

FEDERAL IMPORT/EXPORT LAWS AND REGULATIONS

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Abstract: The present federal wildlife import/export control program consists of designated ports of entry for imports, import declarations, package marking requirements, inspection and clearance of imported animals, parts, products, documentation, and records. Future control over imports and exports will be strengthened if new regulations designating ports for export, a licensing provision for wildlife importers and exporters, and a new export declaration requirement is instituted. Adequate enforcement of wildlife importing and exporting is dependent on state, federal, and international cooperation.

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It is indeed a pleasure for me to be here and participate in the 32nd Annual Conference of the Southeastern Association of Fish and Wildlife Agencies. I have been asked to talk about federal import and export laws and regulations, which I know are of interest to all of you.

It always seems helpful to me when explaining federal wildlife statutes to delve into the history behind the action of Congress. Before the turn of the century, many people expressed concern about the danger in allowing unrestricted imports of birds and animals into the United States. At this time, California was the only State that restricted imports of such undesirables as flying foxes, Australian wild rabbits and mongooses. California had an interest to protect and was concerned because there was a bridge from the Orient to Hawaii to San Francisco due to the tremendous increase in trans-Pacific commerce. But California could not do it alone and they, among others, urged national legislation.

By this time the English sparrow was well established and causing economic damage. It stood for America's classic blunder in wildlife importation. As a result of public pressure an Act was passed in 1900 which included a provision prohibiting the importation of the mongoose, fruit bats, English sparrow, starling, and any other bird or animal which the Secretary of Agriculture declared to be injurious to the interests of agriculture or horticulture. In addition, the Act provided that any other importation of a bird or animal was only authorized under a special permit issued by the Department of Agriculture. Thus, the importation of certain species was absolutely prohibited and all other species were subject to a permit provision unless the Secretary said it was unnecessary. That original concept of prohibiting injurious wildlife imports is still with us today even though the specific language of that original Act has been amended several times over the years.

As you probably have already guessed, I am talking about Section 42 of the Lacey Act (18 USC 42) or the injurious wildlife section of the Act. With the Lacey Act the Federal Government became involved for the first time in controlling wildlife imports. This statute is based on the powerful Commerce Clause of the Constitution, which underlies all federal restrictions on wildlife imports and exports.

As you can see, over 78 years ago Congress recognized that a single state cannot protect its citizens from unwanted wildlife importations because it has no power to control what goes on in neighboring states. It was therefore necessary for states to act together under the federal system to provide for wildlife importation and exportation controls.

The subject of current import and export controls is extremely complex and could be organized several ways. I could talk about permits, about species, or I could use a historical approach by the various statutes. I find, however, that it is easier for me and hopefully for you to understand these federal laws and regulations from a procedural and substantive viewpoint. There are certain procedural laws and regulations that apply to imports and exports of wildlife regardless of the species involved. In addition, there are certain restrictions of a substantive nature which apply to the specific species, such as an endangered species, a migratory bird or a marine mammal. Therefore, I have decided to organize my remarks this morning along these procedural and substantive lines.

I think it is easiest if we look at the procedural area first. To start with it is important to recognize that we define importation differently than the U.S. Customs Service. The Customs people are interested in those items brought into this country that are intended for domestic commerce and where a duty may be collected. From our standpoint, an import means to land on, bring into, or introduce into any place subject to the jurisdiction of the United States. This is a much broader definition and includes shipments brought into this country with no intention of entering the United States but simply changing airplanes and flying on to Canada or some other location. Under our approach this would be an importation.

Given this definition of importation, let us look at the importation control procedures currently in effect. I should add that new regulations in both the importation and exportation area were proposed on March 27, 1978, and the public comment period and public hearings have just ended. We are, therefore, in the process of analyzing all these comments and will be publishing final regulations in the near future. I will explain the current procedures as we go along and point out where there are likely to be any significant changes in the new regulations. In general, the changes will be somewhat technical so we probably will not get into an in-depth discussion this morning.

IMPORTS

Basically, our import control system consists of designated ports, import declarations, marking requirements, inspection and clearance procedures, and a soon to be implemented licensing provision for all persons in the wildlife importing or exporting business. Let us now explore each of these further.

Designated Ports

Ports of entry specifically designated for the importation of wildlife were first established under the Endangered Species Conservation Act of 1969. The theory is that we have designated a few ports of entry where all wildlife may enter the country and where monitoring by wildlife officers is economically feasible. There are currently 8 such "designated" ports for importing wildlife — New York, Miami, Chicago, San Francisco, Los Angeles, New Orleans, Seattle and Honolulu. In addition to these ports there are special border ports along the Canadian and Mexican borders. Wildlife entering through these border ports must be Canadian or Mexican wildlife imported directly into the United States. In addition, wildlife taken by sportsmen in Canada or Mexico may be imported for noncommercial purposes at any Customs port of entry.

There are a number of other exceptions to the general requirement that wildlife must be imported through a "designated" port. Passengers can bring wildlife products or manufactured articles which are not intended for sale through any port of entry as part of accompanying personal baggage. However, this does not apply to endangered species and to certain raw furs, hides, skins or game trophies. This exception also applies to wildlife being imported as a result of someone moving their residence to the United States. There also is a general exception for shellfish and fishery products. In addition, there is a permit system which allows imports at nondesignated ports for scientific purposes, in order to minimize the deterioration or loss of wildlife, or to alleviate economic hardship.

Import Declarations

Import declarations, called Form 3-177, are required to be filed by the importer or his broker. This declaration includes the name and address of the importer, of the consignor or shipper, the name of the broker, and any permit numbers which are relevant. The common and scientific names of each species imported must be declared, as well as the country or origin and the number of animals or parts imported. There are a number of exceptions to the declaration requirement. These include fish taken by sport fishermen in Canada or Mexico or on the high seas, shellfish or fishery products imported for commercial purposes, game trophies for which a Customs Form 3315 is filed, and wildlife products which are imported as personal baggage and household shipments which are not intended for resale.

Marking Requirement

Another enforcement tool is the marking requirement. Packages containing wildlife must have the name and address of the shipper and the consignee, an accurate statement of the contents by species, and numbers marked clearly and conspicuously on the outside

of the container. As with most of these provisions, there are certain exceptions to the marking requirement. These deal basically with shellfish and fishery products, ranch-raised furs, and people with special permits allowing the use of symbols in lieu of marking the outside of packages or containers. The marking requirement is designed so that enforcement officers recognize that wildlife or wildlife products are inside of the container. Unfortunately, if it is marked with such information it is also noticeable to the public. The potential for theft becomes greater with valuable furs or other valuable wildlife. Therefore, we have a procedure where a firm or individual can apply for a permit to use a symbol on his package in lieu of the other information.

Inspection and Clearance Procedures

Another major import control feature is inspection and clearance. All wildlife imported into the country is subject to inspection by Service officers. This inspection includes not only the animals and parts or products, but all documentation and records accompanying the shipment. Since it is almost impossible to physically inspect all wildlife imports, we say that such items are "subject" to inspection. There is an absolute requirement that, unless a person meets certain exceptions, wildlife imports must be "cleared" by a Service officer prior to release from Customs custody. During this inspection and clearance phase our officers are looking for compliance with the procedural requirements as well as the substantive requirements of the various statutes.

A few years ago we created a new enforcement position in the Fish and Wildlife Service called Wildlife Inspector. These Inspectors are generally stationed at "designated" ports, however, there are some at selected border ports. The Inspector's job is to work closely with U.S. Customs and other government agencies and to inspect and examine wildlife and accompanying permits and documents. Generally either the broker or importer knows that he must get our clearance on wildlife imports so he brings the shipment to our attention.

EXPORTS

Now that we have looked at the basic procedures controlling wildlife imports, we will turn to exports. As you are probably aware, the United States and most other countries do not have a system of export controls that is in any way as effective as their import control system. Items exported from the United States can generally leave the country without any government control. While there are restrictions on exports in addition to those that apply to wildlife, it is a difficult enforcement mission to control illegal exports.

Designated Ports

In our proposed regulations published last March export control procedures were outlined under the Endangered Species Act of 1973. First of all there would be the concept of "designated" ports for exports. The ports for import would also be designated for export. All wildlife shipments would have to leave the country through one of these 8 "designated" ports unless they fit into one of the exceptions or a permit has been granted. The same kind of exceptions that I discussed earlier for imports would apply to exports including border and special ports and nondesignated port exception permits.

Export Declaration

In addition to the designated port concept we also are proposing a new export declaration. Form 3-177 has been redesigned to make it a Declaration for Importation or Exportation of Wildlife. The same exceptions for shellfish and fishery products also proposed — when the wildlife being exported is not intended for sale and the value is under \$250, no export declaration would be required. Likewise, an export declaration is not required for items of clothing, accompanying personal baggage, and shipments of household items of people moving outside of the United States.

Marking Requirement

The marking requirement for packages containing wildlife that I described earlier is also a requirement for exportation because current regulations apply to any wildlife conveyed in interstate or foreign commerce.

Inspection and Clearance Procedure

In the area of inspection and clearance we have the authority to inspect wildlife shipments prior to export. There is no way, of course, that we will be inspecting all wildlife exports, just as we do not physically inspect all wildlife imports. There is no general clearance requirement proposed prior to export as there is for import. We felt

it would be an impossible situation to enforce and thus have tried to establish enforceable requirements. Even though there is not a specific clearance requirement, almost all export permits issued by the Service require that the exporter present his permit for validation, file an export declaration, and make his shipment available for inspection at the port of exit by a Service officer. That means that an export permit issued to an applicant is not valid unless it is co-signed by a Service officer at the port of exit. In this manner, most items leaving the country under permit will be screened by our proposed export control system. We recognize that this export control system is a new venture and will undoubtedly need revision and modification as experience shows problem areas.

Another new area in the proposed regulation deals with licensing importers and exporters. The 1973 Endangered Species Act prohibits anyone from engaging in "business as an importer or exporter of wildlife" unless he has obtained permission from the Secretary of Interior. While everyone currently has blanket permission to engage in this activity, our proposed regulations spell out who is intended to be covered by this phrase "engage in business as an importer or exporter of wildlife." Generally speaking, the proposal includes people who are actively engaged in importing and exporting live wildlife or manufactured parts or products for trade, sale, or resale, such as animal dealers, animal brokers, pet dealers, pet suppliers, fur dealers, fur brokers, hide and skin dealers, hide and skin brokers and leather dealers and brokers.

We received extensive comments on the licensing provision of the proposed regulations. I suspect the final regulations will be changed somewhat from the proposal. Therefore, it doesn't seem appropriate this morning to go into great detail. The main purpose of this licensing procedure, of course, is an enforcement tool. It will give us a handle on who is involved in the commercial traffic of importing and exporting wildlife.

I have now completed my discussion of the procedural requirements and will turn to the substantive requirements. As you know, there are various federal statutes prohibiting the importation of certain fish and wildlife altogether. The statutes also provide a system of permits which authorize importation or exportation for certain specified purposes during a prescribed time. A host of regulations was developed to implement these statutes. One of the problems we have in administering these statutes is that they have been enacted at various times throughout our history, and while not necessarily contradictory, often provide overlapping protection for certain species. For example, the manatee is protected by the Marine Mammal Protection Act and the Endangered Species Act of 1973, as well as the Lacey Act. The bald eagle is protected in the southeast by the Bald Eagle Protection Act, Migratory Bird Treaty Act, and the Endangered Species Act. These federal requirements are, of course, in addition to any state laws which may also protect those species, and which may also have various permit requirements for the import or export of the species into or from the state.

During the time remaining it will be impossible for me to discuss all of the substantive requirements and the types of permits and permit issuance criteria and conditions available under all of the various federal statutes. Therefore, I will hit the high points of these statutes and we can go into some detail during the question and answer period if there is a particular interest.

The oldest of the federal statutes is the Lacey Act. One section of this act prohibits imports of injurious species. Foreign commerce, including imports and exports, of any wildlife which has been taken, transported, or sold in violation of state or foreign law, is also illegal under the Lacey Act and under another statute, the Black Bass Act. No permits are available under these 2 statutes because the intent is basically to assist the states and/or foreign governments by not allowing imports or exports in violation of their own laws.

The Marine Mammal Protection Act of 1972 has an absolute prohibition on imports of marine mammals taken after 21 December 1972. Under this act polar bears, sea otters, walrus, dugongs, manatees, and marine otters are under the jurisdiction of the Fish and Wildlife Service and whales, porpoises, seals and sea lions are under the jurisdiction of the National Marine Fisheries Service of the Department of Commerce. This division of administrative responsibility compounds even further the public concept of federal import restrictions. Under this statute permits can be issued for scientific research and public display purposes.

The import and export of migratory birds, including eagles, are covered under the Migratory Bird Treaty Act and the Bald Eagle Protection Act. The Treaty Act imple-

ments bilateral treaties between the United States and Canada, Mexico, Japan, and soon the USSR. A migratory bird is any bird covered by one of the treaties. A list of such birds is found in the federal regulations.

The Endangered Species Act of 1973 presents a long list of endangered and threatened species. The importation of all endangered species is prohibited except that permits may be granted for specific purposes, economic hardship, and for the enhancement of the propagation or survival of the species. For those species that are listed as threatened, importation restrictions may or may not apply as there are special regulations which apply to certain threatened species and not others.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, called CITES, is a treaty designed to restrict and control the wildlife imports and exports between all party countries and as far as the United States is concerned, between non-party countries. This Convention, which is implemented by a federal statute, has three appendices with varying restrictions. For those species listed on Appendix I an import permit must first be obtained from the country where the import is to occur and then an export permit from the country of export. For species on Appendix II and III an export permit from the country of origin is required, or a re-export permit or certificate may be obtained, depending on the nature of the item and the export.

That is a summary of the substantive laws enforced by the U.S. Fish and Wildlife Service that relate to importing and exporting fish and wildlife. In addition, you should be aware that the U.S. Department of Agriculture has a number of restrictions relating to the quarantine of hoofed animals and birds. Other federal agencies such as the Public Health Service occasionally put restrictions on wildlife imports.

In conclusion, wildlife importing and exporting is a complicated business. Since it is difficult to stay on top of all the current restrictions, I suggest that whenever you have problems or need answers to questions regarding the import or export of wildlife you contact your nearest Special Agent or Special Agent in Charge of the District serving your particular state.