

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 15**

RIN 1018-AC15

Importation of Exotic Wild Birds to the United States; Final Rule Implementing the Wild Bird Conservation Act of 1992**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: On October 23, 1992, the Wild Bird Conservation Act of 1992 (WBCA) was signed into law, the purposes of which include promoting the conservation of exotic birds by: ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment during capture and transport; and assisting wild bird conservation and management programs in countries of origin. This final rule would implement procedures for establishment of an approved list of non-captive-bred (wild-caught) species listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or the Convention) that can be imported.

DATES: This rule is effective February 23, 1996.

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SUPPLEMENTARY INFORMATION: This final rule implements aspects of the WBCA, which was signed into law on October 23, 1992. This is the fourth of five rulemakings under the WBCA; the first final rulemaking under the WBCA was published in the Federal Register on November 16, 1993 (58 FR 60524). The second and third final rulemakings under the WBCA were published in the Federal Register on December 2, 1994 (59 FR 62255). The WBCA limits or prohibits imports of exotic bird species to ensure that their wild populations are not harmed by trade. It also encourages wild bird conservation programs in countries of origin by both ensuring that all imports of such species into the United States are biologically sustainable and not detrimental to the species, and by creating an Exotic Bird Conservation Fund to provide conservation assistance in countries of

origin. The final rule of November 16, 1993, implemented the prohibitions stipulated in the WBCA and provided permit requirements and procedures for some allowed exemptions.

During the one-year period immediately following enactment of the WBCA, from October 23, 1992, to October 22, 1993, import quotas were established for CITES-listed bird species. Those quotas were announced in the Federal Register on December 4, 1992 (57 FR 57510). A notice published on March 30, 1993 (58 FR 16644), solicited public comments and announced a public meeting, held April 15-16, 1993, to receive input from the public for 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 and submitted comments in writing; that input has been used to develop this final rule. A notice published on April 16, 1993 (58 FR 19840), announced species for which the quotas had been met and no further individual birds could be imported.

Since the publication of the final rule of November 16, 1993, imports of all CITES-listed birds (as defined in the final rule) are prohibited, except for (a) species included in an approved list; (b) specimens for which an import permit has been issued; (c) species from countries that have approved management plans for those species; or (d) specimens from approved foreign captive-breeding facilities. The U.S. Fish and Wildlife Service (Service) published a proposed rule in the Federal Register on March 17, 1994 (59 FR 12784), that would implement procedures for approval of foreign captive-breeding facilities, establishment of an approved list of captive-bred species listed in the CITES Appendices that can be imported without a WBCA permit and establishment of criteria for including non-captive-bred (wild-caught) species in the approved list.

As a result of a lawsuit filed on February 15, 1994, by the Humane Society of the United States and Defenders of Wildlife, and a resultant District Court Order that found a portion of the regulation in the November 16, 1993, Federal Register invalid, the Service, consistent with that Court Order, announced in the Federal Register on May 24, 1994 (59 FR 26810), that all exotic birds listed in Appendix III of CITES are covered by the automatic import moratorium of the WBCA, regardless of their country of origin. A proposed rule was published

on June 3, 1994 (59 FR 28826), to promulgate that regulatory change and the final rule was published on Dec. 2, 1994 (59 FR 62254).

On Dec. 2, 1994 (59 FR 62255), a final rule was published which implemented procedures for the establishment of an approved list of captive-bred species listed in the CITES Appendices that may be imported without a WBCA permit; those approved captive-bred species were those for which it has been determined that trade involves only captive-bred specimens.

This rule addresses the proposals made in the Federal Register of March 17, 1994, for the criteria for including species in the approved list of non-captive-bred species, with some modifications based on comments received and further analysis by the Service. This final rule establishes regulations called for in the WBCA that will accomplish the following: (1) For wild-caught CITES-listed birds to be on an approved list, the Service must determine that: CITES is being effectively implemented for the species for each country of origin from which imports will be allowed; CITES-recommended measures are implemented; there is a scientifically based management plan for the species that provides for the conservation of the species and its habitat, includes incentives for conservation, ensures that the use of the species is biologically sustainable and maintained throughout its range at a level consistent with its role in its ecosystem, and addresses factors that include illegal trade, domestic trade, subsistence use, disease, and habitat loss; and that the methods of capture, transport, and maintenance of the species minimize the risk of injury or damage to health.

Comments and Information Received

The Service received roughly 1500 comments from the public, including over 1409 form letters from private aviculturists (bird breeders) and comments from 12 conservation and/or animal welfare organizations, 1 zoological organization, 4 scientific organizations, 1 representative of the pet industry, 2 private companies, 5 avicultural organizations, and 1 falconry/raptor breeder organization; the remaining comments were from other private individuals.

Comments of a General Nature

The Service proposed to consider only sustainable use management plans for Appendix II and III species since trade for primarily commercial purposes is not permitted under the Convention for Appendix I species. If specimens of

an Appendix I species are required for zoological, scientific, or breeding purposes, individuals or institutions desiring such import may apply for a permit under Subpart C of this Part 15.

Few comments were received opposing such a consideration for sustainable use. A few aviculturists objected because they consider Appendix I species to be the species most in need of conservation attention, and believe that the Service should allow for imports of Appendix I species under this provision of the WBCA. The Service recognizes the need to conserve these threatened and endangered species, and agrees that they are of the highest conservation priority. The Service notes however that approval to import wild-caught birds under a sustainable use management plan will allow commercial trade, and as such is inconsistent with both the intent and the requirements of CITES Appendix I. The Service disagrees that scientifically-based management plans can be submitted for commercial exports of Appendix I listed species. If individuals or organizations wish to import wild-caught specimens of an Appendix I species for zoological, scientific, or cooperative breeding programs, they already may apply for a permit for such an import under Subpart C of this Part 15.

Comments Pertaining to Section 15.30: Definitions

The Service has modified the definition of trend and the new language reflects the need to evaluate past experience as well as future projections in determining trend.

The Service notes that in the development of its definition of 'sustainable use' it drew upon IUCN draft guidelines for 'An Initial Procedure for Assessing the Sustainability of Uses of Wild Species'. These draft guidelines recommend that assessing the impacts of use should cover three factors: (1) Demographic sustainability or the impact of the use on the population being used (the use must be at a rate that is within the population's capacity for renewal); (2) ecological sustainability or the compatibility of a use with the quality and native diversity of the ecosystem; and (3) impacts of other factors (human activities and/or natural events) on the ecosystem. The Service has incorporated these concepts into a working definition of sustainable use.

Several commenters supported the definition of sustainable use while numerous commenters, including the pet industry, avicultural, animal welfare, and conservation organizations

disagreed with the Service's proposed definition—"the use of a species in a manner and at a level such that populations of the species are maintained at optimal levels for the long term and involves a determination of the productive capacity of the species and its ecosystem, in order to ensure that utilization does not exceed those capacities or the ability of the population to reproduce and maintain itself". They objected that the Service's use of "optimal" was vague and left the definition open-ended and subject to interpretation by the reader. The Service recognizes the extreme importance of the term "sustainable use" since the WBCA requires that the import of wild-caught birds must be biologically sustainable. The Service has modified its definition to remove any ambiguity, by replacing the term "optimal levels" with the term "biologically viable levels".

One conservation organization objected to the phrase "long term" in the sustainable use definition, arguing that interpretation of the phrase is open to debate as to the exact length of time meant in the definition. They would prefer a modifier "biased toward the indefinite maintenance of viability, such as in perpetuity" be added to the definition. The Service disagrees, in that such a modifier would be unnecessarily confusing. The phrase "long term" is sufficiently clear, as it refers to many generations and indeed many, many years. The Service considers it too extreme to require exporting countries to implement management plans that are designed to maintain a species at biologically viable levels in perpetuity.

Comments Pertaining to Section 15.32: Criteria for Including Non-Captive-bred Species in the Approved List

This section establishes the criteria for the inclusion of non-captive-bred (wild-caught) bird species in the approved list, thereby allowing their importation into the U.S. under the WBCA without needing WBCA import permits under Subpart C of this Part 15. Pursuant to Section 106 of the WBCA, the Secretary is required to publish a list of species of exotic birds that are listed in an Appendix to CITES and that are not subject to a prohibition or suspension of importation otherwise applicable under the WBCA. For non-captive-bred birds to be imported from other countries and therefore, for such birds to be listed in an approved list, the Service is required by the WBCA to "use the best scientific information available, and to consider the adequacy of regulatory and enforcement mechanisms in all countries of origin for the species,

including such mechanisms for control of illegal trade."

The WBCA requires the Service to make the finding that CITES is being effectively implemented, by making each of the following findings specified in Section 106, paragraph (c) of the WBCA:

- (1) That the country of origin has established a Scientific Authority or other equivalent authority;
- (2) That the requirements of Article IV of the Convention are implemented with respect to that species;
- (3) That remedial measures recommended by the Parties to the Convention with respect to that species are implemented;
- (4) That a scientifically-based management plan has been developed for the species which provides for the conservation of the species and its habitat and includes incentives for conservation (section 106, paragraph (c)(2)(A) of the WBCA);
- (5) That a scientifically-based management plan has been developed for the species which 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 (Section 106, paragraph (c)(2)(B) of the WBCA);
- (6) That a scientifically-based management plan has been developed for the species which addresses factors relevant to the conservation of the species, including illegal trade, domestic trade, subsistence use, disease, and habitat loss (section 106, paragraph (c)(2)(C) of the WBCA);

(7) That the management plan is implemented and enforced (Section 106, paragraph (c)(3) of the WBCA); and

(8) That the methods of capture, transport, and maintenance of the species minimize the risk of injury or damage to health, including inhumane treatment (Section 106, paragraph (c)(4) of the WBCA).

The Service notes that Congress in the WBCA used the terminology "scientifically-based management plan" and it has retained this phrase in this final rule. However, the Service recognizes that preferable phrasing is "science-based" or "scientifically-sound" management plan and notes that this is the objective of a sustainable use management plan under the WBCA. Some animal welfare and conservation organizations recommended that the Service insert the word "scientific" throughout the criteria, such as "scientific study" or scientific

methodology. The Service is making no changes based on these comments, since this wording is redundant and already incorporated in the phrase "scientifically-based".

Numerous comments were received on the criteria which the Service proposed for making the above findings and these comments are addressed in the following sections.

General Comments on the Criteria

The pet industry representative and several avicultural organizations and aviculturists objected to the amount of scientific information required under the proposed regulations because they believe such information is impossible to obtain in developing countries because of scientific, logistical and financial constraints. They oppose the adoption of the proposed criteria because they consider them to be too complex and unattainable for the underdeveloped countries of the world. The Service strongly disagrees. In particular, the Service disagrees that range states that may be interested in exporting wild-caught birds are incapable of developing management plans based on scientific information.

The WBCA requires that the management plans be "scientifically-based" and that the imports of wild-caught birds be biologically sustainable and non-detrimental to the survival of the species in the wild. Therefore, the Service is required to receive and review scientific data that will ensure such findings can be made. The Service notes that such scientific studies are currently being undertaken in several developing countries by nationals from these countries. Some examples include the Blue-fronted Amazon (*Amazona aestiva*) sustainable use project in Argentina; the study of three Amazon parrot species in Mexico; the study of the Yellow-crowned Amazon (*Amazona ochrocephala*) and its potential sustainable use in Guatemala; the study of parrot populations in Venezuela; the study of Atlantic coastal forest Amazon parrots in Brazil; the study of macaws and other parrot species in Manu National Park, Peru; the study of psittacine populations in Cuba; and the study of cockatoo species in Indonesia. These studies are not just brief censuses, but often multi-year studies addressing a spectrum of biological questions integral to the development of comprehensive management plans. In addition to the scientific data collected during these projects, these research projects serve an invaluable function in training ecologists and conservation biologists in these countries. The WBCA encourages such studies and the Service

is willing to offer technical expertise to those countries requesting assistance. The Service hopes that development agencies, consumers (industry and avicultural groups) and the conservation communities will join efforts with the Service to provide support and expertise to sustainable use projects that address the use of exotic birds.

One animal welfare organization opposed the use of the phrase "sustainable use" throughout Section 15.32 and commented that the term "sustainable use has become a buzzword, conjuring up images of carefully planned and strictly controlled use of wildlife that will not harm wild populations or their ecosystems". They requested that the term "scientifically-based" management plan be substituted for sustainable use management plan. The Service disagrees and will retain the use of this terminology. However, the Service believes that any valid sustainable use management plan must be scientifically-based. The WBCA requires that imports of wild-caught birds be "biologically sustainable" and therefore, the management plans submitted must provide information that addresses such use and must be scientifically-based. A management plan based only on commercial interests or market demand would be considered inadequate.

Comments on Specific Requirements for Scientifically-Based Sustainable Use Management Plans

Section 15.32(a)(1) Background Information

One avicultural organization opposed the requirement to provide "a summary of the country's export legislation related to this species, implementing the Convention, and where appropriate, a summary of implementing regulations; and a summary of the country's enforcement and monitoring mechanisms to ensure compliance with the management plan". The Service disagrees. Such information is required under the WBCA to evaluate the implementation of CITES in the exporting country and to make the required non-detriment finding that the import of wild-caught birds will not affect the survival of the species throughout its range. The Service requires such information to ensure that wild-caught birds from neighboring range countries are not being laundered through an exporting country's sustainable use management plan. A copy of a country's export legislation would be extremely useful in assisting importing countries as it would help the Service in smuggling interdiction efforts

and identification of fraudulent documents.

Some animal welfare organizations requested that a scientific study within the previous three years be required for information on a species' distribution and status. The Service disagrees and does not believe the WBCA mandates such a requirement. The Service recognizes that such information needs to be current and factual, but will allow the exporting country to choose a time frame for the information submitted.

The Service is requesting that information on distribution be "recent".

One animal welfare organization suggested also requiring the following background information: Summaries, prepared by the Management Authority of each country of origin of the species, addressing the legislation related to this species, implementation and enforcement of CITES. The Service disagrees. Should the Service require such information to evaluate the management plan for a species with a multi-country distribution, the Service can obtain such information directly from the CITES Management Authority for these countries or the CITES Secretariat. It would be an unfair administrative burden for an exporting country to have to submit such summaries.

Section 15.32(a)(2) Habitat Information

The pet industry representative and several avicultural organizations and individuals opposed the requirement for the submission of habitat information, which they consider to be irrelevant and unavailable. The Service strongly disagrees. The WBCA requires "that a scientifically-based management plan has been developed for the species which provides for the conservation of the species and its habitat and includes incentives for conservation" (Section 106, paragraph (c)(2)(A) of the WBCA). In order to make this finding, the Service needs information on a species' ecological requirements and habitats. The Service also believes that the exporting country needs this information in order to develop a scientifically-based sustainable use management plans. The approval criteria incorporate this consideration in a number of ways, including requiring: (a) Information on species conservation status and distribution; and (b) habitat conservation information, including habitat requirements, habitat distribution and protection status, and habitat status and trends.

Scientific organizations and one zoo representative supported these requirements for habitat information.

Some animal welfare organizations requested that such information be provided from the results of a scientific study conducted within the previous three years prior to the submission of a sustainable use management plan. The Service disagrees, recognizing that such information needs to be current and factual; the Service will allow the exporting country to choose a time frame for the information submitted, as long as it reflects the current situation.

Some animal welfare organizations recommended an additional requirement that would request habitat information on reserves which provide protection for a species and management/enforcement information on those reserves. The Service recognizes the usefulness of this information in evaluating sustainable use plans, but does not believe that this calls for establishing a separate requirement. Rather, such information can be provided under § 15.32(a)(2)(ii), and the Service recommends its submission when available. The Service notes as well that in any application, any such additional information that demonstrates the scientific basis of a sustainable use management plan should be submitted in order to facilitate decision-making.

Section 15.32(a)(3) Information on the Role of a Species in its Ecosystem

Conservation, scientific, and animal welfare organizations commented that it is not possible for a country of export to ensure that a species is being used in a sustainable manner when that species does not breed in the country of export. Since the breeding cycle is one of the most crucial stages in an organism's annual cycle and the one that provides data to assess reproductive output and population dynamics, it would not be possible to assess the affect of take on the population and evaluate the sustainable use of such a population according to these commenters. They argue that a scientifically-based management plan must address these concerns to be valid. The Service strongly agrees and has modified its criteria accordingly. Unless an exporting country can demonstrate that a management plan is scientifically valid and the export of a non-breeding species from the country is biologically sustainable and not detrimental to the species' survival in its breeding range, the Service will consider only management plans for species which breed in the exporting country. The Service does not believe that a species that breeds elsewhere than the exporting country can be managed sustainably in the absence of reproductive data unless

such management is a cooperative submission by both countries. The Service strongly encourages bilateral or multilateral cooperation in the case of such migratory species.

Section 15.32(a)(4) Population Dynamics of the Species

In order to determine that any utilization proposed in the management plan is sustainable, the Service proposed to require evidence of how levels of sustainable use were determined, including either (1) adequate long-term population trends and take levels, or (2) population estimates, reproductive success, and estimation of the number exported from the country during the past 2 years, and estimation of the number of birds removed directly from the wild for export, domestic trade, illegal trade, subsistence use, and other purposes. The information should include the estimated number of birds to be removed from the wild from each area or region of take each year for all purposes, including age-class information for species, and a description of future plans to monitor the species in each area of take and to determine whether the number of birds taken has been sustainable. Throughout this rule, area or region of take refers to the area or region within the country of export where birds will be removed from the wild; the degree of specificity used will depend on the particular situation in the country of export. If the species is abundant throughout its range, the region of take could be the entire country; a species that is locally abundant but rare elsewhere might have a more restricted area of take.

This section generated extensive comments; the criteria listed in this section are essential to evaluate whether the proposed scientifically-based management plan is biologically sustainable. The proposed rule (59 FR 12784, March 17, 1994) required recent population data for the population of the species in the country of export, as well as population data from the population being harvested, derived from indices of relative abundance (such as catch per unit effort or call count surveys) or population estimates (if available), along with documentation for each estimate. These population data or estimates should be based on studies conducted for at least three separate years, or data for one year can be provided, with a description of survey plans for future years. Population assessments should have been conducted during the same season (breeding or non-breeding) of each year for which documentation is submitted.

For long-lived, more "K-selected" species of birds (as listed in the proposed rule in § 15.32) the Service proposed requiring that the management plan (for species that breed in the country of export) include information on nesting ecology, and reproductive rates or mortality rates. Those "K-selected" species were defined as those not in one of 19 specified families of birds. The Service proposed more rigorous standards for the sustainable utilization of "K-selected" species, based on an awareness that their sustainable utilization is very difficult, and that they are extremely sensitive to population depletion.

For species included in one of the 19 families of birds specified in the proposed rule in § 15.32 (more "r-selected" species), the Service proposed that, instead of detailed demographic information, the management plan (for species that breed in the country of export) need include: An estimation (with documentation) of recent reproductive success; estimation of annual mortality or loss; or documentation of long-term population and offtake trends based on indices of relative abundance and measures of offtake and description of any long-term changes in other mortality factors. Reproductive success may be estimated using pre-breeding and post-breeding counts, wherever that is appropriate. For all birds, when the species occurs in the country of export only during the non-breeding season, the Service proposed to require documentation or a letter from the CITES Scientific Authority that the species does not breed there.

Two biologists supported the proposed regulations. Two scientific organizations who represent the ornithological community, and the animal welfare and conservation organizations opposed aspects of the proposed regulations regarding population dynamics. They considered the proposed regulations to be scientifically flawed. Representatives of the scientific community argued that "the amount of information needed to prove sustainable use should be sufficient to demonstrate convincingly that the level of extraction is in proportion to the annual growth of the population." To determine if levels of use are sustainable, they recommend a minimum of four kinds of biological information: (1) Population size and trends; (2) annual reproductive success (number of young produced) per female by age groups; (3) annual rate of survival of males and females by age groups; (4) the number of birds harvested. They recommend that population trends and

levels of harvest should be measured and reported for each year of harvest. Reproductive and survival rates should be measured for 3 to 5 years, and periodically thereafter. They strongly disagree with the proposed regulations which require information on reproductive rates or survivorship rates. They recommend that both be measured for the scientific determination of quotas for sustainable use, and that this should be required for all species in trade, not only for K-selected species.

The scientific community, the zoo representative, and animal welfare and conservation organizations opposed the use of different requirements for "r- and K-"selected species. They argued that while it is generally true that K-selected species are more sensitive to overharvesting than r-selected species, "the population dynamics of long-lived, K-selected birds are usually most affected by (or sensitive to) changes in adult mortality rates. In contrast, r-selected species have shorter life spans and require frequent, successful reproduction for populations to be sustained. In other words, population dynamics of r-selected species are often equally influenced by changes in reproductive success and adult mortality. The proposed regulations do not delineate what age classes should be harvested for trade." Given that both adults and nestlings are likely to be traded, and the general lack of biological information that exists on species in international trade, the commenters argued that it is essential to require similar information for all species of birds. Lastly, they argued that the r-K dichotomy is of little use when comparing families of birds because within families, there is great variation in life history traits. They support the adoption of one set of standards for all birds, and that such standards should be strict and require information on all the population parameters discussed above as necessary to determine biologically sustainable use.

The pet industry and avicultural organizations opposed the requirements for "r- and K-"selected species. They argued that the reproductive information called for may not be necessarily relevant to the determination of sustainable use. They support the adoption of one set of standards for all birds, and that such standards be based on indices of relative abundance, and measures of offtake. A general one-time population study for certain species should be acceptable. The Service strongly disagrees and supports the use of population estimates, reproductive rates, survivorship rates, and mortality rates

in determining if a sustainable use management plan is biologically valid and non-detrimental to the species' survival. For many long-lived species, indices of abundance provide insufficient information to assess a population's status and determine measures of offtake. For many Amazon, cockatoo and macaw species, population numbers may be stable but without reproductive or mortality information, it is impossible to determine if the population is stable, declining or increasing over a limited time period. In the early 1950's the Puerto Rican Parrot population numbered around 200 birds in the wild but by 1968, it had crashed to less than 50 individuals. Population nesting success was so low that the recruitment rate for the population was zero.

The Service strongly believes that it is critical to require information on population dynamics which would allow the Service to be able to evaluate sustainable use management plans in a rigorous scientific manner. The Service has modified the final rule to require the minimum four types of biological information that the scientific ornithological community has suggested. However, should an exporting country be able to demonstrate that its management plan is scientifically valid without the submission of all the documentation required in § 15.32, the Service would consider such a plan. For example, a scientifically-based management plan for estrildid finches could be considered without documentation on annual reproductive success (number of young produced per female by age groups). The Service also recognizes that the theory of the biologically sustainable use of species is continually evolving and methodologies to measure population dynamics will change and become increasingly refined as theory is put into practice. Therefore, the Service wishes to allow some flexibility in evaluating a scientifically-based management plan.

The Service has reviewed the scientific information available on sustainable use and the biological underpinnings of such theory. The Service notes that the most successful projects currently in place for sustainable use involving international trade in CITES-listed species involve reptiles, particularly some lizards and crocodylians, and as such caution should be utilized in translating such projects to birds, particularly long-lived species such as psittacines. In developing the proposed criteria on which to base approval of sustainable use management plans, the Service

drew upon the model for sustainable use of parrot species by Beissinger and Bucher (1992) [Bioscience vol. 42, March 1992: Can parrots be conserved through sustainable harvesting?]. The scientific, animal welfare and conservation communities supported this model in their comments and urged the Service to adopt it. The Service has added an additional criterion to § 15.32(a)(4) to reflect sustainable use management options contained in this model where management operations are used to boost productivity and harvest levels of young are commensurate with such enhancement. In such a case, it is unnecessary to measure adult survival rates, provided there is baseline data upon which to compare population growth rates pre/post enhancement and to determine quotas for the harvesting of young birds.

Section 15.32(a)(5) Determination of Biologically Sustainable Use

The pet industry representative and an avicultural organization argued that the Service failed to "recognize the ability of countries to provide for alternative managed and sustainable use of pest species". They argue that the criteria for the determination of biologically sustainable use are excessive and unnecessary for pest species. "Pest species" are often subject to management control programs in exporting countries and exports of pest species are often used as a measure to reduce the population levels of these pest species.

Although Congress did not exempt pest species from the Wild Bird Conservation Act, the Service recognizes that some bird species in their country of origin may be pests and could be exceedingly abundant which allows for their sustainable use in high quantities. However, the mere designation of a species as a pest is insufficient to determine if exports are non-detrimental to the species. The Service notes that Congress, in the Committee Report on the WBCA, said that "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". These regulations accordingly reflect Congress' intent.

Several animal welfare organizations opposed the estimation of the number exported from a country of origin during the past 2 years. Animal welfare

organizations argued that such information should be provided for 3 years. The Service is making no change based on these comments. The Service believes that 2 years of data are adequate. Of course, more than 2 years of data are welcome. Furthermore, prior to approval, any proposed management plan will be the subject of a notice published in the Federal Register for public comment, at which time any interested organizations or members of the public may comment on the adequacy of data provided.

Some animal welfare organizations requested that the phrase "under the management plan" be inserted into § 15.32(a)(5)(ii) for the number of birds removed from the wild. The Service is making no change based on these comments. This phrase would not add anything, and might be confusing. Data on the numbers removed from the wild are necessary whether part of the management plan or due to other causes.

Some animal welfare organizations requested that § 15.32(a)(5)(iii) be modified to include a description of pre-export holding. The Service agrees and has modified this requirement.

Animal welfare, scientific and conservation organizations supported § 15.32(a)(5)(iv).

Several avicultural organizations and individuals opposed § 15.32(a)(5)(v), claiming that it was too broadly written and requires more information than is necessary to determine if CITES is being effectively implemented. The Service disagrees and is requiring this information to evaluate the scientific management plan and make the required non-detriment finding. Based on its experience in enforcement, the Service is concerned about the laundering of wild-caught birds taken from other areas being represented as birds coming from the areas proposed in the sustainable use management plan. The Service will work with exporting countries on means to prevent such laundering.

Several biologists and conservation organizations supported this requirement in its entirety while most animal welfare organizations and several individuals wish to have it strengthened and text inserted which "ensures that the species is 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". The Service is making no changes based on these comments. These elements are addressed

adequately within the definition of sustainable use.

Some animal welfare organizations requested that the wording in § 15.32(a)(5)(vi) regarding monitoring plans be made clearer to the reader. The Service agrees and has changed its wording.

Some animal welfare organizations and one conservation organization recommended that two additional requirements be added to § 15.32(a)(5) as part of the determination of biologically sustainable use. One requirement would be monitoring of the population during use and how taking will be halted if it is determined that the number of birds taken is not sustainable. The Service disagrees with incorporating such a redundant requirement. Article IV paragraph 3 of the CITES treaty requires the Scientific Authority of the exporting country to monitor its exports, and limit exports when necessary to maintain species throughout their range at a level consistent with their role in their ecosystems and well above a level at which they might become eligible for inclusion in Appendix I. The Service in approving the sustainable use management plan will be evaluating the implementation of CITES by the exporting country, including its implementation of Article IV. The Service also notes that the Secretary may be petitioned at any time under the WBCA to remove a species from the approved list of non-captive bred species should information become available that the number of birds taken is not sustainable.

The other requirement would be "a description of how the country of export has made Article IV determinations for each CITES listed species it has exported in the past 3 years, including the bird species that is the subject of the management plan under consideration". While it would be useful to understand the functioning of a country's Scientific Authority, requiring submission of this information would be excessive and burdensome. The Service has not incorporated this recommended change.

Section 15.32(a)(6) Incentives for Conservation

Some animal welfare groups recommended that the wording of this requirement be changed to "a demonstration of how export of the bird species to the United States will result in a verifiable improvement in the status of the species or its habitat in the country". The Service is making no changes based on this comment. The Service recognizes that such information could be used to meet the requirement of "how the sustainable use

management plan promotes the value of the species and its habitats"; however, this is not the only way to demonstrate a conservation incentive.

The pet industry representative, an avicultural organization and several aviculturists argued that "pest species" which are subject to management control programs in exporting countries need not demonstrate a conservation incentive for the species. For species where the scientifically based management plan provides documentation that such species is a pest in the country of origin, the Service has modified the requirements for a conservation incentive to allow for the consideration of pest species. However, the U.S. Department of Agriculture (USDA) commented that "APHIS and its customers are very concerned about the careful importing of birds from other countries, particularly those that are already known to cause threats in agriculture, natural resources, facilities, or human health and safety in their countries of origin". They requested that the Service consider these factors when approving species for importation. The Service agrees that these should be critical factors to consider. The Service is cognizant of the harm that non-indigenous species can do in the United States. However, the Wild Bird Conservation Act does not specifically restrict the import of pest bird species. Any applications involving the importation of pest species or species that are claimed to be pests in their country of origin will be forwarded to USDA for their comments, which will be taken into consideration.

Section 15.32(a)(7) Additional Factors

One zoological organization, 1 scientific organization, and 12 conservation and animal welfare organizations supported the additional requirements in this section. The pet industry representative and the avicultural organizations opposed the factor which asked for a description of the shipping methods and enclosures. The Service is making no changes based on these comments. The Service is required under Section 106(c) of the WBCA to determine that the methods of capture, transport, and maintenance of the species proposed for export in the sustainable use management plan minimize the risk of injury or damage to health, including inhumane treatment. Therefore, the Service is requiring such information, as it is necessary to evaluate the transport and maintenance of the species. The Service believes that exporting countries are capable of complying with U.S. and CITES humane transport standard. The Service's

primary concern in this regard is the humane and healthful transport of birds, in order to minimize or eliminate mortality and morbidity due to preparation for shipment and transport.

An avicultural organization opposed the requirement for a description of any captive-propagation program for the species carried out in the country as not relevant to the sustainable use management plan. The Service agrees that captive propagation has no bearing on sustainable use and has deleted this factor from the final rule.

A scientific organization for ornithology, one conservation organization and some animal welfare organizations requested that the Service add a requirement which would address how the exporting country will prevent the spread of disease from captured birds being held prior to export to wild populations. While the Service is aware that the birds taken for sustainable use may pose a disease risk to wild populations in the country of import and encourages exporting countries to minimize such risks, we are making no changes based on these comments. The Service is unaware of any reliable, documented examples of where captive-held birds have transmitted diseases to wild populations in the exporting country.

Section 15.32(b) Approval Criteria

General Comments on the Approval Criteria

Some animal welfare and conservation organizations recommended that the Service strengthen the wording of the approval criteria to require the Director to "determine whether or not an exotic bird species should be listed as an approved species for importation from the country of export, under Section 15.33. In making this determination, the Director shall make a finding that all of the approval criteria have been demonstrably satisfied". The Service disagrees and is making no changes. The Service notes that Congress, in the Committee Report on the WBCA, said that "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. 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". For

example, a sustainable use management plan for the CITES Appendix II-listed Blue-fronted Amazon (*Amazona aestiva*) which has declined in some parts of its range would be evaluated more stringently than a sustainable use management plan for the CITES Appendix III-listed red-billed waxbill (*Lonchura senegala*) which is abundant and widespread in its range. The approval criteria in Section 15.32(b) give the Director the flexibility and discretion needed to evaluate sustainable use management plans as Congress intended.

The pet industry representative, an avicultural organization and several aviculturists expressed their support for the proposal by the Service "to give particularly positive consideration to situations wherein very conservative capture and export quotas are implemented prior to being able to obtain all of the biological information necessary for a more large-scale management plan (in effect, a preliminary approval)". They recommended that such approval criteria be built into the regulations themselves. Several animal welfare and conservation organizations opposed such a "preliminary approval".

The Service notes that the criteria in Section 15.32 will be used to evaluate the sustainable use management plans submitted by an exporting country but that the Director has flexibility and discretion in approving plans, as Congress intended. The Service is aware that the criteria for approval of sustainable use plans may appear rigorous, and although desirable and scientifically valid, they may be difficult for some exporting countries. The Service will evaluate each sustainable use plan and the information provided within on its own scientific and conservation merit. The Service may give positive consideration to plans wherein very conservative capture and export quotas are implemented prior to being able to obtain all of the biological information necessary for a more large-scale management plan, if the country can demonstrate that such conservative capture and export quotas are non-detrimental to the species survival in the wild. There is precedent among CITES Parties to impose such conservative quotas when some scientific data is available and a species' status is known while the firmer scientific database is being developed. While some of the biological information in the sustainable use management plan may be lacking, the plan must address all the other approval criteria requiring the effective implementation of CITES in the

exporting country. The Service notes that Congress, in the Committee Report on the WBCA, said that "the Committee expects the Secretary to consider the extent to which a country's Scientific Authority is technically capable of carrying out the duties described by CITES." It directs the Secretary to review whether a country is effectively implementing remedial measures recommended by the Parties to CITES.

One scientific organization commented that the Service should be required to establish an "advisory board of scientists chosen for their competence in demography" to review management plans and make recommendations to the Service on the approval of such plans. The Service strongly disagrees. The Service makes non-detriment findings routinely and has the expertise and competency to evaluate sustainable use management plans. The Service shall publish notice in the Federal Register of sustainable use management plan applications. Interested parties, including the scientific community, are invited to submit comments regarding these plans.

A few animal welfare organizations and individuals commented in opposition to the duration of approval of 3 years and requested that the Service approve sustainable use programs for 1 year only. The Service strongly disagrees and is making no changes. Given the amount of data and information required by the Service to evaluate sustainable use management plans, an approval for only 1 year would be excessive and burdensome to an exporting country and would not allow an exporting country to develop long-term sustainable use and conservation management programs. The Service notes that the Secretary may be petitioned at any time under the WBCA to remove a species from the approved list of non-captive bred species should information become available that the number of birds taken is not sustainable.

General Comments Pertaining to Section 15.33: Species Included in the Approved List for Non-Captive-Bred Species

No comments were received on the proposed organization of this subpart. This subpart is established in this rule; actual text will be proposed as sustainable use management plans are received and approved.

Effects of the Rule

The Service has determined that this final rule is categorically excluded under Departmental procedures in complying with the National Environmental Policy Act (NEPA). See

516 DM [Departmental Manual] 2, Appendix 1 Paragraph 1.10. The regulations are procedural in nature, and the environmental effects, while crafted to carry out the benign purposes of the WBCA, are judged to be minimal, speculative, and do not lend themselves to meaningful analysis. Future regulations and permitting decisions implementing the WBCA may be subject to NEPA documentation requirements, on a case-by-case basis.

Executive Orders 12866, 12612, and 12630 and the Regulatory Flexibility Act

This rule was not subject to Office of Management and Budget review under Executive Order 12866. This action is not expected to have significant taking implications for United States citizens, as per Executive Order 12630. It has also been certified that these revisions will not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Since the rule applies to importation of live wild birds into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the U.S. Fish and Wildlife Service has received approval for this collection of information, with approval number 1018-0084, with the expiration date of August 31, 1996.

This collection of information will be achieved through the use of USFWS Application Form 3-200, which will be modified pursuant to 50 CFR 13.12(b), to address the specific requirements of this final rule. This collection information will establish whether or not the applicant can include a given species of exotic bird in the approved list of non-captive-bred species.

The likely respondents to this collection of information will be foreign governments who wish to include a given species of exotic bird in the approved list of non-captive-bred species. This information will be needed by the USFWS to determine whether a given species of exotic bird can be managed in a scientifically based sustainable manner, thus warranting inclusion in the approved list of non-captive-bred species. A species and country of export will be approved for three (3) years, at which time renewal of approval will be considered by the USFWS. The annual burden of reporting and record keeping should be between five (5) and ten (10) hours per response. The estimated number of likely

respondents is less than ten (10), yielding a total annual reporting and recordkeeping burden of one hundred (100) hours or less.

List of Subjects in 50 CFR Part 15

Imports, Reporting and recordkeeping requirements, Transportation, and Wildlife.

Regulation Promulgation

Accordingly, 50 CFR part 15 is amended as follows:

PART 15—WILD BIRD CONSERVATION ACT

1. The authority citation for Part 15 continues to read as follows:

Authority: Pub. L. 102-440, 16 U.S.C. 4901-4916.

2. Amend Part 15, subpart A, section 15.3 by adding the following definitions, in alphabetical order:

§ 15.3 Definitions.

* * * * *

Documentation means a description of how scientific information was collected, including the methodologies used; names and institutions of individuals conducting the work; dates and locations of any study; and any published results or reports from the work.

* * * * *

Life cycle means the annual processes involved with breeding, migration, and all other non-breeding activities.

* * * * *

Status means a qualitative measure of the vulnerability to extinction or extirpation of a population at a given time (e.g., endangered, threatened, vulnerable, non-threatened, or insufficiently known).

Sustainable use means the use of a species in a manner and at a level such that populations of the species are maintained at biologically viable levels for the long term and involves a determination of the productive capacity of the species and its ecosystem, in order to ensure that utilization does not exceed those capacities or the ability of the population to reproduce, maintain itself and perform its role or function in its ecosystem.

Trend means a long-term assessment of any change in the absolute or relative size of a species' population or habitat over time (e.g., increasing, decreasing, at equilibrium, insufficiently known).

* * * * *

3. Section 15.32 is amended by adding text to read as follows:

§ 15.32 Criteria for including species in the approved list for non-captive-bred species.

Upon receipt of a completed sustainable use management plan for a country of export, the Director may approve a species listed in Appendices II or III of the Convention for importation from that country. Such approval shall be granted in accordance with the issuance criteria of this section. All approved species and countries of export will be listed in section 15.33.

(a) Requirements for scientifically-based sustainable use management plans. Sustainable use management plans developed by the country of export should be submitted for species which breed in the country of export. If the species does not breed in the country of export, the Service will consider sustainable use management plans only when the plan is scientifically valid and nesting (breeding) information can be provided from countries in which the species breeds. Sustainable use management plans shall include the following information, and any other information that may be appropriate:

(1) Background information, including the following:

(i) The scientific and common name of the species;

(ii) Letters from the country of export's Management and Scientific Authorities transmitting the management plan of this species;

(iii) A summary of the country of export's legislation related to this species and legislation implementing the Convention, and, where appropriate, a summary of implementing regulations;

(iv) A summary, from the country of export's Management Authority, of the country's infrastructure and law enforcement and monitoring mechanisms designed to ensure both enforcement of and compliance with the requirements of the management plan, and that the number of birds removed from the wild or exported will be consistent with the management plan;

(v) Recent information on the distribution of the species within the country of export, including scientific references and maps, and historical information on distributions, if relevant; and

(vi) The species' status and its current population trend in the country of export, including scientific references and copies of the most recent non-detriment findings made by the exporting country's Scientific Authority.

(2) Habitat information, including:

(i) A general description of habitats used by the species for each portion of the life cycle completed within the country of export;

(ii) Recent information on the size and distribution of these habitats throughout the country of export and in each area or region of take, including scientific references and maps. The approximate location of any reserves that provide protection for this species should be indicated on the accompanying map(s), along with a brief description of how reserves are protected and how that protection is enforced;

(iii) Status and trends of the important habitats used by the species in the country of export as a whole whenever available and within each area or region of take, including scientific references;

(iv) Factors, including management activities, favoring or threatening the species' habitat in the foreseeable future within each area or region of take, and throughout the country of export whenever available, including scientific references; and

(v) A list of management plans that have been or are being planned, developed, or implemented for the species' important habitats, if any.

(3) Information on the role of the species in its ecosystem, including:

(i) A description of the part(s) of the species' life cycle completed within the country of export;

(ii) A description of nest sites and/or plant communities that are most frequently used for placement of nests and, if applicable, nesting habits;

(iii) A general description of the species' diet and where the species forages (aerial feeder, tree canopy, tree trunk, midstory, understory, open water or other), and seasonal changes in foraging habits, including, when available, scientific references; and

(iv) Information on any species or plant community which is dependent on the occurrence of the exotic bird species.

(4) Population dynamics of the species, including:

(i) Recent population data for the population of the species in the country of export, as derived from indices of relative abundance or population estimates, along with documentation for each estimate;

(ii) Within each area or region of take, documentation for recent population data or estimates, conducted for at least 3 separate years or 1 year with a description of survey plans for future years. These population assessments should have been conducted during the same season (breeding or non-breeding) of each year for which documentation is submitted (i.e., be methodologically comparable—both temporally and spatially);

(iii) Within each area or region of take, a scientific assessment (with

documentation) of recent reproductive (nesting) success. This assessment should include information on the number of young produced per egg-laying female per year or per nesting pair, or if scientifically appropriate for the species to be exported, estimates on the number of young produced per year from pre-breeding and post-breeding surveys conducted within the same annual cycle;

(iv) Within each area or region of take, estimation (with documentation) of annual mortality or loss including natural mortality and take for subsistence use, export trade, and domestic trade in each area of take; or

(v) When appropriate, information (with documentation) on the number of young which can be taken from the area, as a result of a conservation enhancement program.

(5) Determination of biologically sustainable use:

(i) Estimation of the number exported from the country during the past 2 years, and the number of birds removed from the wild for export, domestic trade, illegal trade, subsistence use, and other purposes (specify) for the country of export during the past 2 years;

(ii) The estimated number of birds that will be removed from the wild from each area of take each year for all purposes (export trade, domestic trade, illegal trade, and subsistence use), including a description of age-classes (nestlings, fledglings, sub-adults, adults, all classes), when applicable;

(iii) For the projected take addressed in the management plan, a description of the removal process, including, but not limited to, locations, time of year, capture methods, means of transport, and pre-export conditioning;

(iv) Documentation of how each projected level of take was determined;

(v) Explanation of infrastructure and law enforcement and monitoring mechanisms that ensure compliance with the methodology in the management plan and that the species will be removed at a level that ensures sustainable use; and

(vi) Description of how species in each area or region of take will be monitored in order to determine whether the number and age classes of birds taken is sustainable.

(6) (i) For species that are considered "pests" in the country of origin: documentation that such a species is a pest, including a description of the type of pest,—e.g., agricultural, disease carrier; a description of the damage the pest species causes to its ecosystem; and a description of how the sustainable use management plan controls population levels of the pest species.

(ii) For non-pest species: A description of how the sustainable use management plan promotes the value of the species and its habitats. Incentives for conservation may be generated by environmental education, cooperative efforts or projects, development of cooperative management units, and/or activities involving local communities.

(7) Additional factors:

(i) Description of any existing enhancement activities developed for the species, including, but not limited to, annual banding programs, nest watching/guarding, and nest improvement; and

(ii) Description, including photographs or diagrams, of the shipping methods and enclosures proposed to be used to transport the exotic birds, including but not limited to feeding and care during transport, densities of birds in shipping enclosures, and estimated consignment sizes.

(b) Approval criteria. Upon receiving a sustainable use management plan in accordance with paragraph (a) of this section, the Director will decide whether or not an exotic bird species should be listed as an approved species for importation from the country of export, under section 15.33. In making this decision, the Director shall consider in addition to the general criteria in part 13 of this subchapter, all of the following factors for the species:

(1) Whether the country of export is effectively implementing the Convention, particularly with respect to:

(i) establishment of a functioning Scientific Authority;

(ii) the requirements of Article IV of the Convention;

(iii) remedial measures recommended by the Parties to the Convention with respect to this and similar species, including recommendations of permanent committees of the Convention; and

(iv) Article VIII of the Convention, including but not limited to establishment of legislation and infrastructure necessary to enforce the Convention, and submission of annual reports to the Convention's Secretariat;

(2) Whether the country of export has developed a scientifically-based management plan for the species that:

(i) provides for the conservation of the species and its habitat(s);

(ii) includes incentives for conservation unless the species is a documented pest species;

(iii) is adequately implemented and enforced;

(iv) ensures that the use of the species is:

(A) sustainable;

(B) maintained throughout its range at a level that is consistent with the species' role in its ecosystem; and

(C) is well above the level at which the species might become threatened;

(v) addresses illegal trade, domestic trade, subsistence use, disease, and habitat loss; and

(vi) ensures that the methods of capture, transport, and maintenance of the species minimize the risk of injury, damage to health, and inhumane treatment; and

(3) If the species has a multi-national distribution:

(i) Whether populations of the species in other countries in which it occurs will not be detrimentally affected by exports of the species from the country requesting approval;

(ii) Whether factors affecting conservation of the species, including export from other countries, illegal trade, domestic use, or subsistence use are regulated throughout the range of the species so that recruitment and/or breeding stocks of the species will not be detrimentally affected by the proposed export;

(iii) Whether the projected take and export will not detrimentally affect breeding populations; and

(iv) Whether the projected take and export will not detrimentally affect existing enhancement activities, conservation programs, or enforcement efforts throughout the species' range.

(4) For purposes of applying the criterion in paragraph (b)(2)(iv) of this section, the Director may give positive consideration to plans wherein very conservative capture and export quotas are implemented prior to being able to obtain all of the biological information necessary for a more large-scale management plan, if the country can demonstrate that such conservative capture and export quotas are non-detrimental to the species survival in the wild under the criterion in paragraph (b)(2)(iv) of this section.

(c) Publication in the Federal Register. The Director shall publish notice in the Federal Register of the availability of each complete sustainable use management plan received under paragraph (a) of this section. Each notice shall invite the submission from interested parties of written data, views, or arguments with respect to the proposed approval.

(d) Duration of approval. A species and country of export listed in section

15.33 as approved shall be approved for 3 years, at which time renewal of approval shall be considered by the Service.

4. Section 15.33(b) is revised to read as follows:

§ 15.33 Species included in the approved list.

* * * * *

(b) Non-captive-bred species. The list in this paragraph includes species of non-captive-bred exotic birds and countries for which importation into the United States is not prohibited by section 15.11. The species are grouped taxonomically by order, and may only be imported from the approved country, except as provided under a permit issued pursuant to subpart C of this Part.

Dated: November 7, 1995.

George T. Frampton, Jr.,
Assistant Secretary for Fish and Wildlife and Parks.

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