

Written Testimony Presented on Behalf of Private Aviculture of the United States

For The Subcommittee on Fisheries, Wildlife & Oceans
Committee On Resources
U.S. House Of Representatives
H1-805 O'Neill House Office Building • Washington, D.C. 20515
concerning
The Wild Bird Conservation Act Of 1992 • P.L. 102-440
Written Testimony By
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28 September 1995

Introduction

On July 29, 1992, the Report of the House of Representatives on H.R. 5013 was referred jointly to the Committees on Merchant Marine and Fisheries and Ways and Means of the House of Representatives. In that Report on what was to become the Wild Bird Conservation Act of 1992 ("WBCA"), the Honorable Walter B. Jones of North Carolina stated that "It is the intent of the **Breeder's Bill** to encourage captive breeding both in the United States and elsewhere" [emphasis added]. It is the perception of private aviculture that the WBCA, which became P.L. 102-440 on October 23, 1992, has failed that charge from the Congress in several key areas. Prior to addressing these areas, permit us to define ourselves and our position.

Aviculturists in the private sector are generally individuals who have a genuine appreciation for and fascination with birds. They keep, study, breed and raise exotic birds in captivity either as a devoted avocation or commercial activity. The majority of private aviculturists recognize their stewardship responsibilities and are deeply concerned over dwindling wild populations of avian species and are sincerely dedicated to their conservation both in the wild and in captivity. Indeed, the mission statement of the American

Federation of Aviculture (AFA) is "**To preserve avian species on a worldwide basis.**" Aviculture has a commitment to establishing self-sustaining populations in captivity as well as habitat preservation and other conservation efforts in countries of origin. Aviculture believes that captive breeding is a valuable asset in conservation strategy by helping reduce demands on wild populations by virtue of making exotic birds readily available from captive-bred sources. Aviculture actively supports avian research resulting in improved knowledge and understanding of avian species. Aviculture is both a conservation and humanitarian effort. Aviculture represents grassroots participation at its best. Aviculture, as a cottage industry, contributes to taxes and the economy without cost to the government.

In this forum, AFA, a non-profit organization, is representing the private aviculture sector. When this testimony was submitted, nearly 300 organizations had joined with AFA's testimony or had requested to be listed as supporting the testimony. Our constituents include people ranging from pet bird owners to commercial exotic bird breeders. Pet birds are represented in 6 to 10% of the households in the United States and the population of pet birds is estimated to be on the order of 14 to 30 million birds. Commercial aviculture exists mainly in the form of many thousands

of small businesses but, collectively, the industry is large, on the order of \$543.4 million in annual sales.

Aviculture has historically acknowledged that intense pressures have been and are being placed on exotic (non-native to the United States) bird populations by a number of sources. Devastating habitat destruction, hunting for food and feathers and local use as pets, natural predation, planned programs of eradication in countries of origin, smuggling and, prior to WBCA, unregulated trade, were and continue to be grave concerns. While most of these pressures continue (trade with the United States for most CITES-listed species having been eliminated by the WBCA), aviculture is committed to the concept of sustainable yield, the conservation of exotic birds in their natural habitats and in captivity, and the strict regulation of international trade in wild-caught birds for the pet market.

Aviculture was, in fact, one of the original participants of the Cooperative Working Group on the Bird Trade, organized by World Wildlife Fund. As part of this Group, aviculture formally acknowledged in 1988 the need for a regulated, sustainable trade in and wise use of wild-caught exotic birds in order to make them valuable assets in their countries of origin, and to promote saving them and their habitats. Aviculture also pointed out the need to address concerns regarding planned programs of avian eradication in countries of origin. Certain species of birds are seen not as resources to be used as economic incentives in their range countries but are considered pests to be destroyed.

In 1992, aviculture supported the concept of the WBCA. As part of that Act, aviculture stressed the need to promote, encourage, and facilitate captive breeding of exotic birds in the U.S. and abroad. Aviculture supported the WBCA based, in part, upon the understanding that one **cornerstone would be the free trade in captive-bred exotic birds.** Congress agreed, by enacting P.L. 102-440 which attempted to (1) insure that trade in wild-caught exotic birds involving the United States would be biologically sustainable and not detrimental to wild populations and (2) promote the role of captive breeding or aviculture to supply trade requirements as an alternative to harvest from the wild.

Even now, private aviculture is **not** in favor of repealing the WBCA.

Aviculturists believe their stewardship obligation requires that trade in wild-caught birds involving the U.S. should be biologically sustainable and not detrimental to wild populations. It is the position of aviculture, however, that the WBCA has failed to fulfill its promise and the mandate of Congress in a number of significant respects, particularly those relating to population studies in countries of origin and undue regulation of trade in captive-bred exotic birds. Regulation of legitimate captive-bred exotic birds has nothing to do with wild populations of exotic birds. We define specific problems and offer some sensible solutions below.

AVICULTURE'S RECOMMENDATIONS

Trade in Wild-Caught Exotic Birds

The first concern is that the WBCA and Regulations developed by the U.S. Fish and Wildlife Service (USFWS) have resulted in an almost total ban on importation of exotic birds into the United States – even captive-bred birds. The WBCA had two primary goals. The first goal of the WBCA was to insure that trade in wild-caught exotic birds involving the U.S. would be biologically sustainable and not detrimental to wild populations. Congress, in 1992, recognized that well designed and comprehensive studies in the countries of origin would be needed to achieve the first goal, and authorized \$5 million in fiscal years 1993, 1994, and 1995 for this purpose. To date, only \$1 million has been actually appropriated and these funds were for CITES permits and **law enforcement**. There has been **no request** by the Clinton Administration **nor money appropriated** for the WBCA for the past two fiscal years. Thus, the population studies necessary to establish exotic birds as sustainable and valuable assets in their countries of origin are not being conducted. However, trade between these countries and foreign countries other than the U.S. continues to the detriment of the wild populations. The WBCA is clearly failing to achieve its intended conservation role. While the U.S. is no longer a consumer of wild birds, the reversal of its commitment to fund the required population studies leaves the U.S. directly accountable for the ultimate decline and extinction of exotic bird populations. This reversal of stated intent has caused aviculture to have serious doubts as to

the real goals of special-interest groups who endorse the WBCA as "an exemplary piece of conservation legislation that places the U.S., formerly the world's largest consumer of wild birds, at the forefront of efforts to conserve these magnificent species." Aviculture disagrees. The only accomplishments have been to mislead the American public and our CITES partners that U.S. aid would be forthcoming and to create a virtual total ban on all CITES exotic bird importation into the U.S. We recommend

that Congress:

1. Appropriate the funds authorized or direct USFWS to allocate existing budgetary resources to support and conduct sustainable-use research programs in exotic-bird range countries – studies which incorporate scientifically-sound protocols.

Aviculture concurs with the underlying premise of the WBCA that sound scientific information is required before exotic birds can be safely harvested



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from the wild for the purpose of trade or any other reason. The requisite information is uniformly lacking, including data necessary to evaluate the presently popular concept of ranching (harvesting so-called excess production resulting from placement of artificial nest boxes). Before any sustainable harvest strategy can be evaluated, studies must be conducted which incorporate the scientific concepts of controls and replication in periods both before and after a management experiment is conducted. Such studies would require significant funding levels and time frames on the order of 6 to 10 years. Few, if any, have been initiated and none of the committed funding has been provided. Thus, the existing ban has no end in sight and the birds and their habitats have, in essence, been abandoned.

2. Conduct an investigation of the actual scope of the smuggling problem involving the U.S. and an investigation of the USFWS enforcement activities.

The only funds appropriated for the WBCA to date have been for law enforcement. The perception that high

levels of smuggling are occurring is the justification for these expenditures. In 1987, Thomsen and Hemley (World Wildlife Fund/Traffic, U.S.A.) stated in *Bird Trade...Bird Bans* that as many as 150,000 parrots **may be** smuggled across the Mexico border into the United States **every year**. In contrast, between 1991 and 1994, it has been reported that a total of only 573 birds were confiscated by the U.S. law enforcement agencies at that border. While it is not suggested that only 573 birds were smuggled in a four year period, there is clearly a huge credibility crisis here.

Aviculture and aviculturists do not support smuggling, laundering or other illegal activities. Aviculturists abhor smuggling. In fact, AFA has produced and furnished to the USFWS a bilingual anti-smuggling poster on parrots for the United States/Mexican border. At the very height of avicultural concerns is that smuggled birds jeopardize the health of avicultural collections with disease.

The USFWS Division of Law Enforcement has told Congress of intensive and expansive enforcement activities. USFWS conducts sting operations and publicizes indictments. Through

as little as hearsay or rumor, come undeserved arrests, broad search warrants and unwarranted confiscation of birds (in some cases having led to the deaths of the birds, even rare birds). Many of the resulting charges involve only paperwork or other minor technical violations. Aviculturists are intimidated by such events, even when not directly involved. Certainly, smugglers should be prosecuted, but there appears to be a deliberate effort to expand enforcement to entrap innocent aviculturists and to place a stigma on all aviculture.

Aviculturists would like to work with USFWS to stop the real smuggling of exotic birds, but until USFWS Division of Law Enforcement stops seeing all aviculturists as potential smugglers or law breakers, this will be impossible. On a positive note, recently a new Chief has been appointed at USFWS Office of Management Authority and he has reached out to the avicultural community. Aviculture believes that this is signaling a new era of cooperation and understanding between USFWS and aviculture. Aviculture welcomes this. Hopefully, this outreach will expand to law enforcement.

3. Amend Section 105(c), "Moratoria on Imports of Exotic Birds Covered by Convention," to clarify that exotic birds covered on Appendix III of the Convention shall only be subject to the WBCA as to those species found in the country of Appendix III listing.

After adoption of the WBCA, anti-trade activists took the USFWS to Federal Court to effectively include in the WBCA birds listed on CITES Appendix III (that is birds listed specifically as to certain countries of origin, but not as to all CITES parties at large), regardless of their country of origin or listing. The anti-trade plaintiffs alleged that this was justified because the WBCA failed to make a distinction between birds listed on Appendix III which are country-specific, and the same species occurring in non-listing countries. Under CITES, birds listed on Appendix III are only included within the CITES Treaty for specific countries where the species may be rare and not as to other countries of origin where the species may be abundant. Appendix III listed birds are not endangered or threatened species. They are merely birds in which specific countries, but not CITES at large, do not wish to trade. The court has held that the

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WBCA made no such distinction even though it may have intended to do so.

Section 105(c) should have appropriate wording added to effectively limit the coverage of the WBCA of Appendix III birds to wild exotic birds originating in the country of listing only.

4. Amend Section 112(2) "Exemptions for Personal Pets" by requiring the USFWS to issue regulations simplifying the importation of pet birds.

The WBCA allows that an individual may import up to two exotic birds in any year upon his/her return to the United States after having been continuously out of the country for a minimum of one year. Issuance of such permits should be based upon nothing more than an affidavit from the applicant that he/she has met the out-of-country requirement, has not exceeded the allowable two birds, has acquired the birds legally, has the proper CITES or other required permits, and that the intent of the importation is not for re-sale purposes. The requisite permits would be attached to the affidavit. Abuse of the "personal pet" exemption is unlikely to ever reach proportions that will be detrimental to wild populations. Presently, due to the relatively large number of personal pet versus other applications, and the complexity of the existing information requirements, it is likely that a large fraction of available USFWS staff time is spent in processing innocuous pet-bird permits. As a result, more significant and complex permit applications experience unacceptably-long delays.

5. Amend Regulations under Section 112(4), "Cooperative Breeding Programs," to eliminate the requirements imposed by USFWS under the Regulations that participants be required to "track the whereabouts of progeny of imported birds."

In its Report, Page 20, Congress directed the Secretary to issue permits if the applicant can demonstrate that he or she is capable and fully intends to keep track of imported birds and their offspring. The purpose of this requirement was to ensure that if efforts to reintroduce the species into the wild were undertaken, the location of birds that might be included in such a program and their genetic makeup would be known.

However, upon reflection, aviculture believes that WBCA regulations requiring the tracking of the progeny will act as an impediment to aviculturists participating in captive breeding of captive-bred offspring of birds imported under Section 112. Additionally, due to the breeding biology of many of these species, this could eventually lead to the tracking of hundreds, or even thousands, in the case of more prolific species, of birds and will be totally unworkable and unmanageable. It also introduces the specter of unwarranted law enforcement activities involving U.S. captive-bred exotic birds. Certainly, cooperative breeding programs will encourage the participation of aviculturists in continuing to breed captive-bred offspring of imported cooperative breeding program birds. However, if these programs become successful in producing large numbers of offspring, regulation requiring tracking of captive-bred offspring will deter avicultural breeding efforts. It will also remove the incentive for cooperative breeding programs, which is to have as many participants working with and producing as many captive-bred offspring from cooperative

breeding program imported birds as possible. The USFWS has already seen this deterrence of captive breeding under the CBW (Captive Bred Wildlife) Program under the Endangered Species Act. This program requires tracking of captive-bred endangered species and has deterred broad participation and is actually shutting down breeding programs for endangered species due to the limited numbers of aviculturists willing to register with the government. The WBCA itself under Section 112(4)(A) only required the promotion of conservation of the species by enhancing the propagation and survival of the species. It was the Report which contemplated the tracking of progeny for future release programs. At this time it is more important to encourage propagation of these species than it is to track the whereabouts of offspring for release programs which may be decades away. If these programs are successful, the whereabouts of captive-bred cooperative breeding program species will be well known in aviculture and the deregulation of progeny will actually serve as a greater incentive for wider participation by aviculturists in promoting captive breed-



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Gary Lilienthal, AFA General Counsel, delivers oral testimony on behalf of private aviculture. Other panel members include (L to R) Frank M. Bond, North American Falconer's Association, Marshall Meyers, Pet Industry Joint Advisory Council, Susan Clubb, DVM, Association of Avian Veterinarians.

ing of cooperative breeding program progeny.

Trade in Captive-Bred Birds

Captive breeding of exotic birds was already dramatically increasing between 1985 and 1992, prior to the WBCA, due to advancements in and education by the groups joining in this testimony about exotic avian science, veterinary techniques, diet and husbandry and increased interest and participation in aviculture. Captive-bred birds were and continue to be naturally replacing wild-caught birds for the pet trade. The WBCA has had little to do with the increase in breeding of exotic avian species. On the other hand, the inability of aviculture to import even captive-bred exotic birds since adoption of the WBCA is already having a detrimental effect on avicultural activities. While aviculture has the ability to fill a great deal of the void created by the WBCA in the pet trade supply, it must be given the tools to continue to do so. Foreign breeders of exotic birds have different gene pools and species needed by U.S. aviculture. Shipping mortality of captive-bred birds is far below the 14% level reported for wild-caught exotic birds. The prohibitive WBCA regulatory structure, especially with respect to the ability of aviculturists to import captive-bred exotic birds, is deterring avicultural pursuits both in supplying the pet trade and in creating self-sustaining populations of exotic birds for preser-

vation of rare and endangered species. This was not the intent of the WBCA.

Aviculture is gravely concerned that without swift and decisive action by Congress, the WBCA will continue to fail aviculture in the U.S. and abroad as it relates to trade in captive-bred birds. For aviculture, this is the most important part of the current oversight and reauthorization process. The WBCA must acknowledge the legitimacy of aviculture if captive-bred birds are to replace wild-caught birds in trade. Aviculture respectfully requests that Congress amend the WBCA and give direction to the USFWS as summarized below.

6. Amend Section 107, "Qualifying Facilities," and require the USFWS to issue regulations which will promote the captive breeding of exotic birds in the United States and foreign countries and insure the free importation of captive bred exotic birds into the United States as a tool to promote aviculture and exotic bird conservation, and to control illegal trade.

On March 17, 1994, the USFWS proposed complicated and intrusive regulations under Section 107 as a precondition to allowing captive-bred birds to be imported into the United States. The draft regulations were so unworkable and intrusive that they resulted in a massive outcry from aviculture. Unfortunately, no final regulations have been adopted. Therefore, it

is impossible for Congress to review these during this oversight process. The draft regulations as proposed would surely have deterred captive breeding and would certainly not have promoted it. They were also hypocritical. The USFWS requires only a simple affidavit of captive-breeding to allow CITES-listed birds bred in the United States to be exported from the United States. **The regulation of legitimate captive-bred birds has nothing to do with wild exotic bird populations.** It was not the intent of the WBCA to regulate captive-bred birds. The fear of "laundering" (trading in wild-caught birds alleging they are captive-bred) is used to justify the proposal of overly restrictive regulations to control importation of captive-bred birds. This is neither appropriate nor acceptable.

Currently, WBCA Section 107 is a simple section for which the USFWS has proposed complicated and excessive regulations requiring, among other things, disclosure of proprietary husbandry and breeding information, proof of origin of breeding stock, cage sizes, diet and other detail in such a way as to deter any but the largest captive breeding facilities with huge staffs from qualifying. This will not insure against laundering, but will effectively eliminate from trade most captive breeding facilities which do not have the staff or funds to complete and furnish the paperwork which the USFWS requires. This was not the intent of Congress which stated in the Report: "It is also the intent of the Committee that the paperwork burden required of captive breeding facilities be minimized, especially as it applies to small facilities that employ few people."

Report page 18. This directive was either missed or disregarded by the USFWS in its proposed regulations. The regulations as proposed will even discourage participation by larger facilities which might comply with reasonable and workable regulations as a cost of trade with the United States. Most individuals would sooner pursue unregulated trade with other countries rather than comply with unworkable or intrusive U.S. regulations and delays.

Aviculture requests that the WBCA be amended and that Congress instruct the USFWS to effectively allow and promote the importation of captive-bred birds under Section 107, as follows:

(i) Require an affidavit from the facility of breeding that birds to be imported were bred from parents housed at the

facility.

(ii) Require that birds to which an affidavit pertains be marked with a simple marking system for identification.

(iii) Require a certificate by a licensed veterinarian that the facility contains an adequate number of pairs to supply birds in the numbers to be exported and is operated humanely.

(iv) Require the local CITES management authority certification that the operation of that facility does not deplete birds in the wild.

(v) Provide the USFWS with a quota option on a facility-by-facility basis to be used to guard against laundering.

(vi) Provide that owners of a facility proved to be laundering birds to the United States shall forever lose their right to export birds to the United States.

7. Amend Section 106(b)(1), "List of Approved Species," to clarify that Congress did not intend for species regularly bred in captivity and for which no wild-caught birds of the species are in "trade," did not mean that if any of a regularly captive-bred species are in illegal trade, the species would not then qualify as regularly bred in captivity.

The USFWS, in promulgating its Regulations, added the words "legal or illegal" to modify the word "trade" when determining whether or not species regularly bred in captivity and of which no wild-caught birds were in "trade" would qualify under the List of Approved Species. It is both unreasonable and an inappropriate conservation measure to add the words "illegal or legal" when describing trade in determining whether birds regularly bred in captivity would qualify as approved species. The fact that some number of birds of a given species may be in illegal trade should not prevent birds regularly bred in captivity and for which wild-caught individuals are not generally in the pet trade from being approved species under Section 106(b)(1). In fact, withholding from the Approved Species List species regularly bred in captivity merely because some of those species may be in illegal trade will actually serve as an incentive for continued smuggling. If birds regularly bred in captivity are on the Approved List, then they will be readily available to the trade and the smuggled bird will not be at a premium. In fact, in the Report, on Page 17, Congress

stated, in reflecting on the Approved Species List of the New York State Wild Bird Law that "...certain species are exempted from the banding requirement because **virtually** all of the specimens of those species in trade have been captive-bred" [emphasis added]. It is clear that Congress intended the Secretary to use the criteria used for the New York State Law which makes no distinction for birds regularly bred in captivity not qualifying because some were or might be in **illegal trade**. In the Report, Page 17, Congress stated that the Secretary should "...include such species on the Approved List under this Section as long as the Secretary believes that trade based on these standards would not result in harm to species in the wild." As previously stated, to keep species reg-

ularly bred in captivity off the Approved List because some of those species may be in illegal trade will actually serve to encourage illegal trade and perpetuate harm to those species in the wild.

Congress is requested to clarify this problem either by direction to the Secretary to take appropriate action to delete the word "illegal" from the Regulations under the WBCA or by Congress inserting in (b)(1) of 106 of the WBCA the word "legal" before the word "trade."

8. Amend Section 114(c) by deleting the same.

As directed under Section 114(c), USFWS held an open meeting in Washington on April 7, 1995. It is aviculture's understanding that the USFWS



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has reported, or will soon report to Congress that government controlled marking programs and facility certification are not necessary. Aviculture strongly objected to these provisions in 1992 and their adoption in the WBCA has served as a source of stress and concern to aviculture since that time. Aviculture is relieved to hear of USFWS findings because aviculture has always believed these sections were impediments to a viable WBCA and to a good working relationship between the avicultural community and the USFWS. Aviculture is appreciative of the USFWS' direction in this area.

9. Delete Section 115 in its entirety.

Based on the above, we assume that the Secretary has determined that it will not be either helpful or of any productive purpose to require marking and recordkeeping of exotic birds already in captivity in the United States. In fact, this provision is unworkable and would deter captive breeding which is

specifically prohibited in Section 115(b) in any event. Not only would this provision deter aviculture, but, if pursued, would involve the expense of millions of tax dollars for no productive purpose and bring unnecessary enforcement scrutiny to U.S. captive breeding efforts. The purpose of the WBCA was to conserve birds in the wild, not control breeding in the private sector.

10. Add a new section to the WBCA providing that exotic birds hatched from parental breeding stock in the United States shall be deemed legal notwithstanding any other law, regulation or policy to the contrary.

It is currently the policy of the USFWS that any exotic bird hatched in this country that represent progeny of illegally-imported parental stock, no matter how many generations ago, is in and of itself illegal and subject to seizure and confiscation proceedings. In other words, all domestically-hatched offspring of any illegally imported birds are also illegal. Under this policy, if parental stock were illegally imported and the offspring were a product of five generations of captive breeding in the United States or elsewhere, all of those captive-bred generations would be considered illegal by the USFWS. Thus, aviculturists attempting to buy even U.S. captive-bred birds still must be concerned that if originally imported parental stock of any prior generation were illegal, their domestically-bred birds could be subject to seizure and confiscation. Congress should effectively create a new section by amendment to the WBCA declaring that all birds documented as hatched of parental stock in the United States are legal notwithstanding the provision of any other law. The United States government grants citizenship to the children of illegal aliens born in the United States, yet the USFWS has determined as a matter of policy that exotic birds born in the United States of parental stock which may have been illegally imported are not legal. This policy is so preposterous that it could even pertain to originally imported birds deemed illegal due to inappropriate paperwork, improper shipment or other technical violations of law. There is no reasonable basis to have any uncertainty of the legal status of birds hatched from parents located in the United States. Such a policy punishes the U.S. hatched birds and their honest owners.

11. Continue Congressional Oversight.

Finally, Congress must retain oversight of the WBCA. Aviculture asks that in April of 1997 Congress again hold an oversight hearing on the WBCA. We ask that between now and that date Congress, through the staff of this Subcommittee, monitor the regulations and the progress of the USFWS in making P.L. 102-440 function as the WBCA.

CONCLUSION

On behalf of aviculture in the United States, the AFA is honored to have had this opportunity to share its concerns about the WBCA with the Subcommittee. Aviculture wishes to have an effective, fair and properly functioning WBCA which will accomplish its goals. Programs for sustainable trade and aviculture are independent, but critically important to one another. We cannot trust one without the other to effectively save birds and each, if properly promoted, will have side benefits in addition to saving and preserving exotic avian species. Sustainable trade and giving value to trade in wild birds will be an incentive to preserve habitat. Aviculture and promoting the captive breeding of avian species will have the effect of creating sustainable gene pools of these species, allowing us to better understand their biology. Captive breeding of exotic birds in the U.S. reduces the demand on wild populations to supply trade. Additionally, the incentive to smuggle exotic birds is reduced with the rearing of each and every captive-bred exotic bird produced in a U.S. aviary. The avicultural organizations and people joining in this testimony on behalf of the U.S. aviculture are themselves the stewards of exotic birds; they educate the public about how important it is that these birds be saved, both in captivity and in the wild; and they furnish pet birds for human companionship. We ask that Congress help us, aviculture, in our efforts to face this task. Make the WBCA a workable conservation and humanitarian tool, not one which obstructs conservation and humanitarian pursuits.

Respectfully Submitted on Behalf of Aviculture By the American Federation of Aviculture, Inc. and by the Following Avicultural Organizations and Concerned Parties in Support of Aviculture. ➤

¹ Convention on International Trade in Endangered Species

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