

# Response to Proposal to List 14 Species Under USESA

*AFA Legislative Committee Responds*

*In the last issue of the AFA Watchbird magazine (XXXVI Vol. 1–2) we wrote to tell you about activists seeking to include 14 species of parrots under the U.S. Endangered Species Act. At the time of the last issue we did not have enough information to respond properly to the USFWS's call for information. AFA submitted a Freedom of Information Act request for all documents filed by the AR activists to support the proposed listing. AFA also submitted a separate FOIA request to the USFWS for all import data on the 14 species since 1990.*

*The responses to our FOIA request demonstrated to us that the petition to list the species under the act was not warranted; this is based on the "lack" of scientific information submitted by the proponents. It is clear that there is insufficient scientific and commercial data to support the proposed listings and therefore the AFA has submitted a response in opposition to the listing of the 14 species.*

*Below is the AFA's official response to the Service's call for information on this proposal. The USFWS will now review all information submitted pursuant to their notice. This process will not be completed for a year or longer.*

*The AFA Legislative Committee, with assistance from the AFA CITES Committee, the AFA Conservation Committee, and private consultants collaborated to prepare AFA's official response and they will continue to monitor this proposal.*

September 8, 2009  
Public Comments Processing  
Attn: FWS-R9-IA-2009-0016  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Drive, Suite 222  
Arlington, VA 22203

Re: [FWS-R9-IA-2009-0016; 96100-1671-9FLSB6]—Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List 14 Parrot Species as

Threatened or Endangered

**The American Federation of Aviculture (AFA) (see footnote 1) submits that there is woefully insufficient scientific and/or commercial data to support the advancement of the proposal to list the 14 species of parrots that is the subject of FWS-R9-IA-2009-0016; 96100-1671-9FLSB6]- Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List 14 Parrot Species as Threatened or Endangered.**

**The proposed listing of the 14 species of parrots that is the subject of "FWS-R9-IA-2009-0016; 96100-1671-9FLSB6- Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List 14 Parrot Species as Threatened or Endangered" will harm not only the 14 species of birds that are the subjects of the proposal, but it will harm U.S. aviculturists for current, correct, and humane assistance in keeping all of their birds.**

**1. No hard scientific data on the status in the wild is presented in the Notice or in the underlying Friends of Animals (FOA) petition or complaint to support the basis for the listing of these birds under the U.S. Endangered Species Act (ESA).**

Allegations stated in any petition for listing under the ESA, without supporting reliable scientific and commercial data, are nothing more than allegations and suppositions—they are not facts upon which a listing can be based. Neither the Notice, or the underlying FOA petition, or the underlying FOA complaint, cite any specific current or reliable scientific research or reports required to support the petition. Neither the Notice, or the petition, or the complaint cite any current or reliable commercial information from anyone currently involved with the conservation or trade in these species required to support

the petition. The supporting data is more prose suggesting that local (in situ) ownership is the cause of endangerment, suggesting that the uplisting of these species by the U.S.FWS will somehow correct this condition. This is not scientific or commercial data.

The ESA requires that "The Secretary shall make determinations required by subsection (a)(1) of this section solely on the basis of the best scientific and commercial data available to him..." (16 U.S.C 1533(b) )

The general references to Birdlife International, NatureServe, and IUCN website information on these species which are recited in the Notice, the FOA petition, and the FOA complaint, do not constitute "the best scientific or commercial data available to [the Secretary]" that is required by 16 U.S.C 1533 (b) to support a determination by the Secretary that a listing of any of these species under the ESA is warranted.

The general claims made in the Petition and Complaint regarding threats to these species are not supported by citations to current scientific or commercial data that document the claimed threats. The absence of timely or recent citations in the Petition is remarkable—the citations in the Petition are, for the most part, pre-WCBA (1992 Wild Bird Conservation Act). The 1992 WCBA stopped the taking of birds from the wild for sale as pets in the U.S. Claims based on data and observations from the period prior to the WCBA cannot be considered reliable current scientific or commercial data.

Some of the data cited is nearly three decades old and was the same data used to support passage of the WBCA (see below) in 1992. The premise of the WBCA was that these birds should be bred in captivity by U.S. Aviculturists.

Not only does the petition to list these 14 species fail to meet the minimum regulatory requirements set forth in the ESA

itself to support the requested listings, but the lack of scientific evidence in the petition violates the standard recently set forth by President Obama for actions to be taken by U.S. Executive Departments and Agencies.

On May 9, 2009, President Obama signed a Memorandum for the Heads of Executive Departments and Agencies, which directed as follows:

“Science and the scientific process must inform and guide decisions of my Administration on a wide range of issues, including...protection of the environment, ...

The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions. If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking. ...” (See Footnote 2)

The FWS, as required by the ESA itself, and as further guided by that directive, must consider the “best scientific and commercial information” available in making its determination on this issue. We believe that not only have the petitioners failed to provide the required “best scientific or commercial data” available to support their petition, we believe that ample and sound scientific and commercial information exists to deny the requested listings.

The Notice published in the Federal Register on July 14, 2009 does not provide scientific or commercial information sufficient to support the FWS Notice of 90-day petition finding and initiation of status review. The Notice itself refers to and recites undocumented allegations, notes, and assertions made in the FOA petition. The Notice itself does not cite any scientific information which supports an ESA listing for these parrots. The Notice does not provide any scientific information (if there is any) which may have been provided by the FOA to the FWS in support of the FOA petition to list these

parrots. The allegations, notes, and assertions made by the petitioners in the underlying petition are of a general nature. They briefly describe the native habitats where these species are found (apparently gleaned from Birdlife International, NatureServe, and IUCN sources), and include general allegations of human pressure on those native habitats, including undocumented allegations that poached birds of these species regularly end up being sold as pets in the U.S. This is wholly untrue and unsupported. Many of the allegations, notes, and claims cite data that is nearly 3 decades old and that was the same data used to support passage of the WBCA in 1992. These allegations, notes, and claims do not rise to the level of “the best scientific or commercial data available to [the Secretary]” that is required by 16 U.S.C 1533 (b) in order to support a determination by the Secretary that a listing of any of these species under the ESA is warranted.

In order to evaluate and respond to the FOA petition and to respond to the Notice, the American Federation of Aviculture, and other interested parties, made an FOIA request for the information upon which the finding of the U.S.FWS recited in the Notice is based. A copy of that request was sent to Douglas Krofta, Chief, Branch of Listing, Endangered Species, U.S. Fish and Wildlife Service (the “for further information” contact recited in the Notice). On September 4, 2009 AFA received copies of the 7/14/09 Federal Register Notice, the FOA Petition, the FOA Complaint, Summons and other procedural and administrative notices and copies of certified mailing cards, under that FOIA request.

AFA also made a separate FOIA request to the FWS for import data relating to these species from 1992 to the present. As of the date of this comment, that data has not provided by Mr. Krofta or any other representative of the FWS to the American Federation of Aviculture or any other requesting party.

The FWS states in its Notice that “We find that the petition presents substantial scientific or commercial information indicating that listing the remaining 12 species

of parrots may be warranted.” It would seem that a decision has already been made by FWS that the basis for uplisting already has been determined to exist, even before complete data has been submitted. If the FWS cannot, or will not, produce the requested supporting scientific or commercial data upon which the petition is purportedly based, and upon which the finding of the FWS is purportedly based, a reasonable person can assume that such supporting data does not exist.

The burden rests upon the petitioners under 16 U.S.C 1533 to present the required “best scientific or commercial data available” to support its petition to list these 14 species. That data necessarily includes sufficient reliable data to document the petitioners’ allegations of ongoing smuggling and importation of these species into the U.S. That does not mean that they can merely quote like minded groups. It means that there has to be *scientific and commercial* data, and it must be the *best available*. The inescapable conclusion is that no such data exists.

FWS is required collect and maintain data on imported animals, including birds, and to provide any documentary material which is either created or obtained by an agency in the transaction of agency business and under agency control (43 CFR 2.3(c)).

The FWS is required to disclose that information when requested under the Freedom of Information Act (FOIA) (43 CFR 2.13(c)(4), 43 CFR 2.15(d)(1)(i)).

If FWS has that data, it should produce it to the parties who have requested it. If FWS is unable to produce the data forthwith, then the comment period on this petition should be extended until FWS is able to produce the data to the parties who have requested it., or the petition should be rejected as insufficient on its face. The President’s March 9, 2009 directive requires that transparency in the making of policy decisions.

It seems what we have here is a recurring theme of animal rights/conservation groups alleging a problem and them making it the job of U.S. aviculturists to disprove the allegations. The ESA says

otherwise!

**2. The proposed listing will do nothing to stop any import of any these 14 species into the U.S. There has been no legal commerce in these species into the U.S. since the enactment of the Wild Bird Conservation Act in 1992.**

The Wild Bird Conservation Act (WCBA) (16 U.S.C. §§ 4901-4916, October 23, 1992) stopped the importation of all wild caught parrots into the United States. Current data obtained from CITES (see *Exhibit 1*) shows that there has been virtually no legal importation of any of these 14 parrots into the U.S. since 1992, and no reliable data (other than innuendo) has been produced from any source to document that there has been any illegal imports of any of these 14 parrots into the U.S. since 1992.

The FOA petition and the FWS Notice both fail to recognize the fact that import of all wild caught parrots into the U.S. ceased in 1992 as a result of the Wild Bird Conservation Act (WCBA). Virtually all parrots sold in the U.S. since 1992 (either as pets, to zoos or other public display venues, or for other purposes) have been bred in the U.S. Since 1992 the pet trade in the U.S. has not only put no pressure on these birds in the wild, but has had no negative impact at all on these species in the wild.

According to current data from the Convention on the International Trade in Endangered Species (CITES), from 1975 to the present, it is clear that virtually none of these species have been imported into the U.S. since 1992. It is also clear that few birds of these species have been imported into any of the other reporting CITES signatory countries since 1992. The current CITES data for each of the 14 species in question is provided in chart form in *Exhibit 1*, which is attached to this comment. The raw data is available for download from CITES at [www.unep-wcmc.org/citestrade](http://www.unep-wcmc.org/citestrade). The inescapable conclusion must be that the cessation of the U.S. trade in these species would relieve the pressure on these species in the wild. At least that was what was contended by proponents of

the WBCA like FOA pre 1992. In fact, groups which supported the WBCA sold it to Congress that U.S. captive breeding of birds would have salutary effect on wild populations.

**3. In situ programs are not the only way to try to ensure the survival of species in their native lands. Private and professional aviculture also plays an important role in species survival.**

Many aviculturists subscribe to the philosophy so succinctly stated by Baba Dioum:

“In the end, we will only conserve what we love, we will only love what we know, and we will only know what we are taught.”

Aviculturists allow millions of people to know, love, and understand the needs of the birds that we seek to conserve. But for U.S. aviculture and the birds made available to the public as a direct result of the efforts of U.S. aviculturists, few people in the U.S. would know, or care about, whether birds that are native to other countries continue to exist in the wild. The fact that people in the U.S. can, and do, own exotic birds encourages those U.S. owners to support and contribute to conservation of those birds in their native lands.

Aviculturists also have a direct impact on the success or failure of reintroduction programs. Only aviculturists can provide the specialized knowledge and experience that is a crucial element of the conservation work that is, and that will continue to be, required to ensure the continued existence of many endangered species of birds.

For decades U.S. Aviculturists and aviculture organizations have actively promoted the need for the conservation of wild parrots, and as a direct result of the activities of U.S. aviculturists and aviculture organizations, U.S. bird keepers of all kinds have embraced and financially supported the conservation of parrots in the wild. Uplisting of these species will remove them from interstate commerce. That is a factual certainty. With that loss the identity of these birds in the U.S. will be diminished if not lost. Conversely the uplisting

will have NO effect on these species in the wild. Uplisting will however serve to curtail, if not end, breeding of these species in the U.S.

**4. Listing these 14 species of parrots under the U.S. Endangered Species Act will do nothing to help conserve these birds in the wild.**

An ESA listing of these 14 species will only serve to harm these species as a whole, by reducing their overall numbers, both captive bred and in the wild, and to ultimately hasten their extinction.

A listing under the ESA will affect all of those who deal with these species in the U.S. In particular, it will harm those who breed and sell these species in the U.S. with no benefit to the birds themselves. If a bird is listed under the ESA, the captive breeding and interstate trade within the U.S. will be seriously and negatively impacted. Because of the regulatory restrictions on animals listed under the ESA, many U.S. breeders of these species of birds will stop breeding these species as they will be prevented from engaging in interstate commerce.

Unless a species is specifically exempted from the registration and permitting requirements contained in the Regulations, in order to move the species across state lines a FWS permit is required. The permitting process already deters many breeders from breeding listed species, since their ability to sell the offspring from their breeding programs.

U.S. aviculturists have been successful in breeding many parrot species (including these 14 species), and U.S. captive breeding of parrots has significantly increased the total numbers of many endangered foreign parrot species, including several of the species in question. Most aviculture in the United States is conducted by private individuals (not by zoos, preserves, sanctuaries, or government programs). It is a simple matter of economics (commerce) that a private breeding program must be self-sustaining if it is to remain viable, and that means that the breeder must be able to sell offspring of the breeding program in order to raise funds to continue the program.

This applies to breeders who breed for conservation as well as for pet purposes.

Under the ESA, a listed bird cannot be sold as a pet across state lines. Permits to possess a listed species as a pet are not a viable option under the ESA regulations. If these species of birds are listed under the ESA, permitted breeders can sell across state lines only to other permitted breeders or permit holders. No permits are available for pet birds of listed species. A breeder will soon exhaust the potential customers for ESA listed birds within the breeder's own state. Groups of closely related birds will remain within the states where they are bred (antithetical to the genetic diversity needed to maintain genetically healthy populations). Without the availability of permits for commercial trade, the free trade of these species between qualified breeders in different states will cease. Within a short time after listing, most legal trade across state lines in these species will cease. Without customers to sell offspring to, most private aviculture in these species will cease.

A clear example of this problem is demonstrated by the lack of aviculturists who still work with the Golden Conure (aka Golden Parakeet and Queen of Bavaria Conure) *Guaruba guarouba*. The Golden Conure is a beautiful bird, one that many people in the U.S. would purchase if it were available through legal channels. It is also endangered in its natural habitat. Yet, despite the relative ease of breeding these birds in captivity, few U.S. aviculturists still work with the Golden Conure because they cannot sell their progeny. There is little trade in these birds, and as a result, there is no longer much breeding of these birds in the U.S. As a direct result of the listing of the Golden Conure under the ESA, the "living genetic Ark" for these birds that was maintained in various breeding programs, which would have continued to exist but for the ESA listing, is being lost. It is noteworthy that all parrot species listed as endangered under the ESA were listed as such prior to adoption of the WBCA when the U.S. allowed importation of these species into the U.S.

It is also noteworthy that U.S.

Aviculture of these species supports a myriad of other commercial activities which would be negatively impacted by this unwarranted uplisting.

Some of the benefits to wild species listed under the ESA which flow directly from Aviculture, as well as some of the detriments to wild species resulting from their listing under the ESA, are set forth in *Exhibit 2*, which is attached hereto.

**5. The simple allegations contained in the petition and complaint that ongoing poaching and smuggling into the U.S. of the 14 species in question are not documented, are not "science," and cannot be used as the "best scientific or commercial data" that is required to support listing these birds.**

The alleged current smuggling of these species into the U.S., and the implied resulting damage to their native populations caused by the U.S. pet trade, has not been documented by the petitioners.

The petitioners assert in their 60 Day Notice of Intent to Sue:

"The caged bird pet trade directly causes loss of habitat for the petitioned species. Poachers commonly cut down trees in order to obtain access to nestling birds. Traffickers then transport poached birds to the U.S. and other countries. The birds are sold to pet stores and private buyers for up to \$12,000.00. As an aside, none of the proposed 14 species sell for anything close to that number. While populations of these species decline, demand for the birds as pets in the U.S. continues to grow. This demand creates further incentive for poachers to destroy habitats to obtain more birds." (October 17, 2008 60 Day Notice of Intent to Sue for Violations of the Endangered Species Act filed on behalf of Friends of Animals—Section III, Best Commercial and Scientific Information Available Demonstrate that the Petitioned Species Warrant Listing Under the ESA)

This allegation is misleading at best, and ignores the reality that there is virtually no U.S. traffic in, or import of, wild-caught birds today. While habitat

destruction and poaching by traffickers in the areas where the petitioned species are native was a cause of population decline prior to 1992, and while habitat destruction and poaching in those areas may still exist, since 1992 the U.S. pet trade has not been, and is not now, the cause, or the end destination, for any poached birds of the petitioned species. Parrots taken from the wild today are sent to countries other than the United States.

The petitioners repeat similar assertions in Section 25 of their complaint, and they simply recite in Section 26 that they have provided "substantive scientific and commercial data in their petition illustrating the continuing decline of the petitioned species." However, petitioners do not include any current scientific or commercial data in their petition or complaint to support their suggestion that simply by listing any of these species under the ESA that will accomplish anything to protect these species in their native ranges. Absent such justifying scientific or commercial data the petition must be denied.

An ESA listing of any of the petitioned species will do nothing to protect or conserve them in the wild. An ESA listing of any of the petitioned species will have no impact on their poaching or smuggling. Although, it might, due to the decrease if not end of interstate commerce in these 14 species increase smuggling and pressure on wild populations which captive breeding under the WBCA had addressed. It seems that this proposal proposes to kill the proverbial goose. An ESA listing of any of the petitioned species will do nothing to protect their numbers in the wild, or protect their habitat, or encourage the governments of their native lands to conserve these species. As long as there are captive bred numbers of these species available to pet lovers and aviculturists in the U.S., the incentive for poaching and illegal trade for the U.S. will be non-existent. The FOA proposal will promote, not cure the very problem they cite.

There is virtually no illegal importation of poached or smuggled birds of these species into the U.S. because it is just not profitable to smuggle them into the U.S. Since

1992 U.S. aviculturists have been able to breed sufficient numbers of these species to fill the demand for these birds in the U.S. Most of the U.S. pet-bird-owning public is aware of the risks involved with acquiring a smuggled bird, and few exotic bird buyers seek out or are willing to acquire a smuggled bird. Any reduction in price is just not worth the risk to the buyer or to the health of their other birds let alone the risk, per se, of the illegality of the activity. The pet-bird-owning public understands that a domestically bred, healthy, and well socialized pet bird is far preferable to a smuggled wild bird. The market for pet birds in the U.S. clearly shows that the U.S. pet-owning public prefers, and buys, domestically bred parrots.

It is truly ironic that FOA has engaged in a pre-1992 role reversal with AFA. Prior to the adoption of the WBCA, AFA was concerned that cutting off all legal importation would increase smuggling (a practice inimical to all responsible aviculturists, as it subjects their birds to diseases, let alone the illegality of it). Now, post WBCA, it is FOA which is worried about smuggling in the post-WBCA U.S., when they and like-minded proponents of the WBCA assured Congress that would not be a problem in 1992.

**6. The Wild Bird Conservation Act (WBCA) entrusted U.S. aviculturists with the breeding of these species in the U.S. to replace the U.S. trade in wild caught birds.**

Since 1992 aviculturists in the U.S. have met that challenge very successfully. In 1992 the numbers of birds of the petitioned species, as well as many other parrot species, held in the U.S. were more modest. U.S. private and professional aviculturists, encouraged by the U.S. government, have developed successful breeding programs for these species, with the result that now the numbers of these species held in the U.S. have increased substantially. U.S. private and professional aviculturists are now able to trade and sell birds among themselves and sell offspring as pets to support these activities without negatively impacting their breeding programs, and with no

negative impact on those species in the wild.

Both the Endangered Species Act and the Wild Bird Conservation Act were enacted for the purpose of both directly and indirectly assisting in the conservation of species in their native habitats. Private and professional aviculture serves as a valuable resource to those in other countries who seek to increase the numbers of their native birds by the use of captive breeding programs. Information and techniques developed by U.S. private and professional aviculturists have been crucial in the reintroduction of several species to the wild.

According to U.S. professional aviculturist Rick Jordan, who has consulted with a number of foreign countries on captive breeding of parrots and been published extensively on the subject, information and techniques developed by private and professional aviculturists have been used to successfully breed and reintroduce several species into their native lands. (See footnote 3).

Those successful breedings and reintroductions include, but are not limited to, the Puerto Rican Parrot in Puerto Rico U.S.A, the Kakapo and the Black Robin in New Zealand, the Socorro Island Dove, the Spix's Macaw in Brazil, the Slender-billed vulture and the White-backed vulture in India, the Whooping Crane in the U.S., the Echo Parakeet in the Mauritius Islands, the Mangrove Finch Program and the Floreana Mockingbird Program in the Galapagos Islands, the Great Green Macaw and Scarlet Macaws Captive Breeding programs in Costa Rica, the Scarlet Macaw, Military Macaw, and Amazon Breeding Center in Guatemala, and the California Condor Recovery project in California, U.S.A. The re-establishment of successful reproducing populations of the Bald Eagle, Peregrine Falcon, Harris hawk, Aleutian goose, Bean goose, Lesser white-fronted goose, Wood duck, Masked bobwhite quail would not have been accomplished without the knowledge and input from experienced aviculturists.

The pending proposal to list the petitioned species betrays that 1992 commitment by Congress and the FWS to U.S.

aviculturists that, if importation of parrots into the U.S. ceased, then U.S. aviculturists would be encouraged to breed these species for commercial purposes, including for sale as pets. Based on that 1992 promise, U.S. aviculturists developed, and now operate, many successful domestic breeding programs for these petitioned parrots and many other species of exotic birds. The birds produced by these breeding programs satisfy the demand for these birds as pets, as well as provide birds to other breeders, to zoos and exhibitors, and to others. As previously mentioned, it also removes the incentive for poaching and smuggling. This proposal will destroy the successful breeding programs for the petitioned species that exist in the U.S., and will ultimately lead to the decline of their overall numbers. Unless the countries where these species are native are able to stop the decline of their habitat, and that is not likely to happen in the foreseeable future, their eventual extinction is a real possibility. U.S. aviculture has demonstrated that it is able to, and seeks to, avoid those unnecessary extinctions by breeding those birds in the U.S., and by assisting aviculturists in other countries who share that common interest. This proposal betrays the trust given to and met by U.S. aviculturists under the WBCA, as it removes the commercial incentive provided by the WBCA.

**7. There are thousands of members of each of these species currently legally in the U.S.. The proposed up listing of these species would effectively end U.S. interstate commerce and trade in these species.**

As previously noted, importation of wild parrots into the U.S. stopped in 1992 as a result of the Wild Bird Conservation Act (WCBA). One band manufacturer has recently reported that they have sold more than 1.25 Million leg bands for parrots in the U.S. since 1992. For various reasons, not all bird breeders band their birds for identification purposes. If banded birds, unbanded birds, microchipped birds, and tattooed birds are all included in the count, the number of birds bred by aviculturists in the United States since 1992 would be a

multiple (in the millions) of that number.

Given the longevity of many species of parrots, it is likely that most of those parrots are still alive and thriving in the care of their owners. Those millions of owners use the services of countless cage and food suppliers, toy manufacturers, pet shops, veterinarians, and others, who provide goods and services to the exotic bird industry.

U.S. aviculture is no longer a “cottage industry”—it is a widespread and important business that employs many people and provides goods and services to many bird owners. Many people depend on U.S. aviculture for their livelihood. This proposal would end a significant part of that commerce, without any corresponding protection of the species.

**8. One undesirable effect that this up listing proposal will have will be to severely curtail, if not end, U.S. captive breeding of these species, many of which are being bred prolifically by U.S. aviculturists both for breeding programs and for the pet trade.**

The result of stopping the domestic breeding of these species in the U.S. will be that the total populations of these species will no longer continue to increase, but, rather, their total populations will significantly decline. Unless there are successful conservation programs in their native lands, these species will become extinct.

U.S. domestic breeding of these species provides a “living genetic Ark” for these species—an Ark that can provide the genetic material needed to ensure the long term survival for these species, and that may ultimately provide the birds that are reintroduced to their native lands. Since, in the big picture, despite conservation efforts, relatively little is being done to preserve habitat for these species in the countries where these species are native, and since it is likely, given the political and financial climate in those countries, that those conditions will continue for the foreseeable future, without these “living genetic Arks” for these species outside of those countries, the continued existence of those species is unlikely.

**9. The proposed listing is based on**

**concerns regarding the effects of local ownership and control of these species in the country of origin. This listing will do nothing to change this.**

The listing of these species under the ESA will do nothing to conserve these species in the wild. That conservation work, and the politics involved with that work, remains under the control of the people who live in the countries where these species are native. As well intentioned as we may be here in the U.S., and as much as we may wish to help conserve species in the wild, we cannot force those countries, or their citizens, to do anything to conserve their own wildlife by listing any foreign species under the ESA.

Perhaps the very problem the proponents cite provides a vehicle for preserving the species in their native habitats. The local (in situ) keeping of these birds as pets, heightens the awareness of the value and importance of these birds. What FOA cites as a problem has been used by other countries as a tool for conservation and local pride. FOA should be putting its financial and political resources behind this, not in stifling the propagation of the species.

**10. The proponents should be asking and supporting the countries of origin to address their concerns, not threatening the FWS with litigation.**

The people in the countries where these species are native must take steps to protect their own wildlife. If the proponents truly wish to help protect these 14 species who remain wild in their native lands, they should be working with, and helping, the people and the governments in those countries to protect these species. For example, the “Rare Pride” native wildlife conservation programs conducted by RARE (formerly the Rare Center for Tropical Bird Conservation, [www.rareconservation.org](http://www.rareconservation.org)) have been successful in encouraging local governments and local people to protect their own wildlife.

No listing under the ESA will cause anyone in any country other than the U.S. to take any action to protect any species

threatened with extinction. This proposed listing of these 14 species is nothing more than a “feel good” proposal, not based on hard science, that suggests that the U.S. is “doing something” to help these species in the wild. Nothing could be further from the truth.

In reality this listing, which will do nothing to help wild species, is intended to do, and will do, tremendous damage to the successful breeding programs for these species in the U.S. This proposal is not a correct use of the ESA.

**11. The proposal to list these 14 species is contrary to the express findings of Congress and the express purpose for the ESA, as stated in the ESA itself. There is no basis for there to be any honest commitment for funding for the improvement of these species in their ranges.**

The proposal is not a legally correct, defensible, or justified use of the ESA—in fact, it is an abuse of the spirit and stated intent of the ESA.

The express findings and purposes of Congress regarding the purpose of the ESA are ignored by petitioners in their proposal to list these 14 species. Nothing in the petition to list these 14 species includes or suggests anything that will encourage any States or other interested parties (either in the United States or outside of the United States), to conserve these species, or to provide any means whereby the ecosystems upon which these species depend may be conserved.

The petition does not request or suggest that any Federal financial assistance be provided or any system of incentives be put in place, or that any funds or resources whatsoever, from any source, public or private, be put to any uses that may help conserve these birds in the wild. No steps are suggested that may achieve the purposes of the treaties and conventions set forth in section.

It is clear that the only thing that this listing will accomplish is to carry out the political agenda of the proposing parties, which is to prevent the interstate commerce inside the United States in the 14

species which are the subject of the petition. Nothing is contained in the petition to even suggest how, or why, such a prohibitive act will benefit any of those 14 species, because there is nothing in the proposal that will benefit any of those 14 species.

**12. There is no evidence in the proposal to list these 14 species to indicate that there is any honest commitment for funding for the improvement of these species in their ranges.**

A basic premise of the ESA for listing of a foreign species as “Endangered” is to commit funds for the improvement of their condition and conservation in the wild, either through captive breeding programs or protection of the species and their habitat in the wild. Both of those important factors are remarkably absent from the proposal to list these 14 species.

Although the ESA specifically encourages such financial or personnel assistance, this proposal neither requests nor suggests that the Secretary, or anyone else, public or private, render such assistance to anyone try to help conserve any of these 14 species in their native lands.

**13. The proposed listing of these species does nothing to “conserve” those species as that term is defined in the ESA.**

The ESA defines the terms “conserve,” “conserving,” and “conservation” as meaning “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.” (16 U.S.C 1532(3)).

This proposal is contrary to the stated intent of the ESA to conserve species. The

proposal neither provides nor suggests anything that will help manage or conserve these species in their native habitats. The proposal simply seeks to achieve the immediate result of stopping U.S. interstate trade in birds of these species that are captive bred within the United States, and to ultimately to stop the breeding of these species of birds in the United States. With the ultimate goal being the philosophical agenda by some groups of stopping ownership of birds in the U.S. That outcome will achieve nothing to conserve these birds in the wild. In fact, that outcome will serve to reduce overall numbers of these species of birds. The proposal will do nothing to bring any of these species to the point, or allow any of those species to reach the point, at which “the measures provided pursuant to this chapter are no longer necessary.”

**14. While the FWS or the proponents of this up listing might state that there is a program in place, i.e., the Captive Bred Wildlife program (CBW), to allow interstate trade in these species, two realities are well recognized about the CBW program: a) it is a dismal failure due to the necessity of dealing with bureaucracy; and b) the CBW program does not recognize commerce in ESA species as pets.**

The science and art of aviculture is most successful when more people participate, when more species are successfully bred, when more birds can be freely sold and traded, and when more funds can be generated and used to support breeding programs and true conservation efforts.

The CBW failed to encourage aviculturists to pursue their avocation because of its restrictive provisions. The CBW has made many aviculturists so frustrated that they have left the field. This outcome is unacceptable to anyone who wants to see endangered and threatened birds continue to exist.

Because the CBW does not allow progeny of captive breeding programs to be sold as pets, the CBW was doomed to fail from its outset. Unless breeders can sell excess

offspring as pets, then eventually they find that they cannot continue their programs. They cannot afford to continue to maintain a glut of domestically bred birds that they cannot place or sell. Eventually, when all other CBW participants suffer the same effects of a glut of progeny, they also can no longer afford to participate in the program. A program with no participants is no program at all.

15. The result of up listing will be the sale of U.S. breeder stock into the pet trade and the cessation of captive breeding in the subject species in the U.S., or the hybridization of these species to avoid their classification as endangered.

If the birds that are presently being bred are listed under the ESA, and if their progeny cannot be sold as pets, it is likely that the presently held breeder stock will be sold off as pets. It is a simple fact of business that breeders cannot afford to maintain flocks of birds if they cannot sell or trade the progeny.

Also, it is a concern of AFA that some breeders could turn to hybridization of formerly pure species in order to meet the demand for birds as pets. A hybrid of a species listed under the ESA is not subject to the ESA, and may be freely sold and traded in commerce.

Both of these effects are undesirable and betray any alleged commitment to these species or to their conservation which any of the proponents may claim to have.

**16. The proponents of this up listing have as their time proven agenda a philosophical position against ownership of exotic avian species, especially as pets. This proposal is bad as science and worse as politics.**

The petitioners, Friends of Animals, espouse the philosophical view that animals have rights and should be free of interference by man:

“So the rights advocate asks that we relinquish the idea that other animals can be bought, sold, and treated as things. This is not the same thing as asking for better treatment; the rights advocate demands something infinitely more valuable — freedom.”

[www.friendsofanimals.org/programs/animal-rights/index.html](http://www.friendsofanimals.org/programs/animal-rights/index.html)

Friends of Animals advocates that animals, including the 14 petitioned species, should not be bought or sold, and that they should not be owned as “property.” It is evident that the true purpose of their ESA petition is not to conserve or protect these 14 species in the wild, but to stop the sale of these species in the U.S. If this petition is granted, it is likely that many other similar petitions will be filed with the FWS, either by FOA or by other “animal rights” activists, to first list some or all of the other parrot species, then to list other species of other kinds that are bought and sold or otherwise in commerce, so that the ultimate goal of stopping the sale and trade in these species in the U.S. can be achieved.

While FOA and its supporters certainly have the right to their moral and political views, they do not have the right to use the ESA and FWS or the corruption of the political process to force those moral and political views on the majority of those who do not hold those views.

Basing uplisting of species upon philosophy, however, is an abuse of any system in government which requires its basis in commerce or science.

There is no room for a political agenda in what is supposed to be a scientifically based standard. The ESA should not be used as a weapon to harm or destroy private and professional aviculture based on ideological views and ill-conceived policies that are not supported by science, or by the political agenda of opponents of the private ownership of birds and other animals.

This proposal is bad as science and worse as politics.

**17. The following quote should itself suffice to guide the FWS to deny this proposed listing:**

“It is about ensuring that scientific data [are] never distorted or concealed to serve a political agenda and that we make scientific decisions based on facts not ideology”  
—Barack Obama, President of the United States, March 9, 2009, upon signing the stem cell research funding bill.  
[www.whitehouse.gov/the\\_press\\_](http://www.whitehouse.gov/the_press_)

[office/Removing-Barriers-to-Responsible-Scientific-Research-Involving-Human-Stem-cells/](http://www.friendsofanimals.org/office/Removing-Barriers-to-Responsible-Scientific-Research-Involving-Human-Stem-cells/)

### In conclusion

With the lack of scientific or commercial data to support the up listing, the lack of commercial trade in the species, the zero trade into the U.S., the negative effect the proposal will have on U.S. commerce and conservation of these species through captive breeding programs which will be destroyed by the up listing and the failure of a contemporaneous commit to any conservation of these species in their ranges; this proposal fails on both a scientific as well as commercial basis.

For all of these reasons the American Federation of Aviculture, Inc. requests that the petition to list the 14 species of parrots under the Endangered Species Act be denied and that the FWS renews its commitment to support and not interfere with private U.S. breeding programs of these and other parrot-like species.

The American Federation of Aviculture, Inc. stands ready to assist FWS in crafting reasonable and effective solutions to problems facing endangered species. This listing is not a reasonable solution that will help solve any problem that these 14 birds face in their native lands. There is no science which supports this uplisting, and the lack of scientific and commercial data to support this uplisting and the commercial and scientific data which contradicts it suggests that this proposal is exactly what it appears to be—political and ideological agenda cloaked as science and commercial justification. We look forward, on behalf of the millions of citizens of the U.S. who enjoy the companionship of their pet birds, and on behalf of those who breed birds in the U.S. both for pet purposes and for conservation purposes, to the Secretary and the Fish and Wildlife Service recognizing and acting on our concerns.

If you have any questions, or if we can be of further assistance, please do not hesitate to contact our Legislative Vice President, Genevieve Wall, Attorney at Law. You can reach Ms. Wall by mail at 23521 Paseo de Valencia, Suite 304-B, Laguna Hills, CA 92653, or by email to [gwallco@aol.com](mailto:gwallco@aol.com).

com, or by telephone to (949) 584-4079.

Very truly yours,

Jim C. Hawley, Jr.

President, American Federation of Aviculture, Inc.

Genevieve Wall

Legislative Vice President, American Federation of Aviculture, Inc.

### Footnotes

**1. The American Federation of Aviculture (AFA)** is a nonprofit national organization established in 1974, whose purpose is to represent all aspects of aviculture and to educate the public about keeping and breeding birds in captivity. AFA supports public and private programs that are designed to support conservation of birds in the wild.

AFA represents the interests of more than 10,000 people who are our members and members of our affiliated clubs and affiliated businesses. AFA has a broad membership consisting of bird breeders, pet bird owners, veterinarians, pet/bird store owners, bird product manufacturers, and many other people who are interested in the future of birds and aviculture and who own and breed the many species of birds in aviculture. There are millions of U.S. households who keep birds.

AFA promotes and encourages the humane husbandry, care, and breeding of birds. While AFA speaks to and for the interests of the birds themselves, AFA also speaks to and for the interests of the millions of U.S. households and individuals who own birds, the thousands of businesses and professionals who provide those bird owners with goods and services, and the birds and families who rely on the continued existence of those businesses and professionals not only for their own livelihood, but so that they will all be able to continue to humanely keep their birds.

Our members, affiliates, and associates in aviculture in the United States own and maintain many hundreds of separate species of exotic birds. AFA recognizes that there is no “one-size-fits-all” husbandry program for the humane keeping, breeding, care, and husbandry of the many species of exotic birds currently kept by aviculturists worldwide. AFA is proud to include in its membership many experts who have long term, hands-on experience with many species of birds, and who can, and do, provide the public and our government with current reliable information regarding the humane keeping, breeding, care, and husbandry of exotic birds.

While some “humane” organizations may claim to have the knowledge necessary to keep birds in a humane manner, without extensive hands-on experience keeping, breeding, and caring for the birds that they purport to speak for and about, any claims by “humane” organizations to know what is “best” for birds are simply opinions and speculation.

Aviculturists who maintain the many species of exotic birds now in captivity in the U.S. have the extensive knowledge and expertise required to keep, breed, and care for birds in captivity. Aviculturists serve an important role in the preservation of species, and in some cases aviculturists are the only hope for the long term survival of many of those species at risk for extinction in their native lands.

**2. On May 9, 2009, President Obama signed a Memorandum for the Heads of Executive Departments and Agencies, which directs as follows:**

The White House  
Office of the Press Secretary  
For Immediate Release March 9, 2009  
Memorandum for the Heads of Executive Departments and Agencies  
Subject: Scientific Integrity

Science and the scientific process must inform and guide decisions of my Administration on a wide range of issues, including improvement of public health, protection of the environment, increased efficiency in the use of energy and other resources, mitigation of the threat of climate change, and protection of national security.

The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions. If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking. The selection of scientists and technology professionals for positions in the executive branch should be based on their scientific and technological knowledge, credentials, experience, and integrity.

By this memorandum, I assign to the Director of the Office of Science and Technology Policy (Director) the responsibility for ensuring the highest level of integrity in all aspects of the executive branch's involvement with scientific and technological processes. The Director shall confer, as appropriate, with the heads of executive departments and agencies, including the Office of Management and Budget and offices and agencies within the Executive Office of the President (collectively, the "agencies"), and recommend a plan to achieve that goal throughout the executive branch.

Specifically, I direct the following:

1. Within 120 days from the date of this memorandum, the Director shall develop recommendations for Presidential action designed to guarantee scientific integrity throughout the executive branch, based on the following principles:

(a) The selection and retention of candidates for science and technology positions in the executive branch should be based on the candidate's knowledge, credentials, experience, and integrity;

(b) Each agency should have appropriate rules and procedures to ensure the integrity of the scientific process within the agency;

(c) When scientific or technological information is considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate, and each agency should appropriately and accurately reflect that information in complying with and applying relevant statutory standards;

(d) Except for information that is properly restricted from disclosure under procedures established in accordance with statute, regulation, Executive Order, or Presidential Memorandum, each agency should make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions;

(e) Each agency should have in place procedures to identify and address instances in which the scientific process or the integrity of scientific and technological information may be compromised; and

(f) Each agency should adopt such additional procedures, including any appropriate whistleblower

protections, as are necessary to ensure the integrity of scientific and technological information and processes on which the agency relies in its decisionmaking or otherwise uses or prepares.

2. Each agency shall make available any and all information deemed by the Director to be necessary to inform the Director in making recommendations to the President as requested by this memorandum. Each agency shall coordinate with the Director in the development of any interim procedures deemed necessary to ensure the integrity of scientific decisionmaking pending the Director's recommendations called for by this memorandum.

3. (a) Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

4. The Director is hereby authorized and directed to publish this memorandum in the Federal Register.

Barack Obama

[www.whitehouse.gov/the\\_press\\_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/](http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/)

### 3. Examples of Avicultural Successes/assists for wild bird conservation.

**Rick Jordan, professional aviculturist, Chair of AFA CITES Committee**

**Janice Boyd, Ph.D., Chair of AFA Conservation and Research Committee**

**Puerto Rican Parrot, Puerto Rico U.S.A.:**

Placed on the ESA in 1967, when there were an estimated 70 birds. In 1969 efforts were started towards recovery of the species in the wild. These efforts were unsuccessful. FWS started a captive breeding effort in 1972 when the population was estimated at 16 individuals. Breeding success was very low until professional aviculturists were brought in to advise the program (statement made by several of the present active participants in the FWS and DNER programs). At the end of the 2009 breeding season the population had reached over 300 individuals at two aviaries and two wild populations. Additional release sites are being identified. Without the information provided by private aviculturists, the population in captivity would not have flourished.

**Kakapo, New Zealand:** Early "hands-off" approach to recovery in the wild was unsuccessful. Only translocations to safe islands, plus active interventions to increase breeding success kept this bird from going extinct. One of the most successful portions of the conservation program for the Kakapo was the avicultural consultations and assistance. A native New Zealander, Pauline Colpman worked with biologist to learn the biology of the species by studies in captivity of chicks hatched at the Auckland Zoo. Don Merton has delivered this species from extinction by using all methods available to him, including captive

breeding and hand rearing.

**Black Robin, New Zealand:** The most successful technique employed during the recovery efforts of the Black Robin was surrogate incubation and rearing. Both techniques perfected by captive breeders. The black robin would not survive today in the wild if not for the biology learned from captivity.

**Socorro Island Dove:** Saved from extinction through people's interest in it as an aviary bird. The late Dr. Luis Baptista recognized the importance of captive breeding and invited participation during this critical program. Today this species exists solely due to the intervention of captive breeders.

**Spix's Macaw, Brazil:** Now extinct in the wild, captive breeding is the only chance for the future survival of the Spix's macaw. Numbers perilously low in captivity have been bolstered in the past ten years through intense study and captive breeding efforts in Qatar, the Philippines, Sweden, Germany, and Spain. All holders of Spix's macaws are now part of the captive breeding effort to save the species and reintroduce it back into the wilds of Brazil. Several avicultural and conservation organizations have banded together and purchased the land where the habitat of the Spix's macaw is being restored for a future reintroduction.

**Slender-billed vulture and White-backed vulture, India:** Captive breeding efforts are now being used to bolster the dwindling populations in the wild in India. These two vultures are more endangered than the Indian Tiger. Only through captive breeding efforts will these two species survive.

**Whooping Crane, U.S.:** Almost exclusively saved from extinction through captive breeding, aviculture, and experimental artificial insemination. Most whooping cranes flying free today are descendants of captive bred birds.

**Echo Parakeet, Mauritius Islands:** Once perilously low numbers in the wild has been bolstered with the assistance of professional aviculturists. Captive breeding, surrogate placements, and release have saved this species from sure demise.

**The Mangrove Finch Program, Galapagos Islands, and the Floreana Mockingbird Program are recent additions to the Captive Breeding Programs in Galapagos.** After much preparation, both programs are now underway. Both bird species have reached critical population sizes (about 80 for Mangrove Finches and 140 for the Floreana Mockingbird). Captive breeding and the subsequent release of young is considered the best management option for these species.

**Great Green Macaw and Scarlet Macaws Captive Breeding, Costa Rica:** Over the past 15 years, multiple aviculture breeding centers have bred hundreds of scarlet macaws and nearly 100 great green macaws through at least F2 in both species. (Zoo Ave, ASOPROLAPA, Asociación Amigos de las Aves, Jardin Zoo La Marina, others). Reintroduced populations of scores of captive bred birds have been established in at least 5 locations where they are successfully breeding. Aviculture experts from the U.S.A and Europe have been constant advisers in the past and continue doing so today.

**Macaw and Amazon Breeding Center, Guatemala:** Aviaros Mariana has bred hundreds of macaws (in particular scarlet and military) and Amazons (in particular yellow naped) through F2 in a private aviary in Guatemala and is now working with Wildlife Conservation Society-Guatemala and rescue center ARCAS on developing a scarlet macaw reintroduction program. U.S. aviculturists have served and continue to serve as employees and advisers to these efforts.