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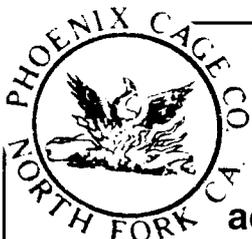
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1814 First printing of the Star Spangled Banner - Samuel Sands.

1830 First passenger train - "Tom Thumb," which carried passengers from Baltimore to Ellicott Mills.

1839 First dental college in the world - Baltimore College of Dental Surgery.

Birds vs. "Birds"

by Richard A. Scott, Eufaula, AL

I am sure that every avian breeder has had their share of experiences of breeding exotic species of birds. You have also had your share of broken eggs, addled eggs and for no apparent reason the parent abandoned the clutch. If you haven't then you are one of the lucky few.

I really don't need to describe the joy and anticipation of a new clutch of eggs progressing very well nor the sorrow when the hen jumps out of the nest screaming and has broken her eggs.

For several years I have been breeding exotic species and been puzzled at the low survival rate and the broken eggs problem. One morning I found the answer.

I was eagerly watching my Moluccan Cockatoo's progress with her clutch. I had talked to her every morning when I fed her and was doing everything I could think of to keep her happy. Then a military C-130 aircraft over flew our aviary at approximately 400 feet above ground level and she came out of the nest screaming. I checked and her eggs were broken.

To say I was upset is putting it mildly. I knew there had been low flying aircraft before but I just didn't put it together. I personally had been used to low flying aircraft and but it didn't occur to me that it would cause breeding problems. Boy, was I wrong.

The Government has a Fly Neighborly Program which recognizes aircraft do bother people and livestock. The Government has provisions to compensate for damages. It is very easy to request the forms from the closest military legal office and they are very helpful in filing your damage claims.

Believe me it stops there. For more than two and one half years I have recorded overflights and video record-

ed aircraft. I have communicated with Army and Air Force Officials. I have requested Congressional help. I have communicated with The Dept of Justice and I have obtained, through the Freedom of Information Act, flight records of the offending aircraft. One would expect that this would be sufficient. But guess again.

There are two claims procedures to follow. One is through the Tort Claims Court and the other is through the Damage Claims Court.

The Tort Court requires you to prove the government is negligent and has violated their regulations therefore being negligent. In addition, you must prove damages. The Tort Court investigative procedure has no time limit. In effect, they can sit on the claim as long as they want to. You have no recourse until they act. Then you can file in Federal Court.

The Damage Claims route does have a time limit. Should no action be taken within six months, you then have the right to file in Federal Court. You must be represented by an attorney. His fee is set by the court and is usually taken on contingency basis.

Now what do you need to support your claim? The first is egg production records for the last five years. Then proof of value, sales receipts of your birds, price lists from other breeders. You need witnesses of the over flights or flight records.

Be aware, there is no central repository for flight records and they are destroyed once the holding period expires. You will need to know the origin of flight. This usually is the closest military air base. Usually the military Public Affairs office can verify the flights or refer you to the flight source.

My first claim was denied with the statement that "the Air Force Sound Assessment Reports indicate aircraft noise would not cause the startle

response to damage eggs and that avian experts agreed that helicopters would not cause a problem."

There was no such report. Their avian expert is a part time breeder or a part time lawyer (I don't know which) that stated to me that you "cannot stop the overflights."

To the contrary, I discovered over 403 studies of aircraft disturbances to wildlife, horses, raptors, swans, sheep, fish, owls, sooty terns, brown pelicans, ostriches, and emus.

The Endangered Species Act 16 Section, 1531 - 1544 prohibits the destruction of endangered species.

I conferred with avian professionals who wrote in the avian medical publications and who conducted research on overflight disturbances to turkey and pheasant production. I have corresponded with avian medical authorities on the effects of noise induced stress. Each and every one of these publications, medical authorities and avian scientists are consistent in that low flying aircraft do disrupt the breeding cycle, will startle nesting birds and can cause nest abandonment. Heck, it wouldn't take a scientist to tell me that to bust in unannounced to my bedroom would be stressful and would disrupt us. Or, as one avian vet said "lying in bed fearful the kids might..."

I suppose you would think the FAA would be responsible and assist in eliminating low flying aircraft. That too is a myth. Federal Aviation Regulation 91.119 para. b does prohibit aircraft from flying lower than 1000 ft. above the highest structure or within 2000 ft. of populated areas, settlements, or open air assembly of people. That seems pretty cut and dried.

Guess again.

The FAA has no jurisdiction over aircraft outside of a controlled air space. The pilot in command is solely responsible for the operation of the aircraft. FAA regulations do not require a flight plan to be filed on each flight. But when one is filed then it must be closed out within a time period.

The FAA does have an office to report aircraft problems providing you can supply the identification number, type of aircraft and the date of the incident. Big joke. Who could see the black numbers on a dark aircraft when

it passes over you at high speed or during a night flight?

What can you do to protect your livelihood?

1. File damage claims.
2. Keep accurate egg production records and dates birds were paired up.
3. Keep sales receipts for bird valuation.
4. Keep a flight log of each low overflight.
5. Establish a good relation with your attorney.
6. Refer to known damage claims of others.
7. Acquire and keep on file all reports or articles related to low level aircraft damages.
8. And most of all persevere, hang in there if you have a legitimate claim. Don't be frightened off by the governments threat of penalties for filing fraudulent or frivolous claims — or their denial of responsibility.

The reference list I have referred to is available or you can contact the National Technical Institute Service Office. Copies of these publications do cost but they are worth it. Right now I

am waiting for the most recent Sound Assessment Study that is being conducted in Oklahoma on Ratites. The aircraft involved are C-130, helicopters and other aircraft. This study was scheduled to be completed in 1996 but I believe my 15 claims against the Army and Air Force prompted the study to be expanded to include helicopters. Last report from the Occupational & Health Laboratories at Wright Patterson AFB, Ohio, indicated the report would be available approximately the last of February 1998.

What can you do to protect your birds from military "birds?" The bottom line is not much, you can't shoot them as you could a wild dog that was eating your livestock. But you do have the right to be compensated at full market value. If you have a legitimate claim then go for it.

For more information send SASE to Cody Hill Aviary, 4287 CR 49 Eufaula, AL 36027. You may e-mail me at rscott76@mindspring.com, or by Phone at 334-667-7304.

Thank you for your assistance and consideration. 

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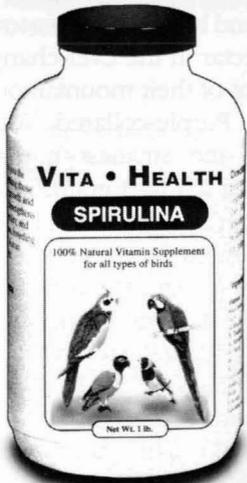
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