



MASTER CUSTOMS SPECIALIST (MCS) COURSE

Part 5: Admissibility Requirements | Module 20: U.S. Fish and Wildlife Service (FWS)

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INTRODUCTION

The U.S. Fish and Wildlife Service (FWS) is a bureau within the Department of the Interior responsible for the importation, exportation or transportation of wildlife and wildlife products. As of 2013, FWS had oversight of 170+ individual Acts such as the Endangered Species Act (ESA). Regulations pertaining to FWS can be found in 50 CFR.

Over 1,000 species of animals and plants are officially listed under U.S. law as endangered or threatened. With few exceptions, none may be imported or exported either alive, as parts or products, or as hunting trophies.

Exceptions exist for certain antiques. Federally-permitted exceptions may be granted for scientific research, breeding, or similar purposes designed to contribute to the species conservation.

Under 50 CFR, the term “fish or wildlife” means any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof.



Lesson 1: CITES

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), now with more than 183 signatory parties, is the only international treaty designed to control unsustainable trade in plants and animals (“wildlife”) where trade could threaten their survival in the wild or cause extinction. CITES is administered through the United Nations Environment Programme (UNEP) with a Secretariat located in Geneva, Switzerland. The member countries are known as the Conference of Parties (CoP). The CoP meets every two to three years to review CITES agreements and revise as appropriate.

CITES divides protected wildlife into three groups – threatened in Appendix I, potentially threatened in Appendix II and controlled by request in Appendix III. To be listed in Appendix III, the range country must request support to control trade. There are 147 species listed in Appendix III. The U.S. has 27 species listed, most of which are freshwater turtles. In total, over 35,000 species are listed under CITES.

The backbone of CITES is the permit system. Through the use of standardized permit forms, inspectors at both export and import countries can quickly ascertain if CITES specimens are properly documented.

Permits facilitate trade data collection, including species-specific numbers, for use in creating annual reports, determining trade trends and ensuring trade is sustainable. Permit-driven trade monitoring has generated a substantial amount of information on the management and use of CITES species worldwide.

Permits are issued only if a country’s Management and Scientific Authorities (in the case of the United States, the FWS) determine that the trade is legal and does not threaten the species’ survival in the wild.

Lesson 2: Migratory Birds

Most migratory birds are protected by international treaty and by United States law and require a permit. Many CITES-listed live birds are also controlled under the Wild Bird Conservation Act and may require U.S. import permits.

Game birds that are legally killed in and exported from foreign countries by United States hunters may be imported and possessed. Fully manufactured artificial flies for fishing (other than those containing protected bird species) may also be imported and possessed.



Lesson 3: Injurious Wildlife

Several live animals are considered harmful to the environment, people or wildlife in the U.S. and may not be imported. Some examples include the fruit bat, mongoose, walking catfish, and java sparrow.

The import prohibition applies to animals in captivity, including pets, but does not apply to domesticated dogs, cats, or rabbits. Many states also have strict prohibitions against the introduction of non-native wildlife.

Lesson 4: Lacey Wildlife

The Lacey Act also helps foreign countries and our individual states enforce their wildlife conservation laws. The Lacey Act makes it a violation of Federal law to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any wildlife, including fish, that was taken, transported, possessed, or sold in violation of any state or foreign law, or taken or possessed in violation of other Federal law or Indian tribal law.

In 50 CFR, the term “transport” means to move, convey, carry, or ship by any means, or to deliver or receive for the purpose of movement, conveyance, carriage, or shipment.

It is critical for Customs brokers and freight forwarders to have programs designed to ensure compliance with the Lacey Act prior to accepting cargo.

Lesson 5: Importing

Licenses

Import Licenses are issued to entities (companies or individuals) before they are allowed to commercially import shipments containing wildlife into the U.S. Import licenses are valid for **one year** and issued only by FWS’s Office of Law Enforcement (OLE).

Note that the term commercial means “related to the offering for sale or resale, purchase, trade, barter, or the actual or intended transfer in the pursuit of gain or profit, of any item of wildlife and includes the use of any wildlife article as an exhibit for the purpose of soliciting sales, without regard to quantity or weight.”

There is a presumption that eight or more similar unused items are for commercial use. FWS or the importer may rebut this presumption based upon the particular facts and circumstances of each case (50 CFR 14.4).



Permits

Almost all FWS-regulated wildlife require permitting prior to import. If wildlife arrives in the U.S. without proper licensing and permitting, the product is subject to fines and/or seizure. Seizure of improper imports is common.

For example, June 4, 2019, FWS issued guidance for the importation of mink eyelashes which are trending in online purchases. These imports are subject to both licensing and permitting and can be seized if not properly documented.

Common FWS-regulated imports include jewelry, footwear and handbags.

Import permits are critical to the conservation programs administered by FWS. Which permit is needed and when it is needed can depend on the wildlife, source, regulatory requirements of the U.S. and exporting country. To facilitate the permitting process, FWS has created a webpage with required permits and guidance for the individual permitting process.

<https://www.fws.gov/permits/applicationforms/ApplicationA.html>

Designated Ports

Imports of products subject to FWS are limited to 18 designated ports, unless a port exception has been granted. A port exception requires a permit.

Some of the roles of FWS inspectors at ports of entry include:

- Monitor imports and exports
- Monitor cargo shipments and passenger carries
- Understand and enforce U.S. and international laws, regulations, and treaties
- Identify thousands of different species, both live and as parts or products
- Ensure wildlife imports and exports are accompanied by the required permits and licenses
- Verify that the contents of shipments match the items listed on declaration forms
- Pay special attention to in-transit live wildlife to ensure humane treatment.

Declaration

A FWS 3-177 form must accompany all imports of FWS-regulated goods.

This form requires information such as:

- Transportation information - e.g. date of import and bill of lading number
- Location of cargo
- Scientific Name
- Common Name
- Country of Species Origin Code



The scientific name and common name are critical elements that can be difficult for casual importers to obtain. Companies should make the submission of this information a supplier requirement. Incorrect information can result in fine or seizure.

CONCLUSION

The complex legal framework involved in importing wildlife encourages early engagement with regulators to ensure that subject product can be legally and properly imported. At times, small errors on an application can mean the difference between a successful import and a seizure.

Reasonable care programs should include steps to evaluate products for FWS oversight. Supply chain members such as freight forwarders should also develop programs to assess shipments for exposure in light of the Lacey Act requirements.