

U.S. Fish & Wildlife Explanation of Wild Bird Conservation Act Misconceptions

Editor's Note: Roddy Gabel (Office of Scientific Authority) and Dr. Susan Lieberman (Office of Management Authority) have asked the editors of *Watchbird* magazine to publish the following information on the Wild Bird Conservation Act to give a better understanding of what the WBCA actually does and to clarify several misconceptions that have become evident from letters and communications received by the U.S. Fish and Wildlife Service. We (Dale R. Thompson and Sheldon L. Dingle) urge all of our readers to read the following letter.

May 2, 1994

Dear Editor:

We request the publication in your magazine of the following discussion of the Wild Bird Conservation Act, in which we address some common misconceptions of bird breeders and bird owners around the United States.

The Wild Bird Conservation Act (WBCA) was unanimously passed by Congress and was signed into law October 23, 1992; it is a major step in the conservation of wild birds subject to international trade. The WBCA limits imports of exotic bird species to ensure that their populations are not harmed by trade. It also encourages wild bird conservation programs in countries of origin by ensuring that all trade in such species involving the United States is both biologically sustainable and to the benefit of the species. The U.S. Fish and Wildlife Service (Service) of the Department of the Interior is the agency of the Federal Government charged with implementation and enforcement of the WBCA.

New laws and regulations derived from them are frequently a source of confusion and misunderstanding for the people affected by them. This has certainly been the case for the WBCA, and we appreciate this opportunity to clarify some misconceptions and misunderstandings about this important new law. Nearly a year and a half after its enactment, the WBCA is still not fully understood by some bird owners, aviculturists, importers, and other constituencies interested in it. On behalf of the Service, we would like to encourage an open dialogue with all of these individuals and organizations representing them, in the interest of wild bird conservation.

What the WBCA Does

First, we would like to define what the WBCA actually does. The WBCA only restricts *imports* of certain exotic bird species into the United States. The WBCA has *no effect* on sale, interstate or intrastate commerce, or breeding within the United States, or export of exotic birds from the United States. The nature of the import restrictions of the WBCA depends on whether or not a species is listed in one of the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In passing the WBCA, Congress specifically excluded 10 families of gamebirds and ratites from its provisions. These include the Phasianidae (pheasants, quail, peafowl, junglefowl, etc.), Numididae (guinea fowl), Cracidae (curassows, guans, and chachalacas), Meleagrididae (turkeys), Megapodiidae (megapodes), Anatidae (ducks, geese, and swans), Struthionidae (ostriches), Rheidae (rheas), Dromaii-

nae (emus), and Gruidae (cranes). Several individuals have written to the Service to ask that other families or orders of birds be exempted completely from the provisions of the WBCA; the Service cannot do so, since the exclusion of these families was a decision of Congress.

Except for the 10 families named above, if an exotic bird species is listed in one of the CITES Appendices (I, II, or III), it is prohibited from import, unless an individual shipment has a WBCA import permit, or the species is listed in an approved list. For a permit to be issued, the import must meet the criteria established in the WBCA and implementing regulations for: (1) scientific research, (2) personally owned pet birds of persons who have resided outside the United States for at least a year, (3) zoological breeding or display programs, and (4) certain cooperative breeding programs. If an import is found to qualify for one of these exemptions, a WBCA import permit can be issued to allow the import.

Imports for cooperative breeding programs require a two-tiered process whereby first the breeding program itself is approved as qualifying under the WBCA and then individual import permits may be issued to individuals for purposes related to their participation in the program. That is in order to expedite processing of import permits, after a program is approved.

The WBCA also allows for the establishment of a list of approved species, which may be imported *without* a WBCA import permit. Of course, the import of the species may still be regulated by other treaties or laws, such as the Endangered Species Act, CITES,

the Migratory Bird Treaty Act, or the Lacey Act. We would like to stress that if a species is listed in the approved list, no WBCA import permit is needed; if a species is not in the approved list, it is still eligible for a WBCA import permit. Both captive-bred and non-captive-bred species may be placed on the approved list in one of the following ways:

1. *Captive-bred species.* A captive-bred species may be listed as approved, and therefore imported without a WBCA permit, if a determination is made that (a) the species is regularly bred in captivity *and* no wild-caught birds of that species are in trade (legal or illegal trade), or (b) the species is bred in a qualifying foreign facility. If the species is listed as exclusively captive-bred, it does not have to come from a qualifying facility.

2. *Non-captive-bred species.* A non-captive-bred bird species (i.e., from the wild) may be imported without a WBCA import permit if a determination is made that (a) each country of origin of the species is effectively implementing CITES; (b) a scientifically based management plan for the species has been developed; (c) the management plan is implemented and enforced; and (d) the methods of capture, transport, and maintenance of the species minimizes the risk of injury or damage to health, including inhumane treatment.

If an exotic bird species is not listed in the Appendices to CITES, it may be freely imported, but the WBCA does allow for the imposition of a moratorium on imports from any country of origin if it is determined that: there is no management plan for the species; a management plan exists but is not implemented or enforced; or the methods of capture, transport, and maintenance of the species do not minimize the risk of injury or damage to health, or are inhumane. It must also be determined that a moratorium is necessary for the conservation of the species or is otherwise consistent with the purposes of the WBCA. Similarly, the import of *all* species of exotic birds from a particular country may be subject to a moratorium if these same determinations are made for species in trade from that country. The moratorium or quota may be terminated if it is later determined that the reasons for imposing it no longer exist.

Implementing Regulations

The requirements listed above come directly from the text of the WBCA, which is available from the Service on request (see our address at the end of this article). While Congress (the Legislative Branch of our government) passes laws, it is the job of the Executive Branch of our government to implement and enforce those laws. Therefore, the Department of the Interior, as a Cabinet Department of the Executive Branch, is required to promulgate and enforce implementing regulations for the WBCA; the Service is the agency of the Department of the Interior that has been charged with these responsibilities. Federal law requires the Service to publish proposed regulations, receive public comments, analyze those comments, and publish a final rule. Those proposed and final regulations are published in the *Federal Register*, a document published every day by the Federal Government. A final rule, while developed with consideration of the public's comments, must accurately reflect the law from which it is derived. Prohibitions and restrictions imposed by the law cannot be eliminated or modified through regulation.

On August 12, 1993, a Proposed Rule was published, which contained application requirements and issuance criteria for WBCA import permits and approval of cooperative breeding programs. The Service involved the public extensively in the development of these regulations. A public meeting was held April 15-16, 1993, to receive input from the public in the development of regulations to implement some of the provisions of the WBCA. Useful input was received from a broad cross-section of interested members of the public who participated in the meeting, including many aviculturists, and consensus was reached on many points. The final regulations were published November 16, 1993, and incorporated many of the comments that were received.

On March 17, 1994, a second Proposed Rule was published in the *Federal Register*, in which the Service proposed regulations establishing approval criteria for inclusion of both captive-bred and non-captive-bred species in the approved list of species listed in the Appendices to CITES. This Proposed Rule included criteria for

approval of exclusively captive-bred species, requirements for scientifically based sustainable-use management plans, and application requirements and approval criteria for foreign breeding facilities. Of course, breeders and breeding facilities in the United States are not affected by the WBCA or by these regulations; it only affects foreign facilities that wish to export otherwise prohibited species to the United States. The comment period for this Proposed Rule is open until May 16, except for the sustainable-use section, which is open until June 15.

Misconceptions About the WBCA and Associated Regulations

With the background presented above, we now wish to address some common misconceptions about the WBCA and the implementing regulations, based on letters and calls we have received. These misconceptions have given rise to unnecessary fears and concerns from some individuals, who either believe that the WBCA establishes authorities beyond those described above, or they have been otherwise misinformed.

Misconception #1:

No more birds can be imported into the United States.

Birds can still be imported into the United States, but their import may be restricted depending upon their status under the WBCA. Ten entire families of gamebirds and ratites are completely exempted from the prohibitions established by the WBCA, and therefore, those families are not affected by the WBCA *in any way*. In addition, the various permits allowed for under the WBCA also can be used to import exotic birds. Permits must be obtained before a bird is imported, and numerous such permits have already been issued. Any birds on the approved list, as well as any species not listed in any Appendix to CITES, may be imported without a permit. Hundreds of non-CITES birds have indeed been imported since the regulations were finalized.

Misconception #2:

The WBCA restricts the keeping and breeding of exotic birds that are already in captivity in the United States.

The WBCA does not establish any controls or restrictions on keeping, breeding, or selling of any species of exotic birds within the United States, nor does it affect exports of exotic birds from the United States to other countries. The WBCA only establishes prohibitions against imports of certain exotic birds into the United States.

Misconception #3:

The WBCA only applies to wild-caught birds, and captive-bred birds are or should be exempt from its provisions.

One of the purposes of the WBCA is to assist wild bird conservation and management in the countries of origin. However, except for the 10 bird families specifically excluded by the WBCA, the WBCA applies to *all* species of exotic birds being exported from *any* country, whether individual birds are of captive or wild origin. In passing the WBCA, Congress recognized that there are serious concerns that wild-caught birds are often intentionally misrepresented as captive-bred. For this reason, the law specifies criteria for the import of captive-bred species; it does not simply exempt them.

However, captive-bred birds can be imported in a number of ways:

1. Captive-bred exotic bird species on the approved list may be imported without a permit. To be on the approved list, (a) a species must be regularly bred in captivity and *no* wild-caught birds of the species may be in trade, *or* (b) a species must be bred in a qualifying foreign breeding facility. In the first case, if both captive-bred and wild-caught birds of that species are in trade, the species cannot be placed on the approved list. Even if only low numbers of illegal wild-caught birds are known to be in trade and no legal trade in wild-caught specimens is allowed, the species still cannot be placed on the approved list. In the case of qualifying foreign breeding facilities, they must be found to meet the criteria specified in the WBCA, and only birds actually bred at that facility may be considered approved for import without a WBCA import permit. Those regulations will be finalized as soon as possible after the close of the comment period, after all comments received are analyzed.

2. Captive-bred birds may be imported with one of the four types of WBCA import permits. They do not

have to originate in an approved facility.

Misconception #4:

Only birds on the approved list of captive-bred species may be imported from approved foreign facilities. Birds imported for cooperative breeding programs must be from approved facilities or they must appear in the list of approved species.

A foreign facility can be approved for any species. Cooperative breeding programs can apply for any species. The approved list of species and facilities allows for imports without a permit for any purpose.

Misconception #5:

Only birds on the approved list may be bred in the United States.

Again, the WBCA does not affect activities involving exotic birds already in the United States. The approved list includes species of birds that may be imported without a WBCA permit, as stated above. Several people have written to the Service, concerned that in publishing a list of "approved" species, the Service has not recognized that many more species are actually bred in captivity. The Service recognizes that many, many more species are bred successfully, and that aviculture plays an important role in filling the domestic demand for pet birds. However, international trade in those species also includes wild-caught birds, and therefore they cannot qualify for approval as captive-bred species.

Misconception #6:

Only aviculturists belonging to a cooperative breeding program can breed birds.

You do not have to belong to a cooperative breeding program to breed birds, or to sell them. However, you must participate in a cooperative breeding program if you wish to import an exotic bird species that is not on the approved list and the purpose of the import is captive breeding. In addition, the cooperative breeding program must be (a) designed to promote the conservation of the species and to 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.

Misconception #7:

The regulations can be written to exempt additional families of birds, like the gamebirds and ratites, from the WBCA.

The regulatory process cannot be used to completely exempt birds from the provisions of the WBCA. Regulations establish operational procedures for implementing and enforcing the WBCA; they cannot be used to change the law itself. In passing the WBCA, Congress established a definition of the term "exotic bird" which excluded the 10 families of gamebirds and ratites. Changes in the status of a species under the WBCA can only be done within the framework of the law, which means through the various exemptions or approvals. A change in a species' listing status under CITES can also affect how it is handled under the WBCA.

We believe that implementation of the WBCA regulations will foster wild bird conservation. The WBCA allows for importation for cooperative breeding programs designed to enhance the conservation of species in the wild. We support importation of wild birds for cooperative breeding programs and from scientifically based sustainable use management plans, consistent with the requirements of the law.

We regret that there have been misunderstandings of the implications of this important new law. With the cooperation of bird owners and breeders around this country, we are hopeful we can continue to work for the conservation of exotic birds in the wild, so that their populations survive into the future. The preservation and conservation of global biodiversity requires the cooperation of everyone, and we look forward to a continued dialogue with bird owners and breeders around the country on these important issues. Please feel free to write to the Service at the address below, to receive a copy of the WBCA or implementing regulations, or to ask any questions you may have.

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Office of Scientific Authority

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Office of Management Authority
U.S. Fish and Wildlife Service
c/o Department of the Interior
18th and C Streets NW
Washington, DC 20840 ●

Avian Trade Shows & Seminars

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For more information:

Cindy Aident (615) 690-7252 or

Gary Reid (615) 690-0613

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World's Fair Park

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Admission \$2.00

Birds, cages, seeds, toys and other related bird items and services for sale

For additional information contact:

Cindy Aident (615) 690-7252 or

Gary Reid (615) 690-0613

Mid-South Budgie Club

will host a

Budgie Bird Show

August 20, 1994

Quality Inn-Executive Plaza

823 Murfreesboro Road, Nashville, TN

For additional information:

Candice Patrick, Apt. B3-7,

400 Forrest Park Road, Madison, TN 37115

Phone (615) 868-8840 or

Carrol Dunn, 115 Chippendale Drive,

Hendersonville, TN 37075

Phone (615) 324-8642

Mid-South Budgie Club

will host a

Bird Fair

August 21, 1994

Quality Inn-Executive Plaza

823 Murfreesboro Road, Nashville, TN

For information contact:

Mary Russell

416 West Cherry St., Glasgow, KY 42141

Phone: (502) 651-8150

The Biggest Little Bird Expo in Reno

September 3, 1994

9 a.m. - 4 p.m.

Reno Livestock Events Center Exhibit Hall

For further info write R.A.A.V.E.,

P.O. Box 10393, Reno, NV 89510-0393

Call (702) 323-5278 • (702) 826-9714

or (702) 358-8702

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September 3 - 4, 1994

Howard Johnson Governors House Hotel

2705 E. South Blvd., Montgomery, AL

Hotel reservations: 1-800-334-8459

For information call:

(205) 857-3817, (205) 892-2204, or (205) 279-6829

Keystone Cockatiel Club and Chester County Bird Breeders Combined NCS/ACS All Bird Show

September 10, 1994

10 a.m. to 4 p.m.

Valley Forge - Sheraton Convention Plaza

Mezzanine Level

King of Prussia, PA

For details contact:

Doris Rickards (610) 647-4632

Dick & Kathy Freas (610) 644-9337

Lorraine LaBoyne (610) 269-6003

For directions call:

Sheraton Hotel (215) 337-2000

Greater Chicago Cage Bird Club

Spring Bird Fair

September 17, 1994

10:30 a.m. to 5:00 p.m.

Hattendorf Center

225 E. Elk Grove Blvd., Elk Grove Village, IL

(1/2 mile east of Arlington Heights Road)

Semi-annual event, open to the public.

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For everyone from single pet owners to serious breeder/hobbyists.

General information: (708) 705-6260

Erie Cage Bird Club's Annual Auction

September 17, 1994

2306 Norcross Rd., Erie, PA

Public welcome, no admission charge

Starting at 1:00 p.m.

For info.: Diane Holtz (814) 898-2675

The Aviculture Society of Puget Sound (ASOPS)

presents its

Fourth Annual Exotic Bird Fair

September 24, 1994

10 a.m. to 6 p.m.

Seattle Center Flag Pavilion

For more information contact:

Carla Ritchie (206) 862-3358 or

Ann Jones (206) 868-7871

Town & Country Feathered Friends

7th Annual Bird Fair

September 25, 1994

11 a.m. to 5 p.m.

Washtenaw County Fairgrounds

on Ann Arbor-Saline Road

Saline, Michigan

For info contact:

Nancy Egerer

11533 Newman Rd., Brighton, MI 48116

or call (313) 227-6503

Town & Country Feathered Friends meets in Michican Center the 4th Wednesday of every month. Contact Secretary Barb McNamara, 8735 Greenwillow, #8, Brighton, MI 48116.

Coastal Bend Cage Bird Club's

5th Annual Bird Fair

September 25, 1994

9:00 a.m. to 3:30 p.m.

Moose Lodge, 8001 S. Padre Island Dr.

Corpus Christi, Texas

For more info:

Linda Young (512) 991-2704

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