

The Implications of Being on the Endangered Species Act

The implications of a species being on the ESA means (per a letter from the Fish and Wildlife Service dated March 14, 2013 <http://www.avalonaviary.com/ESA/FWSResponsesToQuestions.pdf>

- These prohibitions, at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to “take” (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies. Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species and 17.32 for threatened species. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. For threatened species, a permit may be issued for the same activities, as well as zoological exhibition, education, and special purposes consistent with the Act.

<https://www.federalregister.gov/articles/2013/03/12/2013-05504/endangered-and-threatened-wildlife-and-plants-listing-the-yellow-billed-parrot-with-special-rule-and>

- If you currently own a bird that becomes listed on the ESA, you will be able to keep your bird, whether it is a pet or a breeder and, provided you can document when you obtained your bird, you can do as you like with your bird except if you want to sell your bird, when it would lose its “pre-Act status”. NOTE: KEEP YOUR DOCUMENTATION ON YOUR BIRDS, INCLUDING PURCHASE RECORDS AND VETERINARY RECORDS SO YOU CAN PROVE PRE-ACT OWNERSHIP!
- ESA-listed species can only be bought or sold within the state where you reside. You cannot purchase an ESA-listed species from another state without a Captive Bred Wildlife permit, which is difficult for breeders to get and virtually impossible for pet owners to get.
 - If you want to get an ESA-listed bird to be a pet or a breeder, it will be difficult if not impossible to do unless you can find one in the state where you reside.
 - If you want to get your existing ESA-listed bird a buddy or a mate, it will be difficult if not impossible to do unless you can find one in the state where you reside.
 - If you want to breed your ESA-listed birds, your market will be limited to the state where you reside. Note that this will eventually lead to local market saturation.
 - Some states, including Illinois, Virginia, and Rhode Island, laws on the books cause the automatic adoption of any provisions of the ESA, which would mean that intra-state commerce (within each of those states) would be automatically prohibited for those

listed species. Some of these laws also do not grandfather your existing birds even if they were acquired pre-act. This would mean that once they are added to the ESA that your existing birds will be illegal to possess.

▪ **§ 29.1-564. Taking, transportation, sale, etc., of endangered species prohibited**

The taking, transportation, possession, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568.

Acts 1987, c. 488. http://www.animallaw.info/statutes/stusva29_1_563.htm

- SUMMARY: As species are added to the ESA, for those who already own members of the species either as pets or in captive breeding programs, it becomes illegal to obtain another or place an existing bird through interstate commerce. This means that pet owners cannot look outside their state to find a friend for their pet bird, or to find a mate for that bird. It means that most aviculturists cannot look outside their state to obtain another. It means that when it comes time to find a new home for your bird or birds due to life circumstances or death, it will not be possible to sell your bird or birds to someone in another state, and in some cases even within your own state. And it means bird rescues will not be able to adopt-out across state lines.
- The movement of personal pets across state lines is not prohibited if those pets are documented to be owned prior to their listing AND the state you are entering allows you to have that species.
- To travel with an ESA-listed pet bird into or out of the US you will need a permit, which may be very difficult to obtain.
- It is prohibited to engage in interstate commerce in an ESA-listed species, unless the buyer and seller can demonstrate that such sales or purchases will enhance the propagation or survival of the species or for scientific research, and that principal purpose of this transaction is to facilitate conservation breeding and not for the sale of protected species as pets. Furthermore, authorized commerce must be with another Captive-bred Wildlife registrant. NOTE: Captive-bred Wildlife Registration is difficult to get and expensive and must be regularly renewed, and is only open to those who demonstrate that the purpose is conservation breeding.
- If a species is considered threatened, the ESA allows exceptions to those prohibitions that are appropriate for the species. For example interstate commerce in the Salmon-Crested Cockatoo and Yellow-Billed Parrot are allowed without a permit.
- Without a provision for interstate commerce it will be illegal to take a documented grandfathered-in pet bird to another state for a veterinary exam. And it may put the veterinarian in an awkward position as well.