

(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.

(Pub. L. 102-440, title I, §106, Oct. 23, 1992, 106 Stat. 2227.)

§ 4906. Qualifying facilities**(a) Determination**

Upon submission of a petition under section 4909 of this title by any person, the Secretary shall determine whether an exotic bird breeding facility is a qualifying facility. Such determina-

tion 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 facility.

(Pub. L. 102-440, title I, §107, Oct. 23, 1992, 106 Stat. 2228.)

§ 4907. 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 4905(c)(2), (3), and (4) of this title 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 chapter; 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 chapter.

(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.

(Pub. L. 102-440, title I, §108, Oct. 23, 1992, 106 Stat. 2229.)

§ 4908. Call for information

Within one month after October 23, 1992, 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.

(Pub. L. 102-440, title I, §109, Oct. 23, 1992, 106 Stat. 2229.)

§ 4909. 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 chapter to—

- (1) establish, modify, or terminate any prohibition, suspension, or quota under this chapter 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 4905 of this title; or
- (3) determine under section 4906 of this title 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.

(Pub. L. 102-440, title I, §110, Oct. 23, 1992, 106 Stat. 2229.)

§ 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

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

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