

Confiscated

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Introduction

International trade in wildlife threatens many species with extinction. Several governments have made serious efforts to halt the trade. For example, the United States banned importation of most avian species with the Wild Bird Conservation Act of 1992. However, an economic incentive to trade birds persists and illegal trade, however poorly quantified, remains a serious conservation concern.

One possible approach to mitigate the pressure of illegal trade on wild populations is to repatriate birds to their native habitats. However, to evaluate the effectiveness or even feasibility of repatriating birds interdicted in illegal trade it is crucial to establish how many birds are actually taken into custody by governmental authorities. This project was undertaken to examine public records regarding how many smuggled birds are being caught at international borders, what species are involved, and what their disposition is after interdiction.

The results of initial efforts to collect such records were largely unproductive. Government agencies with enforcement responsibilities – including U.S. Fish and Wildlife, U.S. Customs Service, Animal and Plant Health Inspection Service, the Border Patrol and the Drug Enforcement Agency – were not forthcoming with relevant records. Freedom of Information Act (FOIA) requests were thus made to these five agencies to gather as much data as possible regarding the extent and fate of birds captured in illegal trade at U.S. borders.

Data resulting from FOIA requests, as well as a review of the literature, indicates that the United States is not in compliance with its obligations as a CITES Treaty signatory nation. Moreover, the number of live birds confiscated by federal agencies appears to be far smaller than those agencies would have the public and Congress believe. Indeed, the lack of effectiveness, particularly on the part of the U.S. Fish and Wildlife Service, in policing wildlife trade and disposing of confiscated birds in an ethical and legal manner begs the question of whether more cost-effective approaches to wildlife trade should be considered. The following is a summary of the findings.

I. PUBLISHED ESTIMATES REGARDING THE MAGNITUDE OF THE WILDLIFE TRADE

A. Government Estimates Regarding Avian Wildlife Trade

A “brisk trade” in live birds has been ongoing in the United States and in many other countries over the past 150 years. Of the 9600 identified species of birds currently found throughout the world, approximately 2600 species

have been recorded in international trade (Inskipp, 1990). The United States is one of the primary consumers in the international trade of birds – historically acting as the leading importer of wild birds. While no one has been able to establish an accurate number of birds traded legally or illegally throughout the world, one researcher estimated that a minimum of 7.5 million birds were traded, both legally and illegally, annually during the early 1970s (Inskipp, 1979). Likewise, trade records show that during the 1980s more birds were imported into the United States than any other country – an average of 700,000 birds per year from 1984 to 1988 (Mulliken and Thomsen, 1990).

With respect to smuggled or illegally imported birds, the statistics are sparse and contradictory. “This trade, by its very nature, is impossible to quantify, but has been estimated to involve at minimum tens of thousands of birds” (Thomsen et al., 1992). In 1986 the U.S. Justice Department estimated that more than 150,000 birds per year were being smuggled into the U.S. from Mexico alone. A lower estimate was provided by the Animal and Plant Health Inspection Service (APHIS), which reported that an average of 25,000 illegal birds enter the United States each year (APHIS, 1998; Gobbi et al., 1996). These numbers reflected the total number of illegal birds coming into this country, not just those that were confiscated by governmental agencies.

The U.S. Fish and Wildlife Service (USFWS) is the agency charged with providing wildlife inspectors to monitor and identify smuggled birds when the animals come across the border. That agency admits that the numbers regarding the magnitude of smuggled avian species could be ten-fold the number of birds actually identified and seized¹ at the various ports of entry around the country (Gobbi et al., 1996).² However, this lack of verifiable data has not stopped the USFWS or other federal agencies from making statements regarding the size and extent of the illegal bird trade in this country.

For example, the USFWS has stated, both in press releases and other statements to the media, that: “The illegal wildlife trade is a multi-billion-dollar-a-year global ‘business’ that threatens the future viability of the world’s wildlife. Wild-caught birds, including parrots and macaws, are a prime target for this black market. Many species are highly prized by collectors and other people who seek exotic pets, making them highly profitable commodities for wildlife smugglers” (USFWS, 1990; Potten, 1991; USFWS, 1991; USFWS, 1996; Cable News Network Impact, 1997; Environmental News Network, 1997; NOVA, 1997; Environmental News Service,

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1998; USFWS News Release, 1998). Likewise, the U.S. Justice Department has stated, in conjunction with the criminal prosecution of an alleged bird smuggler, that: "Illegal wildlife smuggling is estimated to be a \$5 billion annual industry, generating more profit than illegal arms sales and second only to the world-wide drug trade" (U.S. Dept. of Justice Press Release, 1996; CNN News Report, 1997).

It is interesting to note, however, that this view of the wildlife trade is not necessarily held by law enforcement agencies around the world. For example, a representative of Interpol (the European consortium of law enforcement agencies) stated that:

Various estimates of the scale and value of illegal trade in protected species have been made during wildlife crime conferences and meetings, in brochures, NGO's publications and in international press releases. As there is no central global database on all detected cases of illegal traffic in protected species nor an indicator of the number of undetected cases it is not possible to give statistics on the scale of international wildlife crime. At the Interpol General Secretariat, we only receive information on major international cases of illegal traffic of protected species from our Member countries and *thus our statistics do not provide enough information even to give an estimation of the illegal trade scales and values.* However, illegal traffic in endangered species of wild fauna and flora is a big problem around the world – below please find some examples of national illegal trade figures:

--in 1995 German Customs registered 1758 CITES related seizures, for a total of 55,824 specimens;

--French Customs seized approximately 1400 live animals and over 5000 dead specimens and products as well as 700 kg of ivory in 1995 and 576 kg of ivory in 1998;

--According to a 1995 Dutch study made by the University of Leiden concerning illegal trade in animals, an estimated 87,600 animals are illegally smuggled into the Netherlands each year (Sabourin, 1999, emphasis added).³

It should also be noted that, for the most part, the countries that view the trade in certain identified animals or birds as "illegal" are generally limited to Europe and the United States. Conversely, a number of developing countries see the trade in wildlife as a means of improving their economic status. In effect, some developing countries view the bird trade and other types of wildlife utilization as a positive mechanism for generating income both at the rural and national level (Thomsen, 1992; Nash, 1993). The downside, of course, is the fact that the trade may actually result in radical alterations of the local ecosystems which, in turn, will eventually lead to complete exhaustion of natural resources and the concurrent economic hardship once again (Thomsen, et al., 1992).

B. U.S. Fish and Wildlife Data on Confiscated Birds

Since the USFWS is the lead agency in the United States with respect to the handling of confiscated smuggled birds it is logical to look to its statistical information to

determine its view of the problem. The USFWS uses information from its LEMIS⁴ database to document the numbers of animals confiscated from smugglers entering this country (General Accounting Office, 1994). The information is keyed into the computer database by a nationwide network of approximately 250 Special Agents and another 85 Wildlife Inspectors stationed at the major points of entry around the United States⁵ (USFWS, 1996). In conjunction with the LEMIS statistics the Service has also suggested that it is detecting less than 10 percent of violations associated with declared shipments (those actually presented to USFWS agents for clearance) and that the number is probably less than 3 percent for undeclared shipments.

Additionally, shipments that are designated as containing wildlife or wildlife parts are only inspected 5 percent of the time (USFWS, 1991b). This low number, according to the USFWS, is due to an overall insufficiency of staff to perform the inspections coupled with an ever increasing number of individual shipments coming in to the over 100 designated ports of entry in the United States (General Accounting Office, 1994; USFWS, 1990 and 1991a).

Despite the handicaps posed by limited staff, budget, and time, the USFWS maintains its position that wildlife smuggling is a crime of great magnitude in this country. To substantiate this claim, the Service points to two covert operations carried out in the last five years to identify and apprehend individuals involved in the illicit wildlife trade. One project, called Operation Jungle Trade, was a three-year investigation that allegedly broke up an international smuggling ring dealing with protected birds and other wildlife. This sting operation, carried out in conjunction with the U.S. Customs Service and concluded in May 1998, resulted in the arrest of 40 individuals and the seizure of more than 660 exotic birds and other animals, most of them species native to Mexico.

Purportedly, these United States federal agencies worked with law enforcement agents in Australia, Canada, New Zealand and Panama to document the criminal activity and to gather evidence.⁶ The USFWS claimed that the snare seized more than 600 endangered or threatened psittacine birds with a domestic value in excess of \$600,000, in addition to a number of monkeys, lynx, mountain lions, and kinkajous (USFWS, 1998).⁷

A similar undercover investigation, code name Operation Renegade, involved a three-year investigation into the bird trade alone. At the conclusion of the investigation the Service reported that it had documented elaborate schemes designed to disguise the native origins of large quantities of parrots allegedly worth millions of dollars. In essence, the "laundering" process involved smuggling birds out of many African nations where they are protected by limitations on trade imposed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)⁸ and into other African countries where

they are not protected.⁹ The birds were given false documentation showing that their "country of origin" was the second country, allowing them to then be "legally" exported for sale or trade to the United States and other receiving countries. Likewise, certain protected cockatoos from Australia were smuggled to New Zealand and then falsely documented as captive-bred so that they might be exported to the United States for the pet trade (USFWS, 1996). The Service reported that 40 of the 44 individuals charged with smuggling were successfully prosecuted and paid fines totaling over \$170,000 and/or were sentenced to prison time totaling 460 months or 480 months of probation time (Environmental News Network, 1997; USFWS, 1997).

Although these two operations demonstrate that bird smuggling is indeed taking place, the number of birds confiscated through these two exemplar operations suggests that the numbers and values of birds being smuggled is significantly lower than the USFWS claims in press releases, news reports, and even budget justifications presented to Congress. Support for this statement comes from (1) the actual number of birds confiscated in the two "sting" operations (between 300 and 600) and (2) the USFWS statistics regarding confiscated birds between 1990-1996 (approximately 3,500). If one believes the USFWS's statement that it is only able to "catch" 10% of the smuggled birds (Gobbi, 1996), and we know (based on the LEMIS records) that they are catching an average of 500 birds per year, that would mean that an average of 5,000 birds are being smuggled into this country each year. This number is significantly lower than the magnitude of the illegal bird trade alleged by the USFWS. For example, that agency claimed that between 20,000 and 25,000 birds crossed the border from Mexico into Texas during a single year (Gobbi, 1996). These figures are in direct contravention of the 5,000 number – calculated using the USFWS's own statistical data and statements – and cannot be relied upon to evaluate the magnitude of the trade.

C. Reliability of Statistical Data on Smuggled Birds

As stated above, virtually every source that reports on the subject of smuggled birds or other forms of wildlife (including wildlife parts) claims that: "The illegal wildlife trade is a multi-billion-dollar-a-year global business that threatens the future viability of the world's wildlife" (Morris, 1996; Environmental News Network, 1998; USIS Washington File, 1998). Moreover, it is consistently reported that: "The illegal wildlife trade is a highly lucrative black market that many believe ranks second in profits only to illegal drug traffic" (Cleva and Fisher, 1998; Edwards, et al. 1996; Inskipp, 1990). The USFWS estimates that bird smuggling is a "booming business worth \$4 billion per year" just in the United States (Lindsay, 1997).¹⁰

However, no reliable statistical data supporting this \$400 million-per-year figure was available from either the USFWS or non-governmental sources. Taking into consideration the

fact that, using the USFWS own numbers, approximately 5,000 birds enter this country illegally annually, the \$400 million figure seems to be way out of line. As an example, one can look to the species of birds identified by the USFWS in its LEMIS report for calendar years 1990-1996 (Table A). The majority of these birds fall into the category psittacines including Amazon parrots, macaws, finches, ground birds like pheasants, and various parakeets. While it is difficult to determine the exact value of these birds once they reach the "wholesale" market in the United States, one researcher determined that, taking all the smuggled species as a whole, the average price per bird was \$78.75 (Thomsen, 1992).¹¹ Alternatively, a study done with respect to Central and South American bird species only resulted in an average wholesale value of about \$200 (Thomsen, 1992). Finally, reviewing retail values available for some of the species listed in the USFWS reports, the \$200 figure does not seem out of line – given that it is an average (American Fed. Aviculture, 1999). Thus, using the more generous figure of \$200 and assuming that there are 5,000 birds coming into the country each year, that makes the illegal bird trade worth about \$1 million annually.

An additional problem in verifying the bird smuggling activity is encountered when trying to separate the problem of bird smuggling from that of other forms of animal life. No organization, either public or private, has offered reliable and verifiable statistical information on the number and kind of illegal animals and/or animal parts confiscated by U.S. federal authorities during the past ten years. However, some idea of the magnitude of the illegal trade in animals can be found by looking at the numbers of wildlife specimens sent to the USFWS repository at the Rocky Mountain Arsenal in Colorado. As of 1998, the Service held over 500,000 wildlife items at the Arsenal Repository, with an estimated value of over \$1 million if sold at auction – thus an average value of \$2 each. Of these, approximately 200,000 represent threatened or endangered species. These items include pelts, ivory, coral, feathers, mammal, reptile, and bird carcasses, as well as other animal items that came into the hands of the USFWS via confiscation or forfeiture. Roughly 1,000 items per week are added to the collection¹² (Denver Post, 1998). Therefore, applying the same analysis of a 10% confiscation rate the USFWS is missing out on approximately 50,000 to 100,000 items each year. Again, based on an average value of \$2, the trade in illegal wildlife that is something other than birds is worth about \$100,000 to \$200,000 annually.

II. THE UNITED STATES' RESPONSIBILITY FOR PROTECTING ENDANGERED SPECIES AND CONTROLLING SMUGGLING

A. United States Legislation Designed to Protect Avian Species

The first piece of national legislation enacted to deal with the problem of illegal birds and, to some extent, the problem of diminishing numbers of certain avian species

was the Lacey Act passed by the U.S. Congress in 1900 (18 U.S.C. § 42; 16 U.S.C. §§ 3371-3378). The Act prohibits trade in wildlife taken or possessed in violation of the laws of the country or state of origin. Unfortunately, at the time it was enacted, the Act provided little in the way of substantive protection for avian species because the countries from which the birds were being taken had little or nothing in the way of protective legislation for their own wildlife. This changed with the creation of the CITES treaty.

CITES is an international treaty, originally enacted in 1973, and now signed by approximately 145 countries. Signatories are obligated to prohibit or strictly regulate trade in animal and plant species considered by the Parties to be in danger of extinction and threatened or potentially threatened by international trade. CITES Appendix I includes approximately 150 species and subspecies of birds that are at the highest risk of extinction. CITES Appendix II lists an additional 2000 plus species of birds that are in danger if certain activities to protect them and their habitat(s) are not taken by their native countries. Due to the large number of birds listed as either Appendix I or II, a Cooperative Working Group on Bird Trade was established by CITES in 1990 to oversee efforts by the signatory countries to protect the remaining birds within their boundaries (Cooperative Working Group on Bird Trade, 1990).

In 1940 The Bald Eagle Protection Act, sometimes viewed as a precursor to the Endangered Species Act (ESA), was passed by Congress. That legislation found that the national bird was endangered and that it should be protected from hunters and other forms of human interference. Then in 1966, Congress passed the first federal Endangered Species Act (ESA).¹³ Subsequently, the ESA was amended in 1973 to specifically add provisions coordinating conservation efforts by the United States with international agreements (including CITES). In sum, the ESA provides federal enforcement of laws, rules and regulations (such as importation and exportation guidelines) regarding species designated as threatened or endangered by the Conference of Delegates to the CITES Convention which is held every other year (Gobbi, et al. 1996). Many species listed in CITES Appendices I and II also appear on the United States' own endangered species list but the two lists are not identical.

To be clear, the mere possession of a bird listed on Appendix I or II of CITES or on the list of endangered bird species recognized by the U.S. federal government does not necessarily mean that the person holding the bird is guilty of a crime. The issue is transportation or movement of the birds without the proper documentation or licenses or acquisition of the bird if it was illegally taken from the wild (16 U.S.C. § 1538 (a)(1)(D)). Basically, the federal legislation discussed above, and the ESA in particular, makes it illegal for: "Any person subject to U.S. jurisdiction to import, export, deliver, receive, carry, transport, ship, sell or offer for sale in interstate commerce and in the course of

commercial activity, any species of plant or animal that has been listed as threatened or endangered pursuant to the Act" (16 U.S.C. § 1531 et seq.).

Several sections of the Act specifically direct the President of the United States to designate appropriate Federal agencies to act as the Management Authority and Scientific Authority required by the Convention, and authorizes these authorities to implement the tasks assigned to them by the treaty, including the issuing of permits and certificates. In response to this mandate, the President designated the Department of the Interior, which in turn designated the USFWS, as both the Management Authority and Scientific Authority (Hoover, 1997).

In 1992 the Wild Bird Conservation Act (16 U.S.C. §§ 4901-4916) was passed by Congress, giving much more authority to federal agencies to investigate and prosecute individuals and organizations suspected of smuggling birds into this country. The stated purpose of the WBCA is to promote the conservation of exotic wild birds by ensuring that birds imported into the United States are: (a) biologically sustainable and not detrimental to the species; (b) that imported birds are not subject to inhumane treatment during capture and transport; and (c) assisting wild bird conservation and management programs in the countries of origin. Additionally, Congress contemplated that the Wild Bird Conservation Act would work in concert with the Endangered Species Act for the purpose of protecting threatened and endangered birds (USFWS, 1999).

These federal statutes provide the basis for any punitive action taken by federal authorities with respect to actual or suspected wildlife smugglers and contraband wildlife entering this country. Compliance with CITES and its various regulations over the past years has been overseen by the USFWS and ultimately by the Senate, which must ratify all treaties. The Senate (actually the full Congress) ratified the Convention on International Trade in Endangered Species of Wild Fauna and Flora when Congress passed the Endangered Species Act of 1973.

B. The United States Participation in the Convention on International Trade in Endangered Species

As stated above, the United States is a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. This international law, which now has at least 145 signatory nations, was originally designed to establish a means of international cooperation for the protection of certain species of wild fauna and flora against exploitation through international trade (USFWS, 1973). Since its initial inception, various "Resolutions" have been passed by the Conference of Delegates. When Congress passed the Endangered Species Act of 1973, it contained provisions that acknowledged the existence of CITES and any subsequent changes as a binding treaty on this country. Furthermore, it required that any vote by the United States against any subse-

quent change to the treaty must be presented to the Secretary of State (16 U.S.C. §1531 et seq.). To date, no effort has been made by United States delegates to CITES conventions to formally object to any change to the treaty, including but not limited to, the addition of over 20 Resolutions expanding or modifying the international agreement.

C. Who Is in Charge of Enforcing Wildlife Protection Laws?

In the United States, a number of different federal agencies are charged with the obligation of ensuring that any endangered or threatened¹⁴ species of animal or plant is not harmed, imported, or exported without substantial justification. The lead agency in this area is the U. S. Fish and Wildlife Service (50 C.F.R. 23.11 et seq. gives enforcement authority to the USFWS).¹⁵ The USFWS is a federal agency under the Department of the Interior that not only promulgates regulations regarding the animals that are to be listed as endangered or threatened, but also attempts to enforce the laws and identify those who would violate them. The USFWS is not, however, in charge of prosecuting those who allegedly violate rules or regulations promulgated to protect the various species; that job is left to the U.S. Justice Department. In effect, the USFWS acts as a policing agency while the Justice Department provides the attorneys and support staff required to pursue criminal prosecutions.

Lesser players in the arena of identifying and dealing with bird smuggling and/or smugglers in this country include the U.S. Customs Service (part of the Treasury Department), the Animal and Plant Health Inspection Service (an agency of the Department of Agriculture) and the Border Patrol (a police arm of the Immigration and Naturalization Service).¹⁶ All of these agencies, along with an occasional representative of a state or local police force or wildlife organization, are engaged in identifying smuggling operations and in confiscating all illegal goods – including live birds – once they have been recognized. Regardless of the agency involved in the identification and seizure, however, all birds eventually end up in the possession of or under the control of the USFWS. In essence, all roads eventually lead to the USFWS as far as live smuggled birds are concerned and it is that agency that has taken on the responsibility for disposing of the animals according to standards it has established.

III. DETERMINING THE NUMBER OF BIRDS INTERDICTED IN ILLEGAL TRADE AT UNITED STATES' BORDERS

A. Discovery of Public Records Concerning Confiscated Smuggled Birds

As discussed above, statistics concerning the breadth of wildlife trade, and specifically the trade in live birds, vary dramatically from year-to-year and from agency-to-agency. In an effort to evaluate the feasibility of repatriation programs it was necessary to determine the actual numbers of confiscated birds in the United States. Since there are five federal agencies involved with smuggled birds, the use of the Freedom of Information Act (5 U.S.C. § 552) to gather statistical data appeared to be the best way to evaluate the situation. This decision was based, in part, on the fact that other individuals who tried to investigate the issue using less formal means (letters, interviews, etc.) were met with little to no cooperation on the part of each of the agencies (Gobbi, 1996; Hoover, 1996; Franklin, 1997; Franklin, 1999b).

In an effort to substantiate the number of birds coming into the United States illegally, requests pursuant to the U.S. Freedom of Information Act (FOIA) were submitted in anticipation that: (a) statistics regarding confiscated birds would be forthcoming and (b) the records of the various agencies could be compared to rule out any inconsistencies or discrepancies. To state it simply, virtually every effort to obtain public records was met by stonewalling and recalcitrance on the part of each and every governmental agency every step of the way.¹⁷ The battle to obtain the records is not over and the next logical step is to resort to judicial intervention

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via a lawsuit to compel the production of these documents. However, since this matter has been going on for nearly five years, time justifies publication of the efforts of data gathering so far on this subject.

1. What Is FOIA and How Does it Work?

The Freedom of Information Act applies to documents held by agencies of the executive branch of the federal government, including cabinet departments. FOIA was initially enacted by Congress in its current form in 1996 (110 U.S. Stat. 1049; codified at 5 U.S.C. 552 et seq.). In essence, the act allows any individual or organization to ask the government for “records, rather than for information” (Committee on Government & Oversight, 1997). “An agency is neither required to collect information it does not have, nor must an agency do research or analyze data for a requester” (Ibid.).

FOIA requires that individual federal agencies publish in the Code of Federal Regulations a description of the agency and the types of information it collects, the office to which FOIA requests must be addressed, and a general statement of procedures to be followed in obtaining records including, but not limited to, fees for retrieval and copying of documents. Additionally, the agency is to set forth in clear language the appeals process to be followed if the requestor believes that the information demanded is not produced in a timely fashion or at all (Ibid.). Finally, FOIA works hand-in-hand with the Privacy Act of 1974, which protects such things as personal information about governmental employees, state secrets, and other data that is deemed to be of such a nature that its disclosure would bring harm to the government or one of its employees (Ibid.).

2. FOIA Requests for Smuggled Bird Information

In order to determine how many birds were being smuggled into the United States and then confiscated/seized by federal agencies, a FOIA request for information was submitted to the U.S. Fish and Wildlife Service, the Animal and Plant Health Inspection Service, the Drug Enforcement Agency, the U.S. Immigration and Naturalization Service (Border Patrol), and the U.S. Customs Service (hereinafter USCS).

With respect to the U.S. Border Patrol, there were three separate but identical requests: one each to offices in Dallas, Texas; South Burlington, Vermont; and Laguna Niguel, California.

With respect to APHIS two requests were made (pursuant to instructions from APHIS headquarters in Washington, D.C.) one for San Ysidro, California and one for “all non-California stations.” The U.S. Fish and Wildlife Service has a centralized office for FOIA requests, so only one demand was made for that agency. Likewise, the Drug Enforcement Agency required only a single request.

Finally, The U.S. Customs Service required (in response to a single FOIA request sent to USCS headquar-

ters in Washington, D.C.) that a separate request be sent to each and every designated port of entry so that eighty separate but identical requests were sent to the Port Director or other designated official.

The primary point of these separate and distinct requests for information was to determine the actual numbers of birds being confiscated by the United States and to see if the numbers accounted for by the different governmental agencies were in harmony with the claims of the USFWS.

The various FOIA requests submitted to the five federal agencies were virtually identical and sought the following:

(a) Copies of all official federal forms (unique to each agency) documenting the birds taken into federal possession during the years 1990 through 1996, inclusive;

(b) Copies of all documentation demonstrating the disposition of confiscated birds including, but not limited to, transfer of birds to other federal agencies or other organizations;

(c) Copies of all documentation showing the number(s) of birds that were received dead or that died during their stay with the federal agency to which the FOIA request was submitted.

3. Agency Responses to FOIA Requests

Most agencies of the federal government were recalcitrant with respect to providing the information requested. Taking the agencies one at a time, this is the status of the requests after nearly three years:

(a) Drug Enforcement Agency

The DEA refused to provide any information whatsoever, including any written response to the original FOIA request dated August 12, 1997. A telephone call was received on 25 August 1997 from a Thomas Wingate, who identified himself as being with the DEA Information Division. He stated that the backlog of FOIA requests was so voluminous that it could be years before any response was generated. As of this writing, no response has been forthcoming.

(b) Immigration and Naturalization Service

This agency stated that it had no records responsive to the requests at its Washington D.C. office and that it was forwarding the request (dated 12 August 1997) to the three “regional INS offices” in California, Vermont and Texas. In response, the office at Laguna Niguel, California, produced a total of eight pages of documentation concerning the confiscation of a total of eight birds, all of which were turned over to either APHIS or the U.S. Customs Service. The Border Patrol office in Texas refused to provide any information without prepayment of a fee amounting to approximately \$450.00 – allegedly to cover the search time it would take for Border Patrol personnel to go through records to locate the information requested.¹⁸ Finally, the office in Vermont stated,

in a letter dated 30 October 1997, that after a thorough search of its records it was unable to find any documents responsive to the request; implying that no live birds had been seized. However, the letter also stated that all records prior to 1995 had been purged so that no information one way or the other for the years 1989 through 1994 was available.

(c) Animal and Plant Health Inspection Service

Initially, a request for information regarding seized birds was sent to APHIS headquarters in Washington, D.C. As mentioned above, that agency responded by stating that two separate (but essentially identical) requests needed to be made – one for the APHIS quarantine station located in San Ysidro, California and the other for all other quarantine stations located throughout the rest of the United States.

An initial response was received from the APHIS Veterinary Services Office at San Ysidro which provided exemplar copies of the “log book entries” kept by the quarantine stations regarding birds that come into their possession from a variety of sources. Based on the manner in which the records were kept, an initial agreement was reached with a representative at the California quarantine center to modify the items being requested to make retrieval of the data easier for the APHIS representative. However, this agreement had to be approved by the FOIA Appeal Officer in Washington and, once the matter was forwarded to him, APHIS reconsidered the matter and, without any stated reason, refused to provide the records.

Nearly two years passed with no communications and then, on November 29, 1999, the FOIA Appeals Office sent a letter stating that APHIS would, after all, produce the documents requested but demanded prepayment of \$820.00 before any records would be made available. Moreover, despite the fact that it took APHIS nearly two years to decide to produce the records, the Legislative and Public Affairs Office

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Bill & Wanda Elder

Rev. Susan Kay Ferguson

Sharon Garsee

Beth & Dwight Greenberg

Earl Haga

Mark Hagen

Robert Hansard

Robert Harrison

Marilyn & Jim Hawley

Don Hedstrom

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FOIA Officer allowed less than one month for this author to come up with the money or the records would be returned to storage. A complaint regarding the discrepancy between the time allotted for APHIS to gather and produce records and the time for the requestor to come up with the copying fees was recently pointed out in a letter, written and sent in March 1999, to the APHIS officer in charge of FOIA requests. Said letter displays an attempt to reconcile the problem by asking APHIS to have the records available for inspection at one of its Northern California offices; deferring copying until the necessary items have been winnowed from the massive file (4200 pages) APHIS is planning on producing.

(d) U.S. Customs Service

As stated above, the procedure for making FOIA requests with the USCS is to submit the request to each individual official port of entry into the United States (and its territories). This resulted in generating eighty identical requests for information about confiscated birds identified and seized during Customs' operations. The response of the various Customs offices throughout the country varied greatly. A chart depicting the port, the date of the request, the date of the reply, and a short summary of what was produced (or not produced) is found at Table B. Out of the total number of individual requests, 23 ports failed to respond in any manner whatsoever. An additional 29 ports stated (in essentially identical language) that they had "no records responsive to this request". Twelve more ports stated that they had "no bird seizures" or "no live bird seizures" — implying that either they had seized other fauna but not birds or that no fauna whatsoever had been seized. Seven of the ports forwarded the request on to either U.S. Customs Service headquarters in Washington, D.C., to the USFWS, to APHIS, or to other ports in the same geographic area. 19 Six ports identified seizures of live birds and gave varying amounts of details regarding the seizures. Finally, three ports stated that records were available but that prepayment of search and photocopy fees varying from an unstated amount to \$360,000.00 that would be required before the records could be produced.

(e) U.S. Fish and Wildlife Service

The USFWS, as stated above, reportedly keeps records concerning seizure of contraband material on its LEMIS computer system. The Service has 11 "designated" ports of entry and an additional 300 "non-designated" (border or "special" ports of entry) located throughout the continental United States, Alaska, Hawaii, and certain U.S. territories.²⁰ Data concerning the confiscation/seizure of smuggled flora and fauna at these points is to be entered into the database upon receipt. In response to the FOIA request for information concerning confiscated live birds between the years 1989 through 1996, the USFWS provided a lengthy computer print out from LEMIS responding to the five items requested in the original FOIA request.

B. Summary of Data Received Via FOIA Requests

In sum, the only significant data received from the five federal agencies queried under FIA came from the USFWS. The information provided by the Service was in no particular order, either by date, species, or location of seizure. Therefore, a chart delineating the species of bird (scientific and common name), the number seized, the country of origin, and the port where seized was created by this author and is included as Table B. Unfortunately, the USFWS failed to provide any dates regarding the seizure of the birds, so that information (other than the fact that the confiscations took place between 1990 to 1996) is unavailable.

A number of critically important facts are disclosed when reviewing the information provided by the USFWS in response to the FOIA request regarding confiscated live birds. First, over a period of seven years, the total number of birds confiscated was a mere 3,214 — significantly less than the "tens of thousands" of birds that the Service claims make up the illegal bird trade in this country. Secondly, as is discussed above and based on the table of species seized, it is clear that most birds are psittacines with an average retail value of less than \$1,000 per bird. Thus, as discussed above, the numbers presented by the USFWS itself demonstrate that the total value of smuggled birds is significantly less than the hundreds of thousands of dollars claimed by the Service. Third, there is no mention whatsoever of any of the birds confiscated as part of "Operation Renegade" or "Operation Jungle Trade" — purportedly the two biggest illegal bird seizures in the time period covered by the data provided by the LEMIS database.²¹

C. Independent Investigations Into USFWS Efforts

Along these same lines, TRAFFIC USA, an arm of the World Wildlife Fund, undertook a special study of bird smuggling across the Texas-Mexico border for the years 1990 through 1993 inclusive. TRAFFIC, much like this author, had some doubts as to the exact number of live birds that were really coming into this country and attempted to document the claims of the USFWS and the USCS by studying LEMIS data and interviewing border agents as well. The result of this study was essentially the same — the government numbers are exaggerated and are unsupported by reliable statistical data.

For example, the Justice Department estimated in 1980 that 150,000 birds were crossing the Texas-Mexico border while APHIS gave a more conservative estimate of 25,000 birds (Gobbi, 1996). The USFWS claims that some 120,000 to 125,000 birds were moved over a one-year period in the Rio Grande Valley in the early 1980s, though it states that it has no corroborating figures to justify these estimates (Gobbi, 1996).

TRAFFIC USA used confiscation records much as this author did and determined that fewer than 3,000 birds were transported illegally across the border between 1990 and 1993. In fact, the TRAFFIC data demonstrated the internal inconsistencies in the USFWS records. For example, 1992 LEMIS data shows that a total of 290 illegal birds

entered the entire United States while the USFWS claims that 740 birds were confiscated along the Texas-Mexico border alone (Gobbi, 1996).

At best, one could say that the USFWS and related governmental agencies are poor record keepers with respect to confiscated live birds. At worst, their data is so inaccurate and inconsistent as to establish a serious question of reliability regarding statements they make about the magnitude of the illegal bird trade.

As a result of its study, TRAFFIC USA made a number of suggestions to the USFWS that would improve the identification and capture of smugglers and live smuggled birds being brought into the United States. These suggestions included an annual review of the parrot confiscation record to determine whether smuggling has increased since the passage of NAFTA²² and the Wild Bird Conservation Act; an effort to use greater diligence to patrol the Mexico-U.S. border to seek out and identify smugglers; the implementation of an awareness campaign to educate the public about the illegal parrot trade from Mexico; and the implementation of regulations critical to effectively achieving the goals and objectives of the WBCA.

However, as of this writing, none of these plans or ideas has been implemented. The Service continually complains that it is understaffed and under-funded and, therefore, cannot enlarge any effort to increase protection of smuggled wildlife or wildlife parts (USFWS, 1990; General Accounting Office, 1994; USFWS, 1996; Morris, 1997; U.S. Congress, House, 1997; Clark, 2000). Yet, in the budget for FY 2001, President Clinton asked for:

..\$52 million ...an increase of almost \$13 million, to begin a multi-year initiative to rebuild our law enforcement program. Today's law enforcement program is at a critical crossroads with a declining and under-equipped force facing increasingly complex challenges. Changes in technology and the rapid growth of the Internet pose a whole new set of challenges in stemming the illegal trade, unlawful exploitation, and habitat destruction that threaten our planet's wildlife...(USFWS Press Release, 2000).

Thus, the USFWS and other federal agencies that may come in contact with smuggled live birds continually refer to insufficient funding and/or a lack of properly trained staff to avoid accountability for capturing smugglers, confiscating wildlife, and repatriating fauna taken into official possession (General Accounting Office, 1994; Hoover, 1997; Morris, 1997; Clark, 2000).

IV. PLANNED VERSUS ACTUAL FATE OF CONFISCATED LIVE SMUGGLED BIRDS

A. What Is Supposed to Happen to Confiscated Live Birds?

Internationally, the issue of disposition of live birds that fall into Appendix I or II of CITES is specifically addressed by a Resolution passed by the Conference of the

Parties held in 1997 titled Conference Resolution 10.7: "Disposal of Live Specimens of Species Included in the Appendices." That document lays out in extensive detail how governmental entities of member countries are to handle live specimens that come into their hands as a result of confiscation, seizure, or abandonment by the importer. In summation, the Resolution states that:

The Conference of the Parties to the Convention recommends that:

a) Management Authority before making a decision on the disposal of confiscated live specimens of species in the appendices consult with and obtain the advice of its own Scientific Authority and, if possible, that of the State of export of the confiscated specimens, and other relevant experts such as IUCN/SSC Specialist Groups;

b) each Scientific Authority in preparing its advice take note of the guidelines in Annexes 1 and 2;

c) the Secretariat be informed about any decision taken on the disposal of confiscated live specimens of species that are either in Appendix I or, if in Appendix II or III, involve commercial quantities; and

d) in the case where live specimens arrive in an importing country without the proper export permits or re-export certificates, and where an importer refuses to accept a shipment of live specimens, the shipment be confiscated and the specimens disposed of in accordance with the guidelines set out in Annex 1 or 2... (CITES Resolution 10.7)

Annex 1 deals with three alternatives for handling confiscated live wild animals. In essence, the confiscating agency/government is supposed to follow a pattern called a "Decision Tree" which asks numerous "Yes" and "No" type questions regarding the animals in question. The first choice is to determine whether or not the animal can be returned to its country of origin — either to the wild or in a captive situation. If this is not viable, the second choice asks the confiscating agency to determine whether or not there is a place in its own country (here the United States) where the animal could be placed for either scientific study, captive breeding, or public education. If that choice fails, the third alternative is to decide whether or not the animal should be euthanized. Annex 2 deals with plants and has no bearing on this study.

The Resolution goes on to state that before its inception there had been a lack of specific guidelines regarding disposal of confiscated specimens and that such a lack has resulted in animals being disposed of in a variety of ways, many of which are inconsistent with conservation objectives. Moreover, the Resolution discusses the need for CITES cooperators to adhere to national, regional and international law. As described above, the authors of the Resolution developed a set of "Decision Trees" for the three major options available with respect to the confiscated species — captivity, return to the wild, or euthanasia. A

copy of said "Decision Tree" is included herein as Illustration C.²³

The United States is legally bound to comply with all resolutions passed by the members of the Convention. As stated above, the major exception is when the Management Authority and/or the Scientific Authority (here the USFWS) makes a specific objection or reservation at least 90 days before the last day on which such a reservation could be entered (16 U.S.C. § 1537a [1994 modification]). Moreover, if the objection is not entered in a timely fashion, the Management or Scientific Authority can take the issue to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on the Environment and Public Works of the Senate — offering a written report setting forth the reasons why such a reservation was not entered (*Ibid.*).

With respect to the Resolution regarding changes, additions or modifications of the original CITES treaty, there is no evidence that the United States offered any objection or reservation to subsequent modifications (called "Resolutions") to the CITES Treaty affecting all parties. The importance of this point will be seen in the discussion below with respect to the USFWS's violation of Resolution 10.7 in its handling of confiscated smuggled birds.

B. What Actually Happens to Live Confiscated Smuggled Birds?

Despite the effort made by the CITES Conference participants to develop guidelines for use by countries engaged in anti-smuggling and/or anti-poaching operations with respect to live animals or animal parts, the United States has taken no action whatsoever to implement the guidelines of Resolution 10.7. In fact, the USFWS has taken affirmative action that is in direct contravention of the guidelines and, moreover, has attempted (with little success) to obtain Congressional endorsement of their activities.

As stated above, regardless of which federal (or occasional local) agency that actually takes initial possession of live birds illegally within the borders of the United States, the animals are eventually transferred to the USFWS and/or put under the Service's jurisdiction. For example, a veterinarian employed by APHIS and who spoke only on the condition of anonymity stated in a telephone conversation on 26 August 1997 that once the USFWS is finished sorting through the birds being held in quarantine there is nothing left to sell, since the USFWS takes everything of any value for itself. Moreover, it is this person's opinion that, based on what he has seen with the USFWS, some birds are then distributed to zoos or captive breeding programs, but most go into the hands of private collectors for breeding and eventual private sale of the offspring (*Pers. comm.*, 1997). Likewise, a representative at another APHIS quarantine station said on 5 September 1997 that all birds either abandoned at the station or already confiscated by the USFWS

were usually taken by the USFWS for its own auction or alternative distribution/sale.

Along these same lines, evidence of violation of Resolution 10.7 (alternatively characterized as a failure to comply with said Regulation) can be seen in the USFWS's attempt to convince former Congressman Skaggs to carry a bill (H.R. 2291, 105th Congress) that would amend the Fish and Wildlife Improvement Act of 1978. The proposed amendment provided that revenues received from the disposition of abandoned or forfeited wildlife would be available for (1) payments of rewards and incidental expenses under such law and (2) payment of costs associated with shipping or storing the items or animals pending any criminal prosecution. The bill died in Committee in August 1997 but selling or giving away confiscated wildlife to further USFWS policing activities can no way be construed as following the three tiered disposition process mandated by Resolution 10.7.

Further evidence of the USFWS's violation of Resolution 10.7 can be seen in events occurring around the time of Operation Renegade. An employee of the USFWS, Richard Prather, quit his government job with the USFWS to establish an organization known as FaunaLink, located in Florida and incorporated in 1994.²⁴ The stated purpose of the organization was to take in psittacines and other birds that were received via donation or on breeding loan for purposes of propagation of the species. The organization also issued a statement early on that it would be its policy "to place suitable birds in cooperative breeding programs by entering into breeding loan agreements with other institutions or private individuals" (FaunaLink, 1997). At the trial of Tony Silva, one of the primary defendants charged with bird smuggling as a result of Operation Renegade, testimony was elicited that Prather and another person by the name of Donald Bruning received birds seized from Silva and his associates by the USFWS. Silva's birds were given to FaunaLink by the USFWS and their fate thereafter is unclear (Franklin, 1997).

Moreover, further investigation into the background of FaunaLink revealed that it was the American business arm of an international bird dealer named Ron LecAirls. The USFWS has refused to provide any information to other investigators that would account for the fate of the birds transferred to FaunaLink whether the request be by a private citizen under FOIA or the court during the Silva trial (Franklin, 1997; Americans Against Corruption, 1997). However, there is evidence to show that FaunaLink made a business of selling and trading birds in its possession as well as breeding hybridized birds for sale (Franklin, 1997; American Against Corruption, 1997). Since full details are unavailable, it is not possible to draw an irrefutable conclusion on this matter. However, on the basis of the USFWS's transfer of the birds to FaunaLink and FaunaLink's status as both a bird breeding facility affiliated with a retail seller of

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birds, it appears that the USFWS violated the provisions of Resolution 10.7 by turning at least some of the birds into a retail commodity.

After the Silva case was concluded, the chief prosecutor for the Justice Department, Sergio Acosta, stated that many of the birds confiscated in the Operation Renegade sting were sent to a number of other institutions as well. These included 49 birds to Cornell University, 9 birds to Colorado State University, 18 birds to the University of Wisconsin, 4 birds to Kansas State, 3 birds to the University of Georgia and 37 birds to Kaytee Products — a commercial manufacturer of bird diets (Franklin, 1997; Americans Against Corruption, 1997). Thus, one might conclude that the USFWS was in partial compliance with Resolution 10.7 in this particular case. What is missing, however, is any information on the disposition of the remaining seized birds (between 180 and 480 depending upon who's statistics one believes). There is no provision in the CITES Resolution 10.7 for intermittent or partial compliance from its signatories and the number of birds missing and unaccounted for far exceeds these few sent to educational institutions.

The most recent example of the USFWS's "intervention" into animals held by APHIS quarantine stations involves the legal importation of sixty pairs of Yellow-bibbed lorries (*Lorius chorocereus*) for the Solomon Island Parrot Consortium (SIPC) in 1997.²⁵ When the birds arrived there were actually 62 instead of the 60 for which the Consortium had permits. At the end of the quarantine period, Dick Schroeder, spokesperson for SPIC, went to pick up the birds in preparation to distribute them to the members of the consortium. According to him:

After I picked up the 30 pairs I asked where the last (confiscated) pair was going. I assumed San Diego Zoo or the auction. Nobody had an answer. After some time spent tracking their whereabouts it was confirmed that they were donated to the Star Foundation, whose address is an apartment in Culver City.

Even more interesting, a week after the confiscation an acquaintance in the LA area called me to see what yellow-bibs were worth and if they were rare. Seems his neighbor had a pair for sale. I said that I doubted they were yellow-bibs, as they were quite rare. He replied they certainly were as his neighbor had just confiscated them and he worked for USFWS... (Schroeder, 1997; see also Franklin, 1999b).²⁶

The story does not end here, however. Along these same lines, the USFWS has now entered into an agreement²⁷ with an organization known as "The Star Foundation" — a California corporation that is primarily designed to provide after school child-care for underprivileged children. The official corporate name of the organization is Star Sports Theater Arts and Recreation, Inc. It has been in business for more than five years and receives over \$5 million in funding from the federal government for child-care programs. In 1997 the corporation opened the Exploration Station and Children's Museum in Southern California. The organization holds itself

out as an "official wildlife station" and takes confiscated birds, mammals and reptiles from the USFWS.

A news story about the Star Foundation aired in 1999 and included an interview with Eric Bozzi, the Director of STAR's Exploration Station. Mr. Bozzi stated, without qualification, that he receives calls weekly from USFWS asking him to come to various points of entry into the United States (such as the Los Angeles Airport) to pick up shipments of smuggled live wildlife (MSN Special Edition, 1999). Mr. Bozzi also stated that the number of animals taken into his custody is "staggering." A FOIA request was made to the USFWS, asking for a list of all live animals transferred to STAR as of July 1998. The numbers included 94 reptiles and amphibians and two yellow-bibbed lorries. While STAR claims that it rehabilitates these animals since they cannot be returned to the wild, they fail to disclose that they also sell the animals at a significant profit (STAR IRS Form 990, 1997 tax return; Franklin, 1999b).

Moreover, as is discussed above, it appears obvious that the USFWS knows that it has no authority to dispose of confiscated wildlife (or wildlife parts) based on the fact that in 1997 it asked Congress to amend Section 3 (c) of the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. § 7421(c)) to allow the Service to sell confiscated goods and keep the funds for the Service's own use (U.S. Congress, House. An Act to Amend the Fish and Wildlife Improvement Act of 1978, H.R. 2291, 105th Congress, 1st Session, 1997). This effort did not pass and the Service has made no further attempt to change the law under which it operates with respect to the seized goods. Instead, the USFWS (or at least some of its employees) have chosen to ignore the rules and place these items on the market — in direct contravention of the law of the United States and the rule promulgated by CITES and which the United States is bound to comply.

As a final note, recent news reports have disclosed that the USFWS is under fire from Congress (particularly the House Resources Committee) for mishandling and/or improperly using federal taxes paid by hunters and fishermen. The Committee found in early March 2000 that \$500 million raised annually from an excise tax on sporting gear boating fuel and fishing equipment has "disappeared" (Sacramento Bee, 2000). Beginning in 1993, the General Accounting Office of the federal government investigated complaints regarding the use of administrative federal aid funds by the USFWS. As a result of the ongoing investigations and continued complaints, a hearing was set up under the authority of the House Resources Committee — the Congressional committee that oversees the disposition of federal aid money raised from the taxes described above.

There is a Sport Fishing and Wildlife Restoration Program administered under the federal aid program that is obligated to disburse the money raised from the excise tax for use in various wildlife and fish restoration programs. When the GAO began looking into the affairs of the Wildlif

Restoration Program it discovered that the USFWS had used almost \$31 million of the tax money as a "slush fund" for unauthorized programs such as African Rhino habitat rehabilitation, bonuses to federal employees, 71 trips for the assistant regional director of the federal aid division, and liquor bills, among other inappropriate items. The USFWS subsequently reported that it had shut down a discretionary account administered by the agency's director Jamie Clark, who was responsible for giving out \$3.8 million of the money. The GAO said in its report to the House panel that it could not account for where all the money was spent because the USFWS's books were not kept correctly. Nevertheless, it appeared that the agency had lost between \$7 and \$20 million.

While the misuse of tax funds allotted for fishing and hunting programs does not have a direct bearing on the topic of the USFWS's ineptness and overspending regarding the illegal wildlife trade, it can be used as indicia (or circumstantial evidence if you will) that the agency is not following the law or its own internal guidelines with respect to the handling of the public's funds.

V. WHAT ALTERNATIVES BETTER SERVE CONFISCATED SMUGGLED BIRDS?

A. Repatriation

Returning birds to their country of origin would constitute compliance with CITES rules and would, theoretically, mitigate the ever decreasing populations in those geographic areas. The problem, of course, is that many smuggled birds are chicks or relatively young fledglings who would not be able to survive if returned to the wild since they did not learn to forage for food, identify members of their own flock/species, or recognize predators before they were captured by trappers. One possible way to return the birds to their natal land without placing them at risk would be to return them to a preserve or conservation area.

This concept is contemplated by the language of the Endangered Species Act which states that the United States may allot financial support to the bird's country of origin for purposes of development and management of programs in that country that would provide repatriated birds with habitat conducive to its continued life and breeding (16 U.S.C. § 1537 (a)). It is interesting to note that such a plan would come under the supervision of the Secretary of State and not the Department of the Interior – giving the agreements with foreign countries regarding the establishment of preserves or other conservation areas into which the birds could be reintroduced (16 U.S.C. § 1537 (c)).

B. Transfer to Zoos for Cooperative Breeding

Unfortunately, it is unrealistic to consider repatriation for many smuggled birds due to a number of factors including: (a) identifying exactly where the bird came from; (b) getting the originating country to agree to take the bird(s) back; and (c) finding the money and time to facilitate the arrangement. (To say nothing of the disease threat that they would pose to native

populations having been exposed to potentially contaminated environments.) As an alternative, confiscated birds could be placed in zoos and possibly certified private breeding collections for the purpose of multiplying the population in the hope of future release in the species' native habitat.

There are already some cooperative breeding programs in place in this country that have been fairly effective in increasing the number of birds but not successful in implementing a release program. For example, the Thick-billed parrot (*Rhynchopsitta pachyrhyncha*) has been successfully bred by a number of zoos in this country but attempts at establishing viable free-living populations in the wild have failed (Wiley et al., 1992). Likewise, as mentioned above, a new cooperative breeding program for the Yellow-bibbed lory (*Lorius chorocereus*) has been instigated by a number of private breeders throughout the United States, having as their goal to produce a significant number of these birds to eventually be released back into their native habitat.

The use of zoo breeding programs and cooperative breeding programs by aviculturists in the private sector complies with the first part of CITES Resolution 10.7 – captive breeding for those specimens that cannot be returned to the wild at this time. Moreover, these programs may provide a viable means of securing the continued existence of certain species that are highly prized in the avicultural marketplace (e.g., palm cockatoos) and which would be at risk of recapture upon their return to the wild.

C. Funding for USFWS

Presently, the USFWS received \$39 million for its wildlife law enforcement arm and the proposed budget for FY 2001 will increase that amount to \$52 million (USFWS, 2000). Based on the statistical information provided by the USFWS regarding confiscated smuggled birds, 3,214 birds were taken into USFWS custody over a period of seven years (average of 500 birds per year). In fiscal year 2000 the USFWS requested a total of \$39.9 million for its "law enforcement duties," an increase of nearly \$3 million from FY 1999 (U.S. Congress. House, The Fiscal Year 2000 Budget Request of the U.S. Fish and Wildlife Service²⁸ Oversight Hearing before the Subcommittee on Fisheries Conservation, Wildlife and Oceans, 1999). The USFWS is attempting to increase that amount again in FY 2001 by another \$3 million. Based on the USFWS track record of identifying and seizing smuggled live birds, that makes each bird worth nearly \$100,000. Obviously, the question must be asked whether the money could be better spent pursuing avenues that may be more effective and are certainly less costly.

D. Federal Government Expenditures Better Spent to Protect Endangered Species of Birds

Assuming that the USFWS budget for law enforcement (e.g., catching wildlife smugglers) is in the neighborhood of \$40 million, there are a number of alternative means of dis-

posing of the money that would ultimately protect more birds (and likely other animals) than the use of police once the birds are already in this country. One example that is actually a part of the proposed fiscal year budgets for the USFWS for 1999, 2000, and 2001 is the acquisition of land in countries that are the native home to endangered species. (U.S. Congress. House, The Fiscal Year 2000 Budget Request of the U.S. Fish and Wildlife Service; 16 U.S.C. § 1537 (a); Snyder, et al. 1992). Congress has given both the USFWS and the State Department the authority to acquire critical habitats in foreign countries for the purpose of protecting native species that are endangered or have the potential for becoming endangered if they continue to be removed and transported to the United States for sale (16 U.S.C. § 1537 (a) and (b)). These programs – which are now carried out on a small scale by the U.S. government and on a larger scale by nonprofit organizations such as the Nature Conservancy and the World Wildlife Fund – secure habitat for birds and other animals to flourish and reproduce under the protective eye of the funding party.

Since the USFWS estimates that it is able to detect and seize only 5% of the birds smuggled into this country, it makes abundant sense to use a large portion of the \$40 plus million dollars that now goes into the law enforcement program to acquire land in these birds' native countries for purposes of protecting them before they can be captured and transported to the United States.

Additionally, there is some evidence in recent years that paying individuals who previously were poachers to act as guardians of the birds in question is a much better use of public funds. One authority in this area describes the situation as putting bird protection versus bird harvesting in terms of "rent." If a landowner, poacher, or middleman were to gain more income by leaving the birds alone and encouraging population growth than by taking birds and placing them into the stream of commerce they would be receiving more "rent" for their efforts. Educating landowners and other citizens around the habitat where birds reside as to their intrinsic value and the fact that eventual extinction will lead to no more "rent" is a factor in changing the way people look at this natural resource in their country (Swanson, 1992).

A third alternative to preserve endangered bird species is to take a portion of the money allotted to the USFWS for "law enforcement" and use it to develop more cooperative captive breeding programs in the United States. Presently, there are few such breeding programs going on, particularly in the private sector, due to the complicated nature of obtaining the necessary permits and other documents necessary to establish a viable breeding population. The paperwork and fees involved in establishing a "consortium" for a particular species is more than most aviculturists can bear – considering that they will also have to make arrangements to house, feed and care for the birds when (and if) they ever arrive.

Fourth, funds for conservation education in targeted countries has already been established as a way to protect

highly endangered bird species. The prime example is the work done by Paul Butler in the Caribbean and its species of Amazon parrots that were on the brink of extinction. Butler developed a program that combined legislation, education, and entertainment to raise the citizens' awareness of the importance and uniqueness of four of the parrots native to the Lesser Antilles Islands. After just one year of public programs, educational presentations, and posters liberally distributed to public gathering places, the countries updated poaching fines, revised wildlife legislation, joined CITES, and designated preserves for the parrots habitat (Butler, 1992).

These ideas are not completely new. Similar concepts were presented to the USFWS and Congress via a publication of TRAFFIC USA seven years ago when that organization analyzed the magnitude of parrot smuggling across the Mexico-Texas Border (Gobbi, 1996).²⁹ Unfortunately, none of these ideas have been implemented and the USFWS continues to seek ever-increasing funds for law enforcement with little regard for the animals they are purportedly trying to help. In a statement to the House Appropriations Subcommittee on Interior and Related Agencies by Jamie Rappaport Clark, Director of the USFWS, on 2 March 2000, it was made clear that the policing arm of the Service, and not the conservation arm, is the one still being emphasized:

The Service requests \$52,029,000, a net increase of \$12,624,000 over the FY 2000 enacted level, to strengthen the Law Enforcement program. Enhancing law enforcement capability is one of the highest Service priorities for FY 2001. Today's law enforcement program is at a critical crossroads – facing increasingly complex and potentially devastating threats from illegal trade, unlawful commercial exploitation, habitat destruction, and environmental contaminants – with a declining and under-equipped force. This request will ensure the safety of our officers and the success of many Service activities such as reintroducing species, implementing Habitat Conservation Plans, reducing contaminants and other industrial hazards, and controlling illegal wildlife trade.

Nowhere in the statement, however, does Clark admit to the fact that with a budget in excess of \$52 million the Service is able to identify less than 5% of the smuggled birds and other wildlife or wildlife parts or that the Service has no organized plan for repatriation, habitat conservation, or captive breeding of confiscated animals.

CONCLUSION

Estimates of the magnitude of the illegal bird trade vary widely. Various federal agencies claim that the trade is a multi-billion dollar a year industry, second only to drugs and ahead of illegal arms with respect to economic value. However, when asked to provide data from which these claims could be justified, the five prime agencies of the United States government involved with smuggling either

refused to produce documents which could substantiate their claims or produced data that showed numbers far below the amounts being claimed.

Based on the data provided by the government, the actual number of birds interdicted in illegal trade at the U.S. borders is on the order of hundreds per year, not the hundreds of thousands per year that the government would have the media and public believe (Gobbi, 1996; USFWS, 1998). This is complicated, however, by the fact that the prime agency responsible for this problem – the U.S. Fish and Wildlife Service – admits openly that it identifies less than 5% of the illegal wildlife that passes into this country at any given time. Furthermore, again based on government supplied data along with independent investigations, the federal government is failing miserably in its efforts to take care of the birds it does confiscate – primarily by failing to comply with the mandates of CITES and the Endangered Species Act requiring repatriation, relocation, captive breeding, or other alternatives to preserve the lives of the birds in their care.

Given all of this, it is necessary to reevaluate the manner in which the problem of wildlife smuggling is handled and the nature of the funding earmarked for such projects. Despite the inability of federal agencies to identify smugglers and seize live birds, these agencies ask for more and more money each year to fund their ongoing operations that produce no good results for the birds and which may actually increase the amount of smuggling since their ineptness is well known in the illegal wildlife trade community. Moreover, there is clear evidence that most of the birds (and likely other animals) confiscated by these agencies do not make it back to their native habitat or into approved breeding programs but are, in some instances, sold by federal agents for their own profit. The combination of ineptness and graft will not stop until federal agencies are held accountable for their actions. Continued increases in funding only complicate the problem, it does not solve it.

About the Author

This research was part of the author's work towards a M.S. in Avian Sciences at U.C. Davis. She is also an attorney and has graduate degrees in Public Administration and Library Science. She raised Lady Ross touracos, worked as a volunteer zoo keeper for 5 years, has published extensively in both the legal and avian fields, fosters orphan kittens, and provides a home to over 40 birds and mammals, including one husband. The author would like to thank her thesis advisor, James Millam Ph.D., Professor of Avian Sciences at U.C. Davis, who originally thought up the idea for this research and provided ongoing assistance and support throughout the duration of the project. You may email me for more information.

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ENDNOTES

1 The terms "seized" and "confiscated" will be used interchangeably herein. However, the U.S. Fish and Wildlife service defines birds taken by a law enforcement officer at the point the shipment enters the country as being "seized". "Confiscated" birds are those for whom a legal determination has been made that they were shipped illegally and have now become property of the U.S. government. Since 99 percent of the seized birds are eventually confiscated, the distinction is moot (Gobbi, et al., 1996).

2 The USFWS admits in a 1998 news release that: "Even though there are no reliable statistics on the number of birds or other wildlife that illegally enter this country each year from Mexico, a 1997 study by the World Wildlife Fund/Traffic USA concluded that the southern border is probably the most widely used route for illegal importation of parrots into the United States" (USFWS, 1998).

3 Here, Interpol is addressing the issue of the wildlife trade in general – not just live birds. Moreover, for the most part, U.S. agencies are counting dollars (the value of the birds in trade). Thus, it might be possible to say that the Interpol data cannot definitively refute the U.S. government data since they are comparing apples and oranges. However, based on the numbers provided by the USFWS (Table B), there is some support for the fact that the quantity of birds being smuggled into the United States is relatively insignificant when compared to the dollar amounts claimed by said same agencies.

4 LEMIS stands for Law Enforcement Management Information Service, a computer program utilized by various police and law enforcement agencies around the country to track data regarding crimes, criminals, arrests, and disposition of criminal cases. The USFWS began to enter data regarding confiscated wildlife and wildlife parts in 1983. Over time, it became apparent that data entry was slow to non-existent and the USFWS petitioned Congress for funds to purchase an updated version of the program – LEMIS II. LEMIS II uses Windows (as opposed to DOS) based technology and is more "user friendly". It was hoped that implementing this new system would increase the amount of data entered by the various USFWS officials around the country (U.S. Fish and Wildlife Service, 1997). Unfortunately, the time lag in data entry remains the same.

5 Congress and the General Accounting Office also made provisions that the U.S. Customs Service and the Border Patrol have access to the USFWS LEMIS database for the purpose of inputting data regarding seizures of wildlife made by both Customs' officials and Border Patrol employees (General Accounting Office, 1994).

6 Upon investigation, none of the countries outside the United States claims to have participated in and/or facilitated the "sting" operation. While silence does not necessarily imply a failure to act, when contacted by the media Canadian officials vehemently denied that their country had anything to do with Operation Jungle Trade and stated that no Canadian wildlife official had they even heard of the operation (Anon., 1999).

7 The exact numbers seem to vary from one source to another. One report refers to seizure of 500 birds and/or eggs (Reynolds, 1996) while another claims the number to be more in the range of 300 birds (NOVA, 1997).

8 A description of the terms and effect of the CITES treaty are discussed in Section II below.

9 The birds are not protected for a number of reasons, the primary ones being (1) the recipient country is not a signatory to the Convention or (2) the recipient country has a higher quota of birds that are allowed to be caught and traded (because the birds are less endangered) than the originating country.

10 As with all statements by federal authorities, there is no consensus on the dollar-value with respect to the birds being smuggled into the United States. This is due, in part, to the fact that some reports discuss the wildlife trade in general while others deal just with birds. For example, one USFWS source states that the annual value of the trade is \$7 million – but whether it is referring to avian species or all wildlife is unclear. Liukewise, another USFWS report claims that birds worth \$4 million pass undetected annually through the Los Angeles, California port alone (Lindsay, 1997).

11 This figure is not totally inconsistent with the data provided by the U.S. Fish and Wildlife Service regarding confiscated smuggled birds over a six year period. While some of the birds would bring \$1,000 or more on the open

market, a review of the species and numbers of birds actually confiscated by the Service makes TRAFFIC'S findings regarding an average dollar figure consistent with the nature of the birds seized.

12 It is not possible to show that these numbers bear any relationship to the number of live animals and birds confiscated by federal agents.

13 The Endangered Species Act underwent a major revision in 1973 (16 U.S.C. §§ 1531-1544). As of this writing, reenactment of the legislation is still pending before Congress and has been pending for more than four years with no significant resolution in sight. Multiple bills have been introduced to Congress during the last three sessions, but no single law has been passed that would constitute a current piece of legislation similar to the 1973 ESA. Regardless, various federal and state governmental agencies in the United States, spearheaded by the USFWS, have continued to enforce the provisions of the 1973 Act against anyone who might attempt to harm, kill, import, export, or otherwise impact the habitat of any of the enumerated endangered species.

14 From this point forward, the terms "endangered" and "threatened" will be used interchangeably. The difference is partly one of semantics and partly one that comes from a determination by USFWS that a given species is close to extinction (endangered) or approaching extinction if intervention is not taken (threatened) (Gobi et al., 1996).

15 The National Marine and Fisheries Service, under the Department of Commerce, is responsible for aquatic species; both mammals and fish. Regardless, the rules and regulations are essentially the same.

16 In 1994 Congress asked the General Accounting Office to evaluate the effectiveness of the USFWS's wildlife inspection program along with the pros and cons of transferring that job to the U.S. Customs Service. After an exhaustive study, the GAO issued a report finding that the USFWS's efforts to detect and seize illegal wildlife and wildlife parts was both inefficient and ineffective in reaching its stated goals. The GAO report found that transfer of this police action to Customs was indicated because the USCS was already set up to handle inspections such as this on a much larger scale. However, the GAO also found that the plan would eventually become unworkable since USCS employees lacked the special knowledge and training needed to identify rare and endangered species (General Accounting Office, 1994).

17 The exception to this statement were the responses received from approximately 10% of the U.S. Customs Service Port Directors in a timely fashion after they received the FOIA request.

18 The provisions of 28 C.F.R. 16 state that no fee can be assessed to an individual doing scholarly work or who is associated with an educational institution. While this rule was pointed out to the Branch Manager of the Dallas Border Patrol Administrative Center, the agency continued to refuse to provide any information whatsoever absent prepayment of the \$450.00 fee.

19 For example, there were three designated ports of entry in Los Angeles, California and the Los Angeles, Long Beach, and Seaport ports forwarded the requests to the Terminal Island office of the Los Angeles Port Authority.

20 These ports of entry designations are taken from the General Accounting Office report to Congress, dated 29 December 1994, and titled "Wildlife Protection: Fish and Wildlife Service's Inspection Program Needs Strengthening" (GAO/RCED 95-9).

21 As an example, Operation Jungle Trade purportedly produced 356 yellow headed Amazons, 57 Mexican redheaded parrots, 110 yellow-naped Amazons, 31 red-lore Amazons, and 8 Military macaws – none of which are accounted for on the LEMIS print out provided in response to the FOIA request for information about confiscated birds. Likewise, as a result of Operation Renegade, one individual was charged with smuggling 4,000 Congo African Grey parrots into the United States – but only 113 birds of this species show up on the USFWS LEMIS list of confiscated birds (Environmental News Network, 1997).

22 NAFTA stands for North American Free Trade Agreement that was enacted by Congress in 1992. Objections to the passage of NAFTA was raised by people who were concerned that there would be an increased opportunity for smuggling wildlife across the U.S. – Mexico border due to the opening of new border ports and increasing the flow of people and goods between the United States and Mexico (Rose 1991).

23 A similar CITES program for plants called the "U.S. Plant Rescue Center Program" (PRC) was established in 1978 to care for plants confiscated by agencies of the U.S. government due to noncompliance with the import/export requirements of the Convention on International Trade in Endangered Species. The USFWS enlisted botanical gardens, zoological parks and research institutions in the U.S. to serve as PRCs. Currently, 57 institutions in 24 states cooperate as PRCs. Basically, after a protected plant is confiscated it goes through a quarantine period and is then sent to the appropriate PRC that is equipped to provide for its continued growth and survival. Should the country of export ask for the return of the plant, the PRC program will air freight the plant back to its country of origin at that country's expense (U.S. Department of the Interior, 1998).²⁴ Prather was one of the major moving forces in the Operation Renegade investigation and established a bogus quarantine station in Southern California to be used as a means of trapping smugglers and their birds. He also represented himself to various bird dealers, collectors, and aviculturists as Richard Britton, bird importer. He made friends with various bird dealers and traveled with them to both Australia and Africa to see just how smuggling operations were carried out (NOVA, 1997).

25 Birds that are protected by either/both CITES or the Wild Bird Conservation Act can still be imported into the United States for breeding purposes. In simple terms, a group of experienced breeders (at least three) get together and develop a "consortium" which then bears the cost of importation and raising of a specific number of birds. In this case, the yellow-bibbed lory consortium made an application for an importation permit to the USFWS and said application was published in the Federal Register in 1996. The consortium members, and not the government, are responsible for all fees and expenses related to the program but can sell offspring of imported birds to help defray the costs.

26 It should be remembered that these birds are CITES Appendix I, are extremely rare in the wild or in captivity, and certainly not something that would coincidentally come into the possession of a USFWS employee at the same time the consortium was importing their birds.

27 In essence, the Service turns over confiscated smuggled wildlife of all sorts (not just birds) to the Star Foundation immediately upon seizure at the port of entry in Southern California.

28 The difference between the \$39 million figure and the \$52 million figure represents a separation between a budget for staff and a budget for supplies, office space, computers, etc.

29 TRAFFIC recommended that USFWS (a) undertake an annual review of parrot confiscation records; (b) exert greater diligence at the Texas-Mexico border since the majority of smuggled birds enter the United States via that route; (c) that they cooperate with the other federal agencies to coordinate efforts to identify smugglers; (d) that they become more active in promoting captive breeding facilities in this country utilizing seized birds; and (e) that funding for repatriation be sought from Congress to return birds to their native habitats (Gobbi, et al., 1996).

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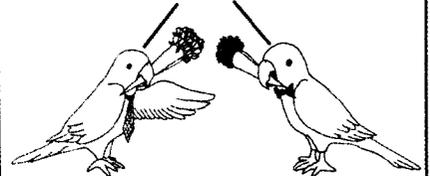
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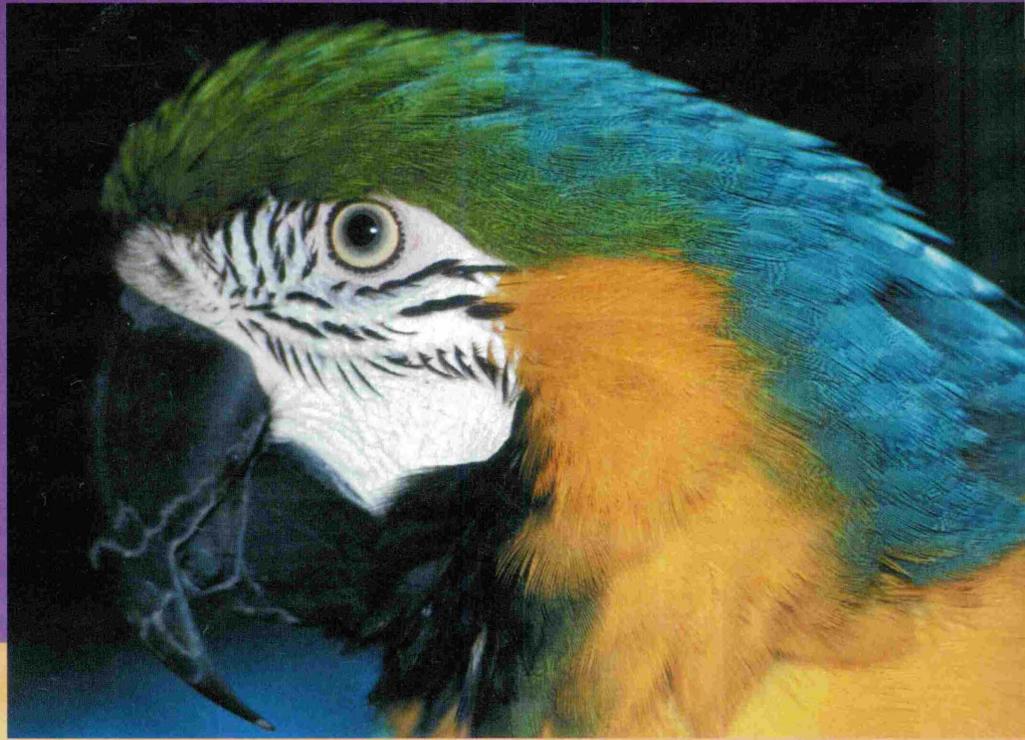
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