

(Pub. L. 102-440, title I, §114, Oct. 23, 1992, 106 Stat. 2232.)

§ 4914. 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 4910 of this title, for—

(1) any exotic bird that is imported after October 23, 1992; or

(2) any other exotic bird that is—

(A) hatched after October 23, 1992;

(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.

(Pub. L. 102-440, title I, §115, Oct. 23, 1992, 106 Stat. 2232.)

§ 4915. 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 chapter, to remain available until expended.

(Pub. L. 102-440, title I, §116, Oct. 23, 1992, 106 Stat. 2233.)

§ 4916. Relationship to State law

Nothing in this chapter 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 chapter; and

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

(Pub. L. 102-440, title I, §117, Oct. 23, 1992, 106 Stat. 2233.)

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