

# H.R. 5013

## Wild Bird Conservation Act of 1992

*Congressional Record—House*  
August 11, 1992

Mr. Studds. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5013), a bill to promote the conservation of exotic wild birds, as amended.

The Clerk read as follows:

**H.R. 5013**

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

### TITLE I—

#### WILD EXOTIC BIRD CONSERVATION

##### SEC. 101. SHORT TITLE

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

##### 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 regulation.

(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 non-discriminatory 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 treatments; 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, Dromaiidae, 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 to, 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

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#### 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.

#### SEC. 106. LIST OF APPROVED SPECIES

##### (a) *Listing* —

(1) *In general* — One year after the date of enactment of this Act and periodically there-

after, 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.

#### 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 facility.

#### 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 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.

#### 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 106;

(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* – A 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.

#### 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.

#### 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.

#### SEC. 115. 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 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.

#### 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. ●

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# REPORT

## Wild Bird Conservation Act of 1992

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(To accompany H.R. 5013 which on April 29, 1992 was referred jointly to the Committees on Merchant Marine and Fisheries and Ways and Means)

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 5013) a bill to promote the conservation of exotic wild birds, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

(Note: The copy of the Act printed in the Report has been intentionally deleted from this copy as it was subsequently replaced by the Act passed by Congress on August 11, 1992.)

### Summary of H.R. 5013

H.R. 5013, as reported by the Committee on Merchant Marine and Fisheries, regulates the importation of birds into the United States to ensure that our imports do not lead to the extinction of bird species in the wild. It provides varying levels of protection for different classes of birds, depending on how threatened they are by trade. It provides immediate protection for birds that have been identified internationally as being under the most serious threat from trade.

For other birds imported into the United States, it provides two tiers of protection, depending on whether trade in the species is regulated by the Convention on the International Trade in Endangered Species of Fauna and Flora (CITES). For those species that are listed as threatened under CITES, it directs the U.S. Fish and Wildlife Service to identify and list those for which the potentially adverse effects of trade are avoided because the species are subject to effective conservation programs in the country of origin. If a CITES-listed species is not on this "approved" list, it cannot be imported into the United States beginning one year from the date of enactment of the bill.

The burden of proof is reversed for birds that are not listed pursuant to CITES. H.R. 5013 authorizes the Secretary of the Interior to ban the importation of these species if there is reason to believe that they are threatened by trade.

Finally, H.R. 5013 authorizes the Secretary to take emergency action to ban the importation of CITES-listed species which may be in trouble due to trade.

### Purpose of the Bill

The purpose of H.R. 5013 is to complement the CITES agreement by regulating imports of wild birds into the United States. Accordingly, in light of the goals of CITES, it is designed to promote the conservation of exotic birds by encouraging wild bird conservation and management programs in bird exporting countries as well as countries that prohibit the export of their wild birds, by ensuring that all trade in

such species involving the United States is biologically sustainable, and by limiting or prohibiting imports of exotic birds when necessary to ensure that exotic wild bird populations are not harmed by removal for the trade. The bill is designed to allow the continuation of sustainable use of exotic birds, based on the premise that such use has the potential to create economic value in the birds and their habitats and can contribute to their conservation.

### Background and Need for Legislation

According to the International Council for Bird Preservation, "While there are a number of reasons for the decline or disappearance of individual species, one of the most persistent and pernicious is the taking of birds in the wild for the cagebird trade. A number of species, particularly parrots, are either extinct or severely endangered due to the almost unrestricted market for them in the United States. One example is the Scarlet Macaw which was once very common in Central America. Now, it is nearly extinct in that area due to the removal of huge numbers of birds from the wild for the pet trade." The primary goal of this bill is to conserve birds in the wild in order to protect their genetic diversity and the integrity of the ecosystems in which they are found.

The majority of birds imported in the U.S. are caught in the wild. In the case of many species, it is much cheaper to import wild birds than to breed them in captivity. The low cost and ready availability of wild-caught birds, coupled with the high prices commanded by the birds once they enter the international retail market, encourages the continued exploitation of wild populations.

The United States imports hundreds of thousands of live birds each year for use as pets, creating approximately \$300 million in retail sales annually. Europe is the second largest importer. The majority of these exotic birds originate in Senegal, Tanzania, Argentina, and Indonesia. The price for the birds ranges from a few dollars to \$30,000, depending on the rarity of the species, its coloration, and its ability to mimic words and "talk." Approximately half the imports are finches and the other half are species of parrots (including parakeets, macaws, cockatiels, cockatoos, and lovebirds). These two groups are affected differently by the trade. Finches are small and relatively inexpensive. They are imported in large numbers and are subject to higher levels of mortality in transport than the parrots. However, they breed rapidly and, for the most part, their wild populations are not declining as a result of the trade. Parrots, on the other hand, are less prolific breeders, and the health of their populations is more greatly impacted by harvest from the wild for the pet trade. It is the parrots that are most widely regulated by international

treaty, since the health of their populations is most threatened by the trade.

### Mortality of Birds in Transport

The average mortality of birds in transport in 1989 was 14%. However, small and inexpensive birds (primarily finches) suffer higher mortality because they are often shipped in overcrowded containers. Approximately one in five of these birds dies during transport or quarantine. The number of birds that die as a result of the trade is significant. In the period from 1980 to 1984, 194,000 birds arrived in the U.S. dead and 512,000 died in quarantine. These figures do not reflect the additional birds that are killed during capture. Although little hard data is available, it is likely that many more birds die when they are captured and shipped in their countries of origin than die during transport to or quarantine in the United States. Depending on the capture and holding methods used, as many as 30% to 50% of wild birds caught for export die before leaving their countries of origin.

### International Regulation of Bird Trade

The trade in many species is regulated under the CITES, an international treaty with over 100 member nations. Approximately 40 species of parrots are considered endangered and are listed on Appendix I to CITES, under which no commercial trade is allowed because those species are threatened with extinction. All of the other 330 species of parrots (except for three species) are listed on Appendix II; trade in these species of birds is restricted because they may become threatened with extinction unless their trade is strictly regulated. Trade is only allowed if the exporting country makes a finding that the trade is not detrimental to the survival of the species in the wild. The three exceptions are two parakeets and a cockatiel, all of which are bred in large numbers in captivity.

CITES has been ineffective in stemming the decline in wild bird populations because many exporting countries lack the resources and/or expertise necessary to perform comprehensive population analyses of their wild bird populations. They are therefore unable to determine whether existing levels of trade are detrimental to the survival of wild avian populations. In many cases, there is evidence that the existing level of trade is resulting in declines in wild populations of certain species, but the evidence is insufficient to list birds on Appendix I. As a result, the birds are traded in very large numbers (while they are listed on Appendix II) until their numbers dwindle to the point that they are endangered enough to warrant an Appendix I listing. This approach, in effect, hampers efforts to keep bird populations at healthy levels since it is not until the birds are pushed to the brink of extinction that trade in them is banned.

Article IV of CITES specifically recognizes the right of each country to enact its own national laws regulating trade in wildlife, in addition to following the trade restrictions embodied in CITES. Australia and New Zealand have banned the export of all native birds for commercial trade, and Brazil and Bolivia have banned the export of all live wildlife. The twelve nations of the European Economic Community (EEC) have adopted a system of regulating birds in which the EEC will not accept bird imports unless it determines that the trade is not detrimental to the wild populations. The EEC evaluates the circumstances on a country-by-country, species-by-species basis,

and has in many cases adopted quotas or refused imports.

The United States does not allow commercial trade in any wild birds that are native to the U.S. In addition, U.S. law (the Lacey Act) prohibits trade in wildlife which is taken or possessed in violation of another country's law.

#### Recent CITES Meeting

At the CITES meeting in Japan earlier this year, the U.S. introduced a resolution that would have temporarily suspended trade in certain species of birds. The resolution recommended that "all Parties (to CITES) suspend trade in shipments of wild-caught Appendix II birds intended to be used for primarily commercial purposes, if they belong to species identified as significantly traded for which there is insufficient information available on which to base a judgment that the species is not being detrimentally affected by such trade." A list of such species was appended to the resolution. That resolution was not adopted and the U.S. offered a second resolution which was adopted. It directs the CITES Animals Committee, a body of scientific experts, to make recommendations designed to help exporting countries manage their Appendix II species, and to provide for the sustainable use of those species while precluding over-utilization.

#### The Endangered Species Act

Under the Endangered Species Act, the Secretary of the Interior is directed to create lists of species or subspecies which are considered to be "endangered" (likely to become extinct) or "threatened" (likely to become endangered). Twenty-five species of parrots are listed as endangered under the ESA and cannot legally be imported or sold in interstate commerce. This prohibition contributes toward the goals of CITES.

#### State Laws

Also in the spirit of CITES, a law was enacted by the State of New York in 1984 to ban the sale of wild-caught birds. The law prohibits the sale in New York state of any live bird which was captured in the wild. All birds sold in New York state must have been born and raised in captivity. New Jersey enacted similar legislation last year.

#### Other Trade Constraints

Recognizing the increasing threats that mortality in transport poses to live birds, a number of commercial airlines have ceased transporting live birds. As a result, few carriers are willing to ship wild-caught birds. The number of birds imported dropped by approximately 50% from 1989 to 1990, and it is believed that the decision by the airlines not to transport the birds has contributed significantly to this decline.

In addition, a chain of 150 pet stores — Docktor Pet Centers — is in the process of voluntarily phasing out the sale of wild-caught parrot species. Petland, a chain of 130 stores, adopted a similar policy. Many other pet stores have policies of selling only captive-bred birds, which generally make better pets.

#### Legislation

In 1988, the World Wildlife Fund convened a group of organizations concerned about the decline in wild populations of birds that has resulted from the pet trade. Those organizations — including the pet industry, bird breed-

ers (aviculturists), zoos, and wildlife conservation and animal protection groups — formed a working group and 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 wild-caught birds with captive-bred birds for the purposes of the pet trade. The working group then began drafting legislation to accomplish that end, a process which took three years. At the very end of the drafting process, a disagreement arose over when the five-year phase-out period was to begin. As a result of that disagreement, the Humane Society of the United States and the Defenders of Wildlife drafted a second bill, which provided for an immediate ban on imports of wild birds for the pet trade. Mr. Studds introduced both bills (H.R. 2541 imposed a five-year phase out and H.R. 2540 imposed an immediate ban) in hopes of eliciting a compromise between the two approaches.

Separately, the Office of the Assistant Secretary of the Interior for Fish and Wildlife and Parks drafted legislation to regulate trade in wild birds. That proposal would have phased out imports over a four-year period. However, the bill would have also permitted continued imports of birds for the pet trade in cases in which the birds are harvested in a sustainable manner. In other words, the number of birds taken from the wild would not exceed the number reproducing in the wild. The bill was never cleared by the Administration. Mr. Studds introduced a bill patterned after this proposal (H.R. 4958), which was referred to three Committees — the Merchant Marine and Fisheries Committee, the Ways and Means Committee, and the Judiciary Committee. The portions of the bill that had triggered the referral to the Judiciary Committee were subsequently deleted, and Mr. Studds introduced a fourth bill — H.R. 5013, the Wild Bird Conservation Act on April 29, 1992. As introduced, H.R. 5013 would prohibit the importation of any species of exotic bird into the United States four years after the enactment of the Act except under the circumstances set forth below.

#### H.R. 5013 as Introduced

##### Prohibition of Imports

Four years after the enactment of the bill, the importation of any species of exotic birds into the U.S. would be prohibited, except for those species on the "Approved list", described below.

##### Approved List of Birds

The Secretary of the Interior would be directed to establish a list of species that are subject to a management plan in their country of origin that provides for conservation of the species and its habitat. This is the "Approved list". Species not listed on CITES Appendices would automatically be included on the Approved list.

##### Phase Out of Imports

During the four years after the enactment of this Act, the number of wild birds imported would decrease pursuant to annual import quotas prescribed by the Secretary, starting at 75 percent of 1991 import levels, and decreasing 25 percent each year. At any time, more stringent species-specific annual import quotas or moratoria could be established by

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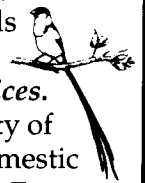
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the Secretary of the Interior. Any person could petition the Secretary to establish or remove a quota restriction, or moratorium.

#### Exemptions

Birds could be imported as personally owned pet birds, or for scientific research, zoological display, religious purposes or breeding programs designed to promote the conservation of the species. The importation of game birds, such as pheasants and quail, (which are not taken from the wild and imported to the U.S. in significant numbers) would also be permitted.

#### Conservation Fund

A fund would be established for the conservation of exotic birds in countries of origin.

#### CITES Decisions

The Secretary would be authorized to implement CITES decisions and recommendations and, in accordance with CITES article 14, take stricter domestic measures.

#### Committee Action

On June 16, 1992, the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries and the Subcommittee on Trade of the Committee on Ways and Means conducted a joint hearing on H.R. 5013. Witnesses included Mr. Mike Hayden of the Department of the Interior, Dr. Gerard Bertrand of the Massachusetts Audubon Society, Mr. Jim Leape of World Wildlife Fund, Dr. Don Bruning of the New York Zoological Society, Mr. Gary Lilienthal of the American Federation of Aviculture, Mr. Marshall Meyers of the Pet Industry Joint Advisory Council, Dr. Steve Beisinger of the American Ornithologists' Union, Mr. George Allen of the American Game Bird Federation, and Mr. Bob Connor, former Assemblyman from New York.

Mr. Hayden testified in support of H.R. 5013 emphasizing the concern of the Department of the Interior over the depletion of wild bird populations due to international commercial trade. He noted that the U.S. is the world's largest importer and should therefore assume a leadership role in finding solutions to the problems and support the efforts of other nations such as Brazil, Mexico, Bolivia, Honduras, Zimbabwe, Australia, and India to protect their native fauna. He stressed the need to restore the criminal provisions in H.R. 4958 and testified in support of an amendment to decrease from four years to one year the phase-out period during which bird imports could continue without further regulation.

All of the witnesses stressed the need for legislation. The issue most frequently mentioned and debated was when a ban on the importation of birds should begin. Several witnesses stressed the need for an immediate ban on the importation of birds in order to preserve and protect them from further destruction. Others suggested that a phase-out period be instituted. In addition, concerns were raised over the lack of penalties in H.R. 5013. The American Federation of Aviculture (representing bird breeders) testified that H.R. 5013 was unduly restrictive, and predicted that, if enacted, it would promote smuggling.

The Subcommittee on Fisheries and Wildlife met on June 25, 1992, to consider H.R. 5013. Mr. Hochbrueckner asked Mr. Studds if it was the intent of the legislation to preempt stricter state laws, and Mr. Studds said that it was not. An amendment in the nature of a substitute

was offered by Mr. Studds and adopted by voice vote. The amendment provided varying levels of protection for different classes of birds, depending on how threatened they are. It provided immediate protection for birds that have been identified internationally as being under the most serious threat.

For the birds imported into the U.S., the amendment provided two tiers of protection, depending on whether the trade in the species is resulted by CITES. For those species that are listed on an Appendix of CITES, it directed the Fish and Wildlife Service to identify and list those that can sustainably be imported into the United States because they are subject to effective conservation programs in the country of origin. If a CITES-listed species is not on this "approved" list, under the amendment, it could not be imported into the United States beginning one year from the date of enactment of the bill.

The burden of proof is reversed for birds that are not listed pursuant to CITES. The amendment authorized the Secretary of the Interior to ban the importation of these species if there is reason to believe that they are threatened by the trade.

Finally, the amendment authorized the Secretary to take emergency action to ban the importation of CITES-listed species in situations in which the circumstances warrant an emergency ban.

Although a variety of measures had been considered to address problems associated with the bird trade, those provided in the amendment were ultimately chosen as the least restrictive necessary to provide for the long term conservation of exotic wild birds. For example, the use of a bird marking system as the sole means of regulating the bird trade was considered to be ineffective. At the other end of the spectrum, a complete and immediate ban on all imports of birds was considered to be excessively restrictive.

The bill, as amended, was ordered reported to the Full Committee by voice vote.

The Full Committee met on July 1, 1992, to consider the bill. A substitute amendment offered by Mr. Studds was adopted by voice vote. It made a series of technical changes to and modified a provision that authorized the Secretary of the Interior to require marking of birds in trade. That change was made because the bill, as approved by the Subcommittee, gave rise to a concern on the part of bird breeders and pet owners that the Secretary might require them to band all their birds. The Subcommittee never contemplated that the Secretary would impose such a requirement, nor would the Secretary have been likely to do so. The amendment made that limitation explicit. The bill, as amended, was rendered reported to the Full House of Representatives by voice vote.

#### Section-by-Section Analysis

##### Section 1. Short Title

The short title of the bill is the "Wild Bird Conservation Act of 1992".

##### Section 2. Findings

The Congressional findings illustrate problems associated with international trade in exotic birds and explain that the bill is consistent with and designed to help achieve, the goals of CITES.

##### Section 3. Statement of Purpose

Set forth the purpose of the bill as the promotion of the conservation of wild birds.

#### Section 4. Definitions

The definition of "exotic bird" excludes species of game birds, thereby exempting them from the provisions of the bill. They were exempted because they are not taken from the wild and imported into the United States, and do not pose the same type of problem as species of birds that are imported in large numbers for sale as pets. If the importation of game birds becomes a problem in the future, and additional legislation is necessary, the Committee would expect to be notified by the Secretary of the Interior.

#### Section 5. Moratoria on Imports of Exotic Birds Covered by Convention

Section 5 provides for the imposition and subsequent withdrawal of moratoria on the importation of exotic birds into the United States. It does not affect interstate or intrastate commerce in birds legally imported into the United States.

Section 5(a) establishes an immediate moratorium on the importation of species of birds listed as "Category B" species in the report entitled "Report of the Animals Committee" adopted by the 8th meeting of the Conference of the Parties to CITES. Category B species are, according to the Animals Committee report, characterized by "international trade levels that are probably a threat to the survival of the tax on a global basis". They include the following species: Fisher's Lovebird (*Agapornis fischeri*), Yellow-headed Amazon (*Amazona aestiva oratrix*), Green-checked Amazon (*Amazona viridigenalis*), Golden Capped Conure (*Aratinga auricapilla*), Chattering Lory (*Lorius arrulus*), Gray-checked Parakeet (*Brotogeris pyrrhopterus*), White Cockatoo (*Cacatua alba*), Yellow-crested Cockatoo (*Cacatua sulphurea*), Goffin's Cockatoo (*Cacatua goffini*), and Red-vented Cockatoo (*Cacatua haematuropygia*). The latter two species were subsequently listed on Appendix I of CITES.

Section 5(b) authorizes the Secretary of the Interior to suspend the importation of any species of exotic bird that is listed on an Appendix to CITES if the Secretary determines that the suspension might be necessary for the conservation of the species, and also determines that either (1) the trade is detrimental to the species, (2) there is not sufficient information to base a judgement that the species is not detrimentally affected by trade, or (3) remedial measures recommended by the Standing Committee to CITES for the conservation of the species have not been taken. Those remedial measures may include the imposition of export quotas, export moratoria, clarification of legislation or administrative procedures, field assessments of bird populations and trends, implementation of enforcement measures, and other appropriate actions. The Committee expects that the Secretary, in making a decision to suspend the importation of birds under this section, will give strong consideration to the implementation of remedial measures by the country of origin. It is the intent of the Committee that the suspension of trade under this subsection will be imposed when immediate action is necessary to protect a species of exotic bird. The Secretary is authorized to take this emergency action under emergency rulemaking procedures to avoid the delay associated with providing notice in the Federal Register and an opportunity for public comment.

This authority will be used to protect exotic

birds listed in an Appendix to CITES during the year following the date of enactment of this Act, before the moratorium under subsection (c) takes effect. The Secretary can also use the emergency authority under this subsection after that date to suspend trade in a species that has been listed under section 6, in response, for example, to a natural disaster that poses an immediate threat to a species' existence.

Section 5(c) prohibits, beginning one year after the date of enactment, the importation of exotic birds that are listed on an Appendix to CITES that are not included on the list published by the Secretary under Section 6.

There are three appendices to CITES. Appendix I includes all species threatened with extinction which are or may be affected by trade. Commercial trade in Appendix I species is prohibited under CITES, and nothing in this bill authorizes the commercial trade in these species.

Appendix II includes all species, which although not necessarily threatened with extinction, may become so unless trade in that species is subject to strict regulation. Commercial trade in Appendix II species requires the prior finding by an exporting country that the export will not be detrimental to the survival of the species.

Appendix III includes all species which any Party identifies within its own country as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade. The export of any specimen of a species included in Appendix III from any State which has included that species in Appendix III requires the prior grant and presentation of an export permit.

Under CITES, an export permit shall only be granted when the exporting country finds that the specimen was not obtained in contravention of the laws of the state and that the specimen will be prepared and shipped in a manner to minimize the risk of injury, damage to health, or cruel treatment. Exporting countries which have not included a species in Appendix III, by contrast, are required only to issue a certificate of origin of the specimen. Appendix III is intended to provide international assistance to individual Parties in regulating the exploitation of species within their jurisdiction. The export of Appendix III specimens from countries that have not listed the species is not subject to CITES controls, other than the requirements for a certificate of origin.

The Secretary is authorized to permit the resumption of trade which has been prohibited by this section based on criteria set forth in each subsection.

Section 5(d) limits the number of exotic birds that may be imported in the U.S. during the year following the enactment of this Act. The purpose of this provision is to avoid a flood of bird imports during the year after the enactment of this Act, in view of the strong likelihood that such a spike in imports would adversely affect the sustainability of wild populations. The limitation applies only to species that are listed in the Appendices to CITES. The number of such birds that may be imported cannot exceed the number that were imported during the most recent year for which the Secretary has complete import data. The Committee expects that the Secretary will keep track of the numbers of CITES-listed birds imported during the year following the enactment of this Act, and once the number of birds

reaches the cut-off level, the Secretary shall prohibit further imports of birds that are not listed pursuant to section 6. The Committee expects that the Secretary will implement this section by issuing a notice in the Federal Register stating that further imports will be prohibited and that only those birds that are in transit as of the date of the Federal Register notice will be accepted after that date unless they are listed pursuant to section 6.

#### *Section 6. List of Approved Species*

Section 6(a)(1) directs the Secretary of the Interior to publish in the Federal Register a list of species of exotic birds that are on an Appendix to CITES for which importation may continue beyond one year after the enactment of this Act. The Committee expects that the Secretary will focus his or her initial efforts under this section on evaluating species of exotic birds that are most heavily traded, and for which trade is likely to pose considerable threats.

Section 6(a)(2) provides that species listing under section 6(a)(1) must indicate the country of origin and, in the case of captive-bred birds, the captive breeding facilities from which they originate. However, captive-bred birds of species for which no wild-caught birds are in trade can be listed without reference to country or breeding facility.

Section 6(a)(3) provides that in deciding whether a species should be included on the list of birds that may be imported, the Secretary shall use the best scientific information available and consider the adequacy of regulatory and enforcement mechanisms in all countries of origin for the species. The point of considering the adequacy of regulatory and enforcement mechanisms in countries other than the country of origin is to allow the Secretary to consider whether birds are being smuggled from bordering countries into countries that might be erroneously identified as countries of origin.

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. Most birds are identified as captive-bred through the use of leg bands. However, certain species are exempted from the banding requirement because virtually all of the specimens of those species in trade have been captive-bred. By regulation, New York exempts the following species from the banding requirements: Diamond Dove, Cockatiel, Crimson Rosella, Eastern Rosella, Pale-headed Rosella, Red-rumped Parrot, Bourke's Parrot, Budgerigar, Blue-masked Lovebird, Zebra Finch, Gouldian Finch, Society Finch, Java Sparrow, and the common canary. The New York law provides for additions to the above list if a species is predominantly captive-bred and if its inclusion on the list will not cause additional birds to be captured in the wild. It is the intent of the Committee that the Secretary use the standards, adopted by the State of New York with respect to importation of captive-bred species, and include such species on the approved list under this section, as long as the Secretary believes that trade based on these standards will not result in harm to species in the wild.

Section 6(b) also directs the Secretary to include on the list of approved species those

that are bred in qualifying facilities. The criteria by which a breeding facility may be designated a "qualifying facility" are set forth in section 7.

Section 6(c) provides the criteria pursuant to which the Secretary is to decide whether species should be included on the list of birds which may be imported. The third criterion addresses the methods of capture, transport, and maintenance of the species, providing that it should minimize inhumane treatment of the birds. There is no significance to the use of the particular term "inhumane" rather than the term "cruel", which is used in the text of CITES; for the purposes of this bill, the terms are interchangeable. The fourth criterion specifically addresses the implementation of CITES. First, it directs the Secretary to consider whether a country of origin has established a scientific authority or other competent authority. The Committee expects the Secretary to consider the extent to which a country's scientific authority is technically capable of carrying out the duties prescribed by CITES. The fourth criterion also directs the Secretary to review whether a country is effectively implementing remedial measures recommended by the Parties to CITES. Those remedial measures may take the form of export quotas from countries of origin. If a country has adopted such a quota, the Secretary may likewise adopt a quota for imports of birds listed pursuant to section 6(a). As noted in the discussion of section 5(b), remedial measures may include the imposition of export quotas, export moratoria, clarification of legislation or administrative procedures, field assessments of bird populations and trends, implementation of enforcement measures, and other appropriate actions. The Committee expects that the Secretary will, in deciding whether to include a species on the list of approved species, give strong consideration to the extent to which remedial measures have been implemented by the exporting country.

#### *Section 7. Qualifying Facilities*

Section 7(a) directs the Secretary to determine whether an exotic bird breeding facility in a country other than the U.S. is a qualifying facility pursuant to criteria set forth in section 7(b), if the Secretary is petitioned to make such a determination. The provisions of section 10 relating to the consideration of petitions will apply to petitions submitted under this section.

Section 7(b) sets forth the criteria by which the Secretary shall determine whether a captive breeding facility is a qualifying facility from which birds can be imported into the United States.

The purpose of requiring that captive breeding facilities meet the criteria set forth in this section is to preclude the importation of birds into the United States that have been laundered through captive breeding facilities. In addition, the Committee does not consider birds raised in captivity from eggs or hatchlings collected from the wild to be captive-bred birds for purposes of this bill.

It is the intent of the breeders 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 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.

#### *Section 8. Moratoria for Species not Covered by Convention*

Section 8(a) authorizes the Secretary to prohibit the importation of species of exotic birds that are not listed on an Appendix to CITES if certain criteria are not met by the country of origin and a prohibition is necessary for the conservation of the species or is otherwise consistent with the purposes of the Act. The phrase "otherwise consistent with the purposes of the Act" was included to authorize the Secretary to prohibit the importation of birds that are subject to high levels of mortality in trade.

Section 8(a)(2)(A) directs the Secretary to establish a quota or moratorium on the importation of species of exotic birds on a species-by-species basis. The criteria for imposing a prohibition under this section include determinations about a country's management plan for a species. In some countries, certain species of birds are very abundant and are considered pests, just as starlings are considered pests in the United States. For example, five bird species in Senegal are designated as crop pests and have been the target of eradication campaigns sponsored by the Senegalese Government and the United Nations Food and Agriculture Organization. It is the intent of the Committee that the Secretary should take into consideration the abundance of a species and the use of population control programs to protect agriculture or other interests in the country of origin in evaluating the management plan under this section. However, the bill does not authorize the Secretary to include a species on the "approved" list by virtue of the fact that it is designated as a pest in the country of origin. Rather, the Committee expects the Secretary to evaluate the management program based on the best scientific information available, and determine whether it effectively provides for the conservation of birds.

Section 8(a)(2)(B) directs the Secretary to establish a quota or moratorium on the importation of all species of exotic birds from a particular country if that country has not implemented a management plan for the birds that ensures species conservation and humane treatment. It is the intent of the Committee that the Secretary have wide discretion in reviewing management plans under this section. Clearly management plans for birds that are becoming rare should be much more stringent than those for birds that are very abundant and are subject to population control programs.

Section 8(b) directs the Secretary to terminate a quota or moratorium established under this section if the Secretary finds that the reasons for establishing the quota or moratorium no longer exist.

#### *Section 9. Call for Information*

Section 9 directs the Secretary to issue a call for information on the wild bird conservation program of each country that exports exotic birds. The Committee expects that through this section the Secretary will initiate bilateral consultations with exporting countries to facilitate implementation of this bill.

#### *Section 10. Petitions*

Section 10 sets forth the procedures by

which the Secretary shall respond to petitions that are submitted under this Act. The petitions may be submitted to establish, modify, or terminate any prohibition, suspension, or quota under this Act, to add a species of exotic bird or remove a species from a list of birds for which importation is permitted, or to determine whether an exotic bird breeding facility is a qualifying facility.

#### *Section 11. Prohibited Acts*

Section 11(a) provides that it is unlawful for any person to import an exotic bird in violation of section 5 (pertaining to species listed in an Appendix to CITES) or section 8 (pertaining to species not listed under CITES). It also provides that it is unlawful to import an exotic bird as captive-bred bird from a qualifying captive breeding facility if the bird was not actually bred at that facility. Finally, it provides that it is unlawful to violate any regulation issued pursuant to this Act.

Section 11(b) provides that any person claiming the benefit of any exemption or permit under this Act 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.

#### *Section 12. Exemptions*

Section 12 authorizes the Secretary to allow the importation of limited numbers of birds through the issuance of permits, even if the species to which those birds belong is not included on the list of species for which continued importation is allowed. Such permits may be issued for the following reasons: for scientific research, for use as a personally owned pet, for zoological breeding or display, or for breeding.

The Committee recognizes that successful breeding of species of birds popular in the pet trade may help reduce the pressures on wild populations by increasing the numbers of birds that are available from captive-bred sources in both the United States and elsewhere. A permit for the importation of a bird for breeding purposes may be issued to individuals involved in cooperative breeding programs. The involvement of avicultural organizations such as bird clubs in the development and administration of cooperative breeding programs is intended to promote the exchange of information about breeding species of exotic birds, including bird health, disease, reproduction, feeding, care, handling, and other aspects of husbandry. It will also help to establish a system of identifying breeders with similar interests and is designed to promote breeding efforts.

The Committee expects that the Secretary will issue permits for the importation of birds for breeding if the applicant can demonstrate that he or she is capable and fully intends to keep track of the whereabouts of the offspring of birds that are imported under this exemption. The purpose of this requirement is to ensure that if efforts to reintroduce the species into the wild are undertaken, the location of birds that might be included in such a program and their genetic makeup will be known. In addition, the Committee expects that individuals applying for a permit to import birds for breeding will seek to ensure that they are not able to obtain the species of birds they want from other breeders in this country.

#### *Section 13. Penalties and Regulations*

Section 13(a) provides civil penalties and criminal penalties for violations of this Act.

Concern was expressed to the Committee by pet bird owners and breeders that the Fish and Wildlife Service would seize their legally held birds pursuant to this Act. That is clearly not the intent of the bill, nor is it authorized by the bill. Under the Lacey Act, the Fish and Wildlife Service would have to prove that the birds were illegally imported or that there was otherwise a violation of an underlying law before it could seize them. Moreover, the Committee directs that the FWS should exercise its prosecutorial discretion and not seize birds from innocent owners unless there is reliable evidence that the owners knew or should have known that the birds were illegally imported.

Section 13(b) sets forth the courts of jurisdiction for violations of this Act.

Section 13(c) provides that 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. The effect of this provision is to ensure that the enforcement provisions of the Lacey Act Amendments of 1981 (16 U.S.C. 3372(a)) will apply to violations of this Act.

Section 13(d) authorizes the Secretary to issue regulations that are necessary and appropriate to carry out the purposes of this Act. Such regulations may include regulations to evaluate the exotic bird conservation programs of foreign countries, as well as regulations to ensure enforcement of, and compliance with, this Act.

Section 13(e) provides that this Act shall not affect the authority of the Secretary under the Endangered Species Act, the Lacey Act Amendments of 1981, nor shall anything in this Act be construed as repealing, superseding, or modifying any provision of Federal law. In addition, as was discussed at the Committee markup, it is not the intent of the Committee in adopting this legislation to preempt state laws that address exotic bird conservation.

#### *Section 14. Exotic Bird Conservation Assistance*

Section 14 authorizes the Secretary to establish an Exotic Bird Conservation Fund to provide financial and technical assistance for exotic bird conservation projects for public and private programs.

#### *Section 15. Marking and Recordkeeping*

Section 15 authorizes the Secretary to promulgate regulations to require marking of exotic birds that were imported after the date of enactment of this Act, or that were bred in the United States after the date of enactment of this Act, are offered for sale, and are of a species that is subject to a high level of illegal trade and whose export is prohibited by any of its countries of origin.

The purpose of authorizing the Secretary to require marking of certain captive-bred birds is to help distinguish them from illegally imported birds that are fraudulently being portrayed as captive-bred birds. It is the intent of this section to help bird breeders and pet owners identify truly captive-bred birds.

Section 15(b) directs the Secretary to seek to ensure that regulations issued under this section do not have the effect of deterring efforts to breed exotic birds in captivity.

#### *Section 16. Authorization of Appropriations*

Section 16 authorizes the appropriation of \$5,000,000 for each of the fiscal years 1993, 1994, and 1995 to carry out the purposes of this Act, including section 14, Exotic Bird Conservation Assistance. ●