

LEGISLATIVE UPDATE

Susan L. Clubb, DVM
P.O. Box 508
Loxahatchee, Florida 33470 USA

ABSTRACT

Bird trade issues continue to be debated on both national and international levels. Consideration of the Exotic Bird Conservation Act and the Wild Bird Protection Acts was effectively blocked by a massive letter-writing campaign with support for the two bills being approximately equal. All groups turned their eyes to the 8th Meeting of the Conference of the Parties to CITES (Conference on International Trade in Endangered Species) for the next move. As expected, bird trade issues dominated the conference. Several United States proposals which would have severely restricted international trade in birds were proposed but modified extensively prior to passage. Following the conference, two more bird bills were introduced into the US House of Representatives. On June 16 1992, a joint hearing was held before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, and the Subcommittee on Trade of the US House of Representatives concerning the Wild Bird Conservation Act of 1992.

Report on the Cites Conference

The debate on the international trade in wild caught birds dominated the 1992 CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) Conference. The 8th Meeting of the Conference of the Parties was held in Kyoto, Japan, with 103 of 114 party nations and 155 nongovernmental organizations in attendance. Over 1500 people attended. As expected several issues related to the bird trade were hotly debated. A commitment to the concept of sustainable utilization as opposed to protectionism was evident. Developing countries showed a desire to continue trading their wildlife resources.

Several resolutions that could result in bans on trade in many avian species were proposed by the US delegation. One resolution established a list of 43 species, identified in the significant trade study as possible problem species that would be prohibited from trade. The significant trade study, a project of IUCN, WWF, and TRAFFIC, identified species that were traded in large numbers and for which there was concern about the possible detrimental effects of this trade on wild populations. These species, however, have not been proposed for Appendix I listing. Many countries objected to such trade bans as being equivalent to Appendix I listing without meeting established criteria (the Berne criteria). An alternative resolution was negotiated by a working group which established criteria for evaluating and limiting trade in species identified as significantly traded. Exporting countries may be required to demonstrate that trade in these species is sustainable or to limit trade as recommended by CITES. As written, this resolution will not be limited to birds but would also apply to mammals, reptiles, amphibians, and fish identified in the significant trade study.

A resolution to ban trade in species that experience high mortality in trade was also proposed by the U.S. In the original version, trade would be suspended if mortality in transport and quarantine exceeded certain percentages. The original proposal included dead in quarantine, losses that in most cases would not be directly attributable to transport. After extensive revisions a resolution was adopted which recommends that parties maintain records on transport related mortality and that parties take action, including suspension of trade in species that have significantly high mortality in transport.

Airlines' bans on transporting wild-caught birds were criticized by many parties as contributing to transport-related mortality by delaying or prolonging shipments and because experienced carriers are no longer transporting birds. According to Defenders of Wildlife, 62 airlines worldwide have joined the ban.

Many proposals for amendment of Appendix I and II listing for birds were considered. Following is a list of proposed amendments and the final decisions of the parties.

Proposals for Amendment of Appendices I and II - Avian Taxa

Order Rheiformes

Rhea americana (Greater Rhea) Add-App II approved

Order Ciconiiformes

Myctena leucocephala (Painted Stork) Add-App II approved

Order Anseriformes

Anas formosa (Baikai Teal) Add-App II (look alike reasons) approved

Cygnus columbianus jankowski (Jankowski's Swan) Add-App II approved

Order Galliformes

Cyrtonix montezuma (Harlequin Quail) Remove-App II approved

Polyplectron empnanum (Palawan Peacock) Register captive breeding facility withdrawn

Order Columbiformes

Caloenus nicobarica (Nicobar Pigeon) Register captive breeding facility withdrawn
Goura sp. (Crowned pigeons) Transfer-App I withdrawn

Order Psittaciformes

Amazona aestiva (Blue-fronted Amazon) Transfer-App I withdrawn because Argentina established export ban

Amazona leucocephala (Cuban Amazon) Register captive breeding facility withdrawn

Six macaw species - Register captive breeding facility withdrawn:

Anodorhynchus hyacinthinus (Hyacinth Macaw)

Ara ambigua (Buffon's Macaw)

Ara macao (Scarlet Macaw)

Ara maracana (Illiger's Macaw)

Ara militaris (Military Macaw)

Ara rubrogenys (Red-fronted Macaw)

Cacatua goffini (Goffin's Cockatoo) Transfer-App I approved

Cacatua haematuropygia (Red-vented Cockatoo) Transfer-App I approved

Cacatua moluccensis (Moluccan Cockatoo) Register captive breeding facility withdrawn

Eos reticulata (Blue-streaked lory) Transfer-App I withdrawn

Probosciger aterrimus (Palm cockatoo) Register captive breeding facility withdrawn

Order Coraciiformes

Aceros sp (Hornbills) Add-App II (8 species) approved *Aceros undulatus*

Aceros comatus (Hornbill) Add-App I withdrawn

Aceros corrugatus (Hornbill) Add-App I withdrawn

Aceros nipalensis (Rufous-necked Hornbill) Add-App I approved

Aceros subruficollis (Hornbill) Add-App I approved

Anorrhinus sp. (Hornbills) Add-App II approved

Anthracoseros sp. (Hornbills) Add-App II approved

Anthracoseros malayanus (Black Hornbill) Add-App I withdrawn

Buceros sp. (Giant hornbills) Add-App II approved

Buceros bicomis (Great Indian Hornbill) Transfer-App I
Buceros rhinoceros (Rhinoceros Hornbill) Transfer-App I
Peneiopides sp. (Hornbills) Add-App II approved
Ptilolaemus sp. (Hornbills) Add-App II approved

Order Piciformes

Pteroglossus sp. (Toucans) Add-App II revised and only *P. aracari* and *P. vindiis* listed
Ramphastos sp. (Toucans) Add-App II revised and only *R. sulphuratus*, *R. toco*, *R. tucanus* and *R. vitellanus* approved.

Guidelines for registration of operations breeding Appendix I animal species for commercial purposes were completely revised. The roles of the commercial captive breeding operation, the management authority (of the exporting country), the CITES Secretariat, and the parties were well defined. Many proposals were submitted for registration of facilities, however, all were withdrawn.

The next CITES conference will be held in the United States in the fall of 1994.

Wild Bird Conservation Act of 1992

On April 9, 1992, a third bird trade bill known as HR 4958 was introduced to the House of Representatives by Gerry Studds. The Exotic Bird Conservation Act of 1992 was drafted by staff of the Fish and Wildlife Service and was based upon the recommendations of the Cooperative Working Group on Bird Trade. On April 29, a fourth bill, HR 5013, was introduced again by Congressman Studds. It is essentially identical to HR 4958 except that some of the criminal penalties were removed. A congressional hearing was held on June 16.

A Summary of HR 5013

SECTION 1. SHORT TITLE - The Wild Bird Conservation Act of 1992

SECTION 2. PURPOSE

The purpose of this Act is to promote the conservation of exotic birds by encouraging wild bird conservation and management programs in countries of origin; by ensuring that all trade in such species is biologically sustainable and to the benefit of the species; 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.

SECTION 3. CONGRESSIONAL FINDINGS

- 1) The international pet trade in wild-caught birds is contributing to the decline of many species in the wild, and mortality remains unacceptably high for many species,
- 2) The United States, as the world's largest importer of exotic birds, should play a substantial role in finding solutions to these problems, including in assisting countries of origin in implementing programs of wild bird conservation, and in ensuring that their actions are not detrimental to the survival of species in the wild;
- 3) Although sustainable utilization of exotic birds has the potential to create values in them and their habitats that can help conserve them and promote the maintenance of biological diversity, utilization that is not sustainable should not be allowed;
- 4) Many countries have chosen not to export their wild birds for the pet trade, and their efforts should be supported;

- 5) Those countries that choose to export their wild birds often lack the means to effectively implement scientifically-based management plans, and should be assisted to bring their wild bird trade down to sustainable levels;
- 6) International concern has been focused on serious conservation problems which currently exist in the trade in wild-caught animals including birds;
- 7) Article XVI of the convention (CITES) permits any party to adopt stricter domestic measures for the regulation of trade in all species, whether or not listed in the appendices;
- 8) The necessary population assessments, monitoring programs, and appropriate remedial measures for Appendix II species are not always being undertaken in order to maintain species at levels above which they might become eligible for inclusion in Appendix I; and
- 9) The Parties to the Convention have recommended that Parties take appropriate measures, including suspension of trade for commercial purposes between parties when appropriate, regarding trade in species of birds that have significantly high mortality rates in transport.

SECTION 4. SELECTED DEFINITIONS

The term exotic bird includes eggs and dead birds, but excludes poultry, dead sport-hunted birds, museum or scientific specimens, and live birds or products from birds in the following families: Phasianidae, Numididae, Cracidae, Meleagrididae, Megapodiidae, Anatidae, Struthionidae, Rheidae, Dromaiinae, and Gruidae.

The term sustainable use means any use of an exotic birds that ensures that the bird is removed from the wild in a manner designed to conserve its species and its habitat. Such use involves, among other things, the scientific determination of the productive capacities of the species and its associated ecosystems, and the implementation of a management program of use designed to maintain the species throughout its range at a level consistent with its role in the ecosystem and well above the level at which it may become threatened.

SECTION 5. RESTRICTION OF IMPORTS

- (a) Establishes a prohibition on importation of any species of exotic bird after four years from the date of enactment unless that species is included as approved on a list maintained by the Secretary of Interior (US Fish and Wildlife Service).
- (b) Secretary may establish import quotas for any species of exotic bird, which will be published in the Federal Register and subject to comment. The Secretary will consider population status of the species, recommendations of CITES, mortality in trade, purpose of import, disease, predation of other factors affecting the survival of the species, regulatory mechanisms in country of origin, and habitat destruction.
- (c) If import quotas are not established within 180 days the Secretary will establish quotas based on average annual imports (for base period 5-year period prior to enactment). These quotas will decrease by 25% per year during four-year phase-out period.
- (d) The Secretary will establish a list of approved species that may be imported without an import permit. The list will be based on the best available scientific evidence and subject to public comment. A strictly controlled and scientifically based

management plan must be in place for the species. The plan must provide incentives for the conservation of the species and its habitat. The use of the species must be biologically sustainable, and the methods of capture, transport, and maintenance must minimize the risk of injury, damage to health, or cruel treatment.

Species not on the CITES appendices will automatically be included on the "clean list" but the Secretary may impose moratoria or quotas at any time.

- (e) Any person may petition the Secretary to remove or establish a restriction, quota, or moratorium. Notice of petition will be published in the Federal Register and the Secretary must make a ruling not later than 90 days after the close of the comment period.

SECTION 6. PROHIBITED ACTS

Established that it is unlawful to import birds in violation of this act.

SECTION 7. EXEMPTIONS

The secretary may issue import permits for any exotic bird for scientific research, as personally owned pet birds, for zoological display, for religious purposes or for cooperative breeding programs designed to promote the conservation of the species in the wild by enhancing the propagation and survival of the affected species.

Permits may also be issued for birds that have been removed from the wild and are in trade prior to a restriction or prohibition in trade became effective.

SECTION 8. PENALTIES AND ENFORCEMENT

Any person who knowingly imports birds in violation of the Act, or any person engaged in the business of importation of exotic birds who violates the Act, is subject to civil penalties of up to \$25,000 or in criminal violations of up to 1 year imprisonment for each violation.

Rewards for information leading to conviction or costs of care of birds confiscated under the Act can be paid out of a fund derived from sums received in fines, forfeitures and penalties.

Enforcement will be by the Secretary of Interior, the Secretary of Treasury, or the Secretary of the Department in which the Coast Guard is operating. Any person authorized to enforce the act may detain for inspection any container, its contents, and documents for inspection at the time of importation. Such person may also make arrests without a warrant if they have reasonable cause to believe a violation is being committed. Such bird will be subject to seizure. Equipment and vehicles used to aid the importing of birds in violation of the Act are also subject to seizure.

The authority of the Secretary under this act shall not affect his authority under the Endangered Species Act or the Lacey Act.

SECTION 9. OTHER FAUNA AND FLORA

The Secretary is authorized to promulgate regulations he may deem necessary to implement the decisions and recommendation of CITES relating to all wildlife and plants to take stricter domestic measures that pertain to the conditions for such trade.

SECTION 10. EFFECTIVE DATE

The Act shall take effect on the date of enactment.

SECTION 11. EXOTIC BIRD CONSERVATION FUND

Amounts received in fines, penalties, and forfeitures as well as donations and additional appropriations shall be deposited in an account known as the Exotic Bird Conservation Fund to be used for the conservation of birds in their countries of origin. Particular attention shall be given to provision of funds and technical assistance to countries of origin containing birds subject to trade restrictions pursuant to this act in order to assist them in development and implementation of conservation management programs.

In cooperation with appropriate representatives of industry, the conservation community, the CITES secretariat, and other national and international bodies, the Secretary shall review opportunities for a voluntary program of labeling of birds, certification of breeding facilities and retail outlets, and provision of privately organized or funded technical assistance to other nations, and shall report back to Congress with the re-suits of this review within two years after the date of enactment of this act.

SECTION 12. AUTHORIZATION OF APPROPRIATIONS

No more than \$ 5,000,000 would be appropriated for the Secretary of Interior and the Exotic Bird Conservation Fund for each of the first three years following enactment.

Comments

The Wild Bird Conservation Act of 1992 is unique in that it establishes both a "clean list" and a "dirty list" for importation of exotic avian species. Many families of birds that are not typically exploited for the pet trade have been exempted from the definition of exotic bird for the purposes of the Act.

The "clean list" of species that can be imported without a permit would include those species not listed on the CITES appendices and species specifically exempted by the secretary because they can be utilized on a sustainable basis. The "dirty list" of species which could only be imported under a permit or for exempted purposes would include species listed on Appendix II and III and any non-CITES species which the Secretary may add to the list.

A major fault in the bill is that no specific exemption exists for the importation of foreign captive-bred birds or for wild-caught birds intended for captive breeding by private aviculturists. USFWS officials state that these birds could be imported subject to issuance of an import permit; however, there is no provision in the bill to allow issuance of these permits.

The bill gives the Secretary authority to establish or remove a restriction, quota, or moratorium on the importation of any species in response to petition and such listing is subject to public comment.

The penalties section of HR 4958 is extensive and potentially invasive. It was apparently prepared by the Law Enforcement branch of Fish and Wildlife Service and will allow them rather extraordinary powers of search and seizure without warrant. Much of this section was removed in HR 5013.

Health concerns are briefly referenced and nothing in this act will affect USDA quarantine regulations. Inclusion would require the bill to be referred to the Agriculture Committee which would significantly reduce the chance of the bill being passed in a timely manner. Section 11 enables the Secretary to participate in establishment of an aviculture improvement plan as contained in the recommendations of the Cooperative Working Group.

In general, the bill can contribute to the conservation of species by encouraging countries of origin to establish management programs in order to obtain listing of a species on the "clean list" allowing

trade. It is consistent with the CITES treaty and allows the Secretary to suspend trade if a species is experiencing excessive mortality in trade. As written, the Act also calls for a phase-out of import of all species during the phase-out period, after which time non-CITES species could be imported without restriction. As written, the bill calls for a four-year phase-out, but if quotas are reduced by 25% each year, zero quotas will be in place at the end of the third year. Failure of the bill to provide exemptions for the importation of foreign captive bred birds and breeding stock for private aviculture should be considered major flaw in the bill which hopefully will be corrected.

At the time of writing the bill is undergoing further revision in response to testimony given at the June 16 hearing.

Birds to Be Brought under Animal Welfare Act Regulation

A successful lawsuit brought by a coalition of humane and animal rights groups against USDA will bring birds and laboratory rodents under regulation under the Animal Welfare Act. US District Judge Charles R. Richey told the department that it had acted "capriciously" by not including rats, mice and birds in regulations promulgated under the Animal Welfare Act. USDA officials had argued that the cost of policing the care of laboratory rodents and birds would be cost-prohibitive. The Judge ruled that since birds and rodents have complex nervous systems and can experience pain, that there no rational distinction can be made from those species regulated under the act.

As written, birds should be regulated under the Animal Welfare Act, the original act which covers all warm-blooded animals. When USDA promulgated regulations to enforce the Act, they felt it was economically impossible to regulate birds, laboratory rodents and farm animals, and these animals were specifically excluded from regulation. Facilities where exotic animals are kept as pets and not used for public exhibit or commercial sales are also exempt from regulation.

USDA officials are not commenting yet on what action will be taken following the decision; however, apparently they are planning an appeal.