

CONSERVATION OF EXOTIC WILD BIRDS

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BEFORE THE
SUBCOMMITTEE ON
ENVIRONMENTAL PROTECTION
OF THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

S. 1218 and S. 1219

BILLS TO ENHANCE THE CONSERVATION OF EXOTIC WILD BIRDS

JULY 31, 1992

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CONSERVATION OF EXOTIC WILD BIRDS

FRIDAY, JULY 31, 1992

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:36 a.m. in room 406, Dirksen Senate Office Building, Hon. Max Baucus [chairman of the subcommittee] presiding.

Present: Senators Baucus and Chafee.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. The hearing will come to order.

This morning the subcommittee on Environmental Protection convenes today to consider legislation to conserve exotic, wild birds.

Last year Senator Chafee and I joined our colleagues in the House in introducing legislation to conserve wild populations of parrots and other exotic birds, to provide humane treatment of these birds during capture and transport, and to improve the process of importing and quarantining these birds.

The U.S. is the world's largest consumer of wild-caught, exotic birds. We bring into this country each year more than 500,000 parrots and other birds that are taken from the wild. International trade in many wild-caught, exotic bird species for use as pets is not sustainable, and this trade, along with habitat destruction, is contributing to a significant decline in these species throughout the world.

Consequently, the United States has a responsibility, as the largest market for exotic, wild-caught birds, to eliminate its imports of many of these birds. Many nations have partially or totally restricted their exports of live indigenous bird species, but others, principally Argentina, Guyana, Senegal, Tanzania, and Indonesia, continue to supply large numbers of wild-caught birds for the international pet trade.

As early as 1976, the parties to the Convention on International Trade in Endangered Species urged exporting countries to gradually restrict the collection of wild animals for the pet trade. They recommended that all member nations, including the United States, encourage the breeding of animals for this purpose so that eventually pets would be limited to those species that can be bred in captivity.

Today, however, current international trade control mechanisms remain inadequate. They're not based on review of U.S. trade data

or on review of the status of the species in the wild. In addition, many exporting nations lack sufficient resources to adequately assess the effects of trade on their wild bird populations. As a result, they are unable to determine whether their exports are detrimental to the species in the wild.

Encouraging the purchase of captive-bred exotic birds for the pet market instead of wild-caught birds and facilitating domestic and foreign captive breeding will reduce the demand for wild-caught birds in the United States and relieve the pressure on wild populations of exporting countries. Although some efforts have been successful in reducing mortality of birds during transport and quarantine in the United States, import-associated mortality remains a serious concern. Clearly the effectiveness of current wildlife trade measures needs to be improved.

When Senator Chafee and I introduced the two pending bills last year to make those improvements, I noted that they took different approaches toward achieving the goal of protecting exotic, wild birds and that we would work to resolve the differences. I welcome, therefore, hearing this morning from our witnesses about the compromise legislation developed in the House. It is important that we succeed in this effort and that we enact legislation in this Congress that places the United States at the forefront of international efforts to conserve the wild birds of this planet.

I'd like now to turn to my colleague, ranking Member of the committee, Senator Chafee, for a statement.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you very much, Mr. Chairman, and thank you for holding this hearing today.

As you noted, we're meeting to discuss the fate of some of the world's most beautiful and prized exotic bird species. Today, in 1992, as many as 1,000 species of parrots, macaws, and other popular birds are in serious decline due to habitat loss and the capture of birds from the wild for the pet trade. The United States plays a crucial role in the wild bird trade which is threatening these species, because we are the world's largest consumer of wild-caught birds. In fact, I was astonished, Mr. Chairman, at these statistics. We import an estimated 500,000—that's half a million—500,000 birds each year for the pet trade.

Fortunately for the wild birds, responsible representatives of conservation organizations, humane groups, the pet trade, and others, many of whom are represented here today, are concerned about this problem and have been working to craft a solution.

As you mentioned, Mr. Chairman, you and I introduced two bills last June, S. 1218 and S. 1219, to conserve wild birds. Why two bills on the same subject with the same goal? The reason was, despite the fact that all of the major groups involved in this issue were in agreement that something needed to be done to address this problem, as is typical in so many situations, we couldn't get agreement on the specific approach. By introducing two bills, we hoped to encourage the groups to reach a compromise.

I'm happy to report that H.R. 5013, introduced by Congressman Studds, seems to represent a reasonable compromise approach that's been agreed to by most, if not all, the affected groups. This will allow us to address the serious decline in these species before it's too late. If we wait, they will become endangered, and trade will have to be banned in all cases.

Clearly this does not mean that people must stop buying exotic birds for pets. These birds can and are being bred in captivity. In fact, I understand the captive-bred birds make better pets than the wild-caught variety.

In a day when the environmental issues are too often polarized between two extremes, this compromise measure represents an accomplishment of great proportions, and I want to congratulate the organizations representing many different interests that worked together and made progress. I also want to pay tribute to Assistant Secretary Hayden and the Fish and Wildlife Service for their assistance and leadership on all of this.

Our friends, the wild birds, are running out of time, and now I'm hopeful that Congress can pass legislation to ensure the survival of these magnificent birds in the wild.

I want to say that the Chairman and I had the privilege of being in Rio, and two things occurred there, as far as I was concerned. One, we had an opportunity to visit a wildlife refuge and see what efforts are being made in other countries. Second, the United States spends a good deal of time hectoring other countries and telling them what to do, how they should be more active and in the Amazonian region, we're telling them how to do things, sometimes to their great annoyance, but if we the consumers, where the demand is, don't do something from our point of view, we're hardly in a position to tell other countries what to do.

So, Mr. Chairman, I'm delighted that we're here, and I think this will be an interesting hearing.

Senator BAUCUS. Thank you very much, Senator.

Our first witness the Honorable George Hochbrueckner.

We're happy to have you here.

STATEMENT OF HON. GEORGE J. HOCHBRUECKNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. HOCHBRUECKNER. Thank you, Mr. Chairman.

I'd like to commend you, Senator Baucus, and you, Senator Chafee, for bringing this important issue before the subcommittee and for allowing me this opportunity to testify on behalf of Congressman Jim Scheuer and myself.

Each year the United States imports hundreds of thousands of wild birds for pets, more than any other nation in the world. This trade leaves a trail of dead birds and devastated species in its wake. It is controlled by a few large dealers who have little regard for laws or regulations. Though we ban trade in our native birds, we are responsible for the destruction it causes abroad. Mr. Chairman, this trade is a national disgrace.

In 1984 New York State passed landmark legislation banning the sale of wild birds as pets and ended its involvement in this dirty business. I voted for this legislation as a member of the New York

State Assembly at that time. The law won praise from conservationists around the world. In 1991 the State of New Jersey followed suit by passing the New Jersey Wild Bird Act, which bans both the importation and sale of wild birds. The act has great public support, passing 66 to 2 in the State Assembly and unanimously in the New Jersey Senate.

From our experiences in New York State and New Jersey, we can see how unnecessary this inhumane trade is and how tragic it is that action on a national scale has been so long in coming. When the New York law was passed, the pet industry predicted economic doom and huge increases in smuggling. Studies in New York State have since shown quite the opposite outcome. The numbers of pet stores increased from 355 in 1982 to 441 in 1987. Seventy-nine percent of high-volume bird stores stated that they now experience the same or increased bird sales. Now, instead of a dozen commercial breeders, there are several hundred.

Officials have made it clear there has been absolutely no evidence of increased smuggling in New York State following the ban. In fact, it is believed that smuggling has decreased as a result of greater public awareness of the dangers of purchasing smuggled birds. As stated by Gerald Thoms, who is the veterinarian in charge of the New York Area Veterinary Service Office of the United States Department of Agriculture, "In my opinion, there has been no indication of any kind that the enactment of the New York wild bird law has been responsible for an increase in smuggling birds into New York. Indirectly, I believe that the passage of this law may have helped discourage smuggling by bringing more attention to bear in this area of concern." And that's his quote.

Recently New York State promulgated new regulations to the Wild Bird Act. These regulations strengthen the law and New York's commitment to protecting wild birds. It's ironic that while the Nation is finally acknowledging the gravity of the problem, the Federal legislation being considered may undermine the laws in both New York and New Jersey, and that's very important to note. We're very concerned about preemption. The proposed national legislation is in many ways weaker than both the laws in New York and New Jersey. Federal law should be amended to clarify that it will in no way preempt the authority of State legislatures to enact their own stricter measures.

New York and New Jersey have shown that trade in wild birds is completely unnecessary. All species popular in the pet trade can be bred and are being bred in captivity. Tame captive-bred birds make far better pets, but they cannot compete with the cheap price of wild bird imports. Just seven companies control over 80 percent of U.S. imports at present, while there will be thousands of breeders producing U.S.-reared birds to supply trade in the future. Already the two largest U.S. pet chains, Docketor's Pets and Petland, have adopted policies of not selling wild-caught parrots. Also, over 80 airlines, including all U.S. carriers, have placed voluntary bans on the transport of wild birds for pets.

In conclusion, I strongly urge this committee to support the proposed legislation. It is a vital step in the right direction to conserve wild bird populations and prevent this inhumane transport and trade. While I fully support this bill, H.R. 5013, I'm confident that

the legislation, in its final enacted version, will clarify that it in no way preempts the achievements of New York and New Jersey.

In fact, along those lines, we are working to assure that the bill that should pass next week, H.R. 5013, will in fact not allow preemption of the tougher New York and New Jersey laws. We put great effort into passing those laws. We feel they do work. The New York law has been in place since 1984, and we would hate to see the impact in New York undercut by anything we do at the Federal level.

So it's very important that the appropriate preemption language be inserted in the bill. We're working to do that in the House, and hopefully we'll pass H.R. 5013 on Monday on the suspension calendar, and it should contain that language, and we hope that you folks would consider it, too.

Senator BAUCUS. Thank you very much, Congressman.

The first question I have is the degree to which New York law is more stringent than H.R. 5013.

Mr. HOCHBRUECKNER. Well, I'm not prepared at this time to lay out the specific details of that, especially with New York State just adding new regulations. I think it's certainly safe to say that it is tougher, and I'll be happy to provide a written statement to the effect of the details of that, if you'd like.

Senator BAUCUS. If you could, please.

[The information referred to follows:]

CITES-LISTED BIRD SPECIES

Under the House bill, CITES listed species will be allowed to continue to be imported for the first year of enactment. Afterwards, a clean list of these species allowed to be imported may be created. This includes species which the Secretary finds to be sustainably and humanely captured and traded.

NON-CITES BIRD SPECIES

The New York law bans sale of all wild birds, whether CITES-listed or non-CITES. New Jersey also prohibits the importation of these birds. The House bill allows imports of non-CITES species to continue unless it is proven that the wild populations of the species are harmed by trade.

EXEMPTIONS

Similar to the New York Act, the House bill allows continued imports during the first year grace period, and afterwards, import of non-CITES species unless proven damaging to their conservation and of CITES species put on a "clean list".

BANDING

The NY law requires all birds sold (except the 14 species on the exempt list) to wear a closed band, enabling consumers to distinguish a legal, captive-bred bird from an illegal, wild-caught one. The House passed bill gives the Secretary of the Interior discretion to require banding of species commonly smuggled into the U.S.—more limited than New York law.

Senator BAUCUS. The next question just came to mind, and that is how preemption fits in this subject. We always wrestle with this problem—that is, should we preempt or not preempt? It's not an easy issue. On one hand, States should be allowed to provide for their own health, safety, and welfare; on the other hand, our country is very mobile and the world is becoming very mobile, and if there are 50 different statutes and 50 different approaches, it sometimes makes it difficult for companies to do business.

But what I'm really getting at is something that's a little bit different, and that's whether there are any GATT implications or restrictions on preemption which would encourage preemption. As I recall, a general provision of the GATT is that countries may restrict to protect their health and safety, but the GATT does not provide for restriction with respect to environmental matters. I know the USTR has looked at H.R. 5013 and is not wild about it, they are worried about some potential GATT problems, but I think they have signed off on it, essentially. But that's with preemption.

I'm just wondering, if there were no preemption—that is, if States were able to provide for tougher provisions—do you have any idea if that creates any kind of a GATT problem? Even if it were to create a problem, I suspect there's some way they can get around it or work it out or do some modification, but I'm just curious whether that is an issue or not. It's just something that came to my mind.

Mr. HOCHBRUECKNER. I think we're not aware at this point of any particular conflict that would occur, but I think the feeling is that since we do have these more stringent laws in place which provide the basic purpose, which is to protect the species, and I think also, of course, do encourage the home-bred variety as opposed to the import, we may run into problems. But I think it's better to error on the side of protecting the species around the world and then to deal with those issues as they arise perhaps through complaints by GATT-affected nations than it is to error on the side of not protecting the species.

Senator BAUCUS. Well, I suspect it can be worked out, because Ambassador Hills has indicated to the Finance Committee, which has jurisdiction over trade issues—Senator Chafee and I are both Members of that committee—that she is willing to agree to allowing more stringent State environmental standards to control—for example, California Proposition 65 has higher environmental standards than does the Nation as a whole with respect to certain pesticides and products and so forth—that is allowable so long as California does not discriminate against Mexican goods as opposed to American goods. So I mean, in that case, there would not be preemption where a higher State standard in a treaty would prevail.

It's just another example of how the world's getting more complicated and we've got to figure all this stuff out. But I appreciate what you're saying, and my inclination would be, as you say, to err on the side of a higher standard, but nevertheless, it's an issue we're going to have to look at. Thank you.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

You sure have put your finger on this problem of preemption. We're wrestling with it all the time. Oil spill legislation, should each State be able to have its own fund. But I think this is an easier thing. Your only complaint with the House bill as it is so far is the lack of preemption, which you believe will be solved—you'll put preemption in it when you bring it up, what did you say, next week?

Senator BAUCUS. No, he doesn't want preemption.

Senator CHAFEE. Oh, I'm sorry. I'm sorry. I got it backward. You want the absence of preemption in the bill, and you believe as it comes over here it will be that way.

Mr. HOCHBRUECKNER. That is our belief and hope, and we hope to resolve that over the next several days. In fact, the Merchant Marine and Fisheries Committee, at this point, the bill that they have sent to Ways and Means does cover the preemption area and allows New York and New Jersey's laws to prevail.

Senator CHAFEE. OK. Fine. Just in passing, I want to make sure I got—what's the correct pronunciation of your name?

Mr. HOCHBRUECKNER. It's Hochbrueckner. It sort of rolls off your lips like Belafonte or something like that.

[Laughter.]

Senator CHAFEE. It must be a tough one to have a campaign punch to, but apparently it's successful.

Mr. HOCHBRUECKNER. Well, I would like to point out that there are only three Members of the House that do have 13 letters in their name, and it almost sounds like a law firm: Sensenbrenner, Hammerschmidt, and Hochbrueckner.

[Laughter.]

Mr. HOCHBRUECKNER. Although I happen to come from an engineering background.

Senator CHAFEE. And you're losing Hammerschmidt.

Mr. HOCHBRUECKNER. Yes.

Senator CHAFEE. He's dropping out of the firm.

Mr. HOCHBRUECKNER. Yes. Unfortunately, many good people are leaving this year.

Senator CHAFEE. Fine. Well, thank you very much.

Mr. HOCHBRUECKNER. Senators, thank you very much for your sensitivity and hopefully your support.

Senator BAUCUS. Thank you, Mr. Hochbrueckner. Thank you very much.

Senator BAUCUS. Now we go to Governor Hayden, Assistant Secretary for Fish, Wildlife, and Parks for the Department of the Interior.

Governor, why don't you go ahead. I forgot to indicate the time limit on statements here. I'd encourage you to keep it under five minutes, if you can.

STATEMENT OF HON. J. MICHAEL HAYDEN, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR

Mr. HAYDEN. Thank you, Mr. Chairman.

Let me say that if Congressman Hochbrueckner and I changed places, I don't know who would be more shocked—the voters in New York or the voters in Kansas. But we do agree on this issue, and we're glad to be here today.

First off that I want to say how much I appreciate your and Senator Chafee's leadership on this issue with the introduction of bills from two different perspectives last year so that we could start the consensus-building process. It was really, I think, the fact that you did that that has allowed us to examine this issue and bring the parties together and really arrive at H.R. 5013 where we are today.

So it was the leadership of you and your committee that really helped us get where we are, and we appreciate that. I think we're very close to a solution, and I'm pleased to appear today to help address this solution.

In considering the solutions to the conservation problems facing wild and exotic birds, I think there are three basic elements that are imperative to understand: the United States is the largest importer of wild, exotic birds in the world; there is currently a lack of existing legislative authority to regulate the trade, except in the case of two States; and efforts until now have not led us to a consensus on how to solve this problem. This legislation tries to objectively address all three of these issues.

We in the Department of the Interior and the Fish and Wildlife Service are very concerned about the conservation of exotic species. The U.S., as the world's largest importer, must play a leadership role in finding the solution to these problems. In fact, between 1988 and 1990, nearly 1.5 million birds were imported into this country alone. Approximately half of these were parrots and other species protected by CITES.

Estimates also are that for every bird that is actually offered for sale, as many as five have died along the way. Many die while in transit or in quarantine. Many die due to the initial shock of capture and caging, and mortalities between capture and export reportedly are even higher, from what we can understand. When birds die due to improper care, capture, and handling, more birds are simply taken from the wild to meet this demand. Our wildlife import policies must be strengthened to prevent further United States contribution to the disappearance of these wild populations and these unacceptable high mortalities.

CITES requires that before an import permit is issued, a country must be satisfied that animals are prepared and transported humanely. Unfortunately, this requirement is often ignored. The U.S. has stricter requirements that include humane transport. On June 17th of this year, in fact, the Fish and Wildlife Service did publish a final rule to revise our regulations on the humane and healthful transport of wild birds and mammals, but the humane regulations are only part of the answer. The other part involves restriction on the importation of species that are particularly at risk. That's what this legislation is all about.

The countries exporting the most wild birds to the United States are Argentina, Senegal, Tanzania, and Indonesia. Every year each of these countries exports more than 25,000 CITES-listed birds to the United States. We are not opposed to the sustainable utilization of these bird species. Let me make that perfectly clear. Nor are we opposed to exotic birds as pets. We are, however, opposed to inaction—inaction that allows our wildlife import policies to continue to contribute to the disappearance of populations around the world.

Take, for instance, the three birds most commonly imported: the Fisher's lovebird, the mitred conure, and the African grey parrot. The Fisher's lovebird is the parrot species imported in the largest number from Tanzania. While more than 68,000 were imported over a three-year period, there is absolutely no information that that level of trade can be sustained. In fact, the International

Union for the Conservation of Nature has concluded that the current international level probably is a threat to the survival of the species. This finding has been adopted by CITES parties at the meeting last spring in Japan. The similar circumstances of the mitred conure and the African grey parrot are described in my written statement. These and other species from Africa, Asia, and Latin America are currently allowed into the United States with very, very little regulation.

In the March CITES meeting, the U.S. played a strong role on the wild bird trade issue. However, current legislation, including the Endangered Species Act, does not provide the mechanism to adequately guarantee preservation and conservation of wild birds imported commercially.

The Department of the Interior recognizes the urgency of this matter. We believe that H.R. 5013 is a fair and equitable approach. This bill is the product of commendable consensus from a broad range of interested organizations. The Department believes that Congress now has an excellent opportunity to protect exotic bird resources through conservation and assistance, as well as through regulation.

We look forward, Mr. Chairman, to working with you and seeing that H.R. 5013 or similar Senate legislation is enacted and successfully implemented. I would be glad to stay for your questions.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much, Governor.

Does the administration support H.R. 5013?

Mr. HAYDEN. Yes, we do. As you mentioned, we are aware and the U.S. Trade Rep has raised the question of interaction between this legislation and GATT, and I know of your and Senator Chafee's interest on the GATT issues. We're committed as an Administration to making sure that this bill does work, and if there are problems, we're committed to working with the U.S. Trade Rep to work those out as an Administration.

Senator BAUCUS. Are there any wrinkles yet, other than GATT, that you'd like to address from the administration's point of view?

Mr. HAYDEN. Well, the bill itself is in pretty good shape, especially if the GATT problems can be resolved. The preemption question is one which you'll have to deal with. My personal feeling as a former governor is that we should not have preemption, but that's an issue which the committee and the Congress will resolve.

I think one must be honest about it. This legislation will require additional employees and it will require additional costs if we're going to implement these procedures. We estimate the first year we'll need about 11 more employees in the Fish and Wildlife Service and a little over \$700,000 the first year to implement it. But as far as the legislation itself is concerned, we are ready to implement it and feel we can implement it when it is enacted, Mr. Chairman.

Senator BAUCUS. I understand that the pet industry may be a little bit concerned about the Secretary's power to require marking of animals, finding it perhaps unduly restrictive or unduly burdensome and maybe not necessary. Do you have any reaction to that or any comment on that?

Mr. HAYDEN. Well, I think that what we were seeking there is not power for the Secretary per se, but what we're seeking is a way

to verify captive-bred birds or a way to verify countries of origin because we know in fact that what happens in the trade many times is that birds are taken from one country where it's illegal to export them over to another country and are exported from that country in violation. We also know that many times birds are marked as captive-bred birds when in fact they are not.

So what we're seeking is some mechanism to ensure that these birds really are originating where people say they are and that in fact they're really wild birds or captive-bred birds so that when the consumer buys them, they have full knowledge of what they're buying.

Senator BAUCUS. Well, the breeders might say that the immediate moratorium with respect to some species and the one-year grace period with respect to others is too stringent, does not allow breeders to sufficiently develop a breeding pool to breed domestically. I wonder if the administration has any reaction to that point.

Mr. HAYDEN. Well, the grace period, if you will, is a compromise. Some of the species are under tremendous pressure and need immediate protection. Other species we really lack the data on to know how immediate the threat is, but we have to have some time to get that data. We also know from an industry standpoint that it will take time to gear up, to develop captive-bred breeding stock, if you will, to supply the market. That's kind of why there's been a consensus on a grace period and why the species vary as they are affected by that grace period, because some are under immediate threat, and some we had more time to figure out a management plan for.

Senator BAUCUS. OK. I have no further questions.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

Governor, I remember when you came before us for your confirmation, and I said at the time I thought you were getting into one of the best jobs in the U.S. Government. I hope you still feel that way.

Mr. HAYDEN. I can't wait to get to work every morning, Senator. You're absolutely right. If there's anybody that's got a better job than I do, I haven't found them yet.

Senator CHAFEE. As I understand the law, it is against the law to export any bird from the United States of America. Am I correct in that?

Mr. HAYDEN. I'll have to check. Unfortunately, we don't have our chief law enforcement officer here today, but let me check with the staff and see if I can get an answer to that question.

Mr. JONES. Senator, you're referring to native U.S. birds?

Senator CHAFEE. Yes, that's right. You are?

Mr. JONES. I'm Marshall Jones, Chief of the Fish and Wildlife Service's Office of Management Authority.

Senator CHAFEE. OK. Am I correct in my belief?

Mr. JONES. Yes, sir. Most native birds are prohibited for export under the Migratory Bird Treaty Act, which implements various treaties with Great Britain, Japan, Canada, Mexico, Soviet Union. And so we do not allow not only the export, but the commercialization of any—

Senator CHAFEE. Of any bird.

Mr. JONES. Yes, sir. That's right for birds covered by the Migratory Bird Act.

Senator CHAFEE. I have some trouble understanding why we should permit the import of any birds into the United States. I don't want to be a radical here, but I don't get it. I read about this slaughter that's taking place, and I suspect these figures aren't challenged, that for every bird that comes in, five die. I'm familiar enough with CITES to know that there's a tremendous lag between being listed on the CITES list and the real danger period having passed. Am I correct? Would you agree with me on that, Governor?

Mr. HAYDEN. Well, there certainly is a lag period that occurs, and—

Senator CHAFEE. They get their data together, and by the time they get their data together, the situation has snowballed so that by the time it reaches CITES, the listed species is truly endangered.

Mr. HAYDEN. That can happen certainly, or at least the gene pool of that species can be reduced significantly so that their future is threatened, even though they might not be endangered per se at the time.

Let me say that as an agency, we support the existence of exotic birds in the pet trade, and we support their import into this country for a variety of reasons: scientific research, the pet trade, and a variety of other reasons, museum work, and zoos, and educational purposes, and a number of other reasons. However, our overriding principle is that they should only be imported at a rate that is sustainable and that does not threaten or endanger that species in their native habitat. We very much encourage the conversion from wild-caught birds to captive-bred birds as technology will allow for.

Senator CHAFEE. I find these statistics truly astonishing, the loss that you yourself cited in your own testimony. You mention that some 80 airlines do not carry these birds. Could you repeat that again? Did you mention that, or was that mentioned elsewhere?

Mr. HAYDEN. Those 80 airlines have joined into a voluntary ban on the transport of these birds. It's not a regulatory authority, but they have as a company policy in fact enacted the ban.

Senator CHAFEE. I don't know whether 80 airlines is a lot of airlines. How many—

Mr. HAYDEN. Yes, sir, it is.

Senator CHAFEE. Is it a lot?

Mr. HAYDEN. Yes, sir. It is virtually most of the major airlines in this country.

Senator CHAFEE. Would those be the major U.S. carriers?

Mr. HAYDEN. Yes, sir, they would.

Senator CHAFEE. Overseas carriers. Well, let me ask you this, and I'm obviously not going to pin you to this. Roughly what percentage of the traffic would that be, those 80 airlines? I mean, are you talking 90 percent, or are you talking 50 percent?

Mr. HAYDEN. We don't really have good data on that, Senator Chafee. What's happened is that as these airlines have enacted restrictions, then importers have looked to other means by which to bring these exotic birds into the country and that might be on other airlines, especially foreign airlines. That might be by ship. That might be over land, across the Mexican border in particular.

So what's happened is that the trade has shifted from one mode of transportation to many other modes as these restrictions have gone in place.

Senator CHAFEE. Let me ask you this. The Administration is backing this, and I understand there's the Studts bill and H.R. 5013, and I understand that witnesses we're going to have before us today are in agreement behind it, likewise. There's nothing we like better than to have a problem solved for us so we don't have to wrestle with it. Life being what it is, I assume that probably this committee will support H.R. 5013, figuring there's one more headache that's gone away.

Do you think H.R. 5013 is going to do the trick?

Mr. HAYDEN. I don't think it's perfect, Senator. I think it is a compromise, but I think it's a great step forward. We need regulation and we need it desperately, and I see this as the first step in that regulatory authority and network. It will allow us to gather some data, it will allow us to get an enforcement mechanism in place, and it will allow us to come back and report to you in a few years how well the legislation has worked and how well that enforcement mechanism—how effective it really is. So I think it's a great first step, but I don't regard it as a perfect solution.

Senator CHAFEE. I mean, as you know, it's just like in the drug trade, the United States is the demand side of the equation, and if the United States drops out certainly in the drug business, it would decrease worldwide tremendously, and so it would, I presume, in this pet bird business, likewise.

As I understand it, the European community has banned export of many species, likewise.

Mr. HAYDEN. Yes, sir, they have.

Senator CHAFEE. I suppose there's not such a demand on what they have anyway.

Mr. HAYDEN. Well, one thing is they have much greater authority, if you will, as an association of nations. They have the authority to outright ban certain species from certain countries throughout the whole European Community, which is significantly different than we have. Also, their new regulations that will go into effect next year even expand that authority to non-CITES species as well. So they're in a much better position really to deal with it immediately on a broad basis than we are in this country.

Senator CHAFEE. That's just the export. But we're doing it anyway, you say. We ban the export.

Mr. HAYDEN. Well, we don't ban the export of exotic birds. We ban the export of native birds under the Migratory Bird Treaty Act. That is, we ban their export for the pet trade.

Senator CHAFEE. Did I read somewhere you've got a big investigation of some of the bird importers?

Mr. HAYDEN. We certainly can confirm, Senator, the existence of an extensive undercover investigation into the smuggling of parrots and their relatives into the United States. The first conviction in this case occurred in June of this year, just last month. The subject did plead guilty to three felony counts and guilty to smuggling wildlife whose value was in excess of \$150,000. In that case, the sentencing has not yet occurred. Additional indictments are expected this fall, as our agents continue to analyze the evidence seized.

Due to the ongoing investigation, further comment on my part would not be wise due to concerns about prejudice and publicity and certainly the violation of anyone's privacy under these investigations. But, yes, sir, we do have an investigation ongoing. It has resulted in one arrest and a guilty plea, and we expect additional indictments.

Senator CHAFEE. Well, good for you.

Well, life being what it is, as I mentioned before, I presume that this will pass, and certainly we will hope that you and your organization will continue oversight in this matter, and I'm sure this committee will be anxious to hear from you and see how it's working out. You know, with all that's going on in the world in connection with preservation of wildlife, it just seems terrible what's occurring here in the United States with these terrible losses that you in your own testimony mentioned.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Senator.

Thank you very much, Governor.

Mr. HAYDEN. Thank you, Mr. Chairman, for taking the time, with all the things on your agenda, to deal with this important issue. We look forward to successful passage of H.R. 5013. Thank you.

Senator BAUCUS. Our next panel is Mr. James Leape, Senior Vice President for the World Wildlife Fund; Mr. James Wyerman, Director of International Wildlife Trade for the Defenders of Wildlife; Ms. Ruth Hanessian, Owner of Animal Exchange in Rockville, on behalf of the Pet Industry Joint Advisory Council; and Mr. Gary Lilienthal, Vice President and General Counsel for the American Federation of Aviculture.

I'd like to remind each of you that when the green light's shining, just let her rip; when you see the amber light, prepare to wind down; red means get your conclusion ready and give it.

[Laughter.]

Senator BAUCUS. Your full statements will be included in the record, and we'll take it from there.

OK. First on my list is Mr. Leape.

**STATEMENT OF JAMES P. LEAPE, SENIOR VICE PRESIDENT,
WORLD WILDLIFE FUND, WASHINGTON, DC**

Mr. LEAPE. Thank you, Mr. Chairman.

My name is James Leape. I'm testifying today on behalf of World Wildlife Fund.

With a million members in the United States alone, World Wildlife Fund is the largest international conservation organization working worldwide for the conservation of nature. We have worked for more than 30 years in over 100 countries to protect birds and their habitats. For more than a decade, we have also worked for effective control of international trade in wildlife, working to strengthen CITES—the Convention on International Trade in Endangered Species—and to strengthen trade laws and law enforcement in countries around the world. Four years ago, we convened, staffed, and chaired the Cooperative Working Group on Bird Trade, whose members included most of the groups represented on this

panel and whose recommendations form much of the basis of the bill that is before us today.

Many of us have recognized the problems of the bird trade for a long time, but for nearly two decades, efforts to address those problems have been in gridlock because of a failure to reach agreement among the many different interests concerned about the trade. It was for that reason that the Cooperative Working Group was formed four years ago, bringing together conservation, animal welfare, pet industry, aviculture, and zoo interests. That process was a start. Thanks to the hard work of the groups represented on this panel, we were able to hammer out recommendations for basic reforms. But getting from those recommendations to legislation has been a tortuous process. We applaud H.R. 5013 as the brightest hope for seeing essential reforms enacted.

In our view, there are two basic challenges in addressing the problem of conservation of exotic birds. The first is to address the threat to wild populations posed by unsustainable trade. The second is, for the long term, to foster conservation of the habitats upon which these birds depend. In the end, the future of these birds lies in the hands of those who live with them.

We believe that H.R. 5013 is a sound and workable response to those two challenges. There are, as Secretary Hayden mentioned, a lot of compromises in this bill. That's what gives it hope of passage. But we believe that the result is a program that can effectively address the most pressing problems of the bird trade, while laying a foundation for a sound, long-term conservation effort on the ground.

There are two issues in this bill that I'd like to highlight briefly in my oral remarks. The first is the basic structure of the bill. The basic structure of the bill is to impose moratoriums on imports of selected classes of birds. We believe the phased program outlined in the bill is a sensible one. It begins with an immediate ban on the handful of species that are in serious trouble because of trade, and then prompt review and a moratorium on imports of all other CITES-listed species for which trade is not sustainable, with periodic subsequent review of species not listed on CITES.

At the same time, H.R. 5013 provides for development of a new trade regime, establishing an approved list of bird species for which continued trade would be allowed. We believe that section 6, which establishes that so-called "clean" list, creates a sound and rigorous program for assuring that any continued trade is in fact sustainable. We also believe that this approach is critically important if we are to foster conservation of wild birds and their habitats.

The second issue that I want to touch on briefly is the allowance of continued imports for the purposes of captive breeding. H.R. 5013 creates an exemption for continued imports of wild birds for cooperative breeding programs where the Secretary finds that such imports are not detrimental to the species. We at WWF have long recognized, and the Cooperative Working Group affirmed, that captive breeding has a critical role to play in conservation—first, by helping to restore depleted wild populations, but also, and I think as importantly, by shifting the pet market to a more sustainable footing, reducing the demand for smuggled birds, especially those from species not on the clean list.

We think this exemption is important, and we urge the committee to make clear that such imports will be allowed for public and private breeding operations, sanctioned by recognized avicultural, conservation, or zoological organizations, that can help supply the public demand.

WWF is convinced that this bill overall is a major step forward in efforts to assure the conservation of wild birds now in trade. We look forward to working with this committee to see it enacted into law in this Congress.

Thank you for the opportunity to testify.

Senator BAUCUS. Thank you very much, Mr. Leape.

Next, Mr. Wyerman.

STATEMENT OF JAMES K. WYERMAN, DIRECTOR OF INTERNATIONAL WILDLIFE TRADE, DEFENDERS OF WILDLIFE

Mr. WYERMAN. Good morning, Mr. Chairman. My name is Jim Wyerman, and I'm representing Defenders of Wildlife and 48 other national environmental and humane organizations which support Federal legislation such as S. 1219 to end the U.S. trade in wild birds.

Mr. Chairman, I'd like to address a few of your specific questions before I go to my prepared statement. First of all, on the question of preemption, we should note for the record that the New York law bans the sale of wild birds unless they're on a certain exempted list. The New Jersey law bans the sale, possession, and importation of wild birds unless they're within certain exemptions. So the big question we're going to face here in terms of preemption is really, what happens when a species may be on the federally approved list allowing imports to continue, but it might be on a banned list for one of those States? And that's actually a very real likelihood that we're concerned about, because, for instance, the New York list allows mostly just those species that are bred regularly in captivity. The Federal list will be geared more toward questions of sustainability and so forth. So it's quite likely that those two lists will be different.

Second, in terms of the GATT ramifications of the preemption question, we have met regularly with the Office of U.S. Trade Representatives discussing various potential amendments to this bill, and we specifically asked them if they would have a problem with an amendment that would ensure that stricter State laws would not be preempted. They stated that they would not oppose the bill on that grounds, and we had the impression that there's no specific GATT problem that would arise because of that.

Next, Mr. Chairman, for your comment about the grace period for captive breeding, I wanted to point out that the exemption that's in H.R. 5013 is not limited by time and that the exemption for captive breeding will continue within that grace period and beyond. The only real requirement is that the people who are getting birds for breeding purposes have to belong to a cooperative breeding program to make sure that this exception is not being abused and used for commercial imports.

I might note as an aside on that point that the leading ornithological organization in this country, the American Ornithological

Union, has stated that they feel that there are already enough birds in this country that virtually all the species of commercial importance could be bred in captivity without importing very large numbers. So I don't think that's really a major problem.

Now, as to Mr. Chafee's question about the effect of these airline bans, I wanted to point out that based on our records, the airlines that are now out of the business were responsible for about roughly 85 percent of the imports in 1989. That doesn't necessarily mean that imports have been cut back to 85 percent. The records that we have indicate that they've been cut back to about half of the levels from a couple of years ago. But there's no indication that there's been any increased smuggling or any other problem. There's just some shifting that's going around with the industry.

Now, in the time that's left, the comments I wanted to mention. I wanted to point out, first, we brought a Goffin's cockatoo, which I believe is behind me, to illustrate one bird that's really been hurt by the trade. I'm sure you all remember the TV show "Baretta." This show caused a surge in the popularity of cockatoos, and right after that show five different species became threatened. This bird comes from a very limited range, but despite that, it's been imported by the thousands into the United States, and as a result, it may be facing extinction within as few as five years.

Senator BAUCUS. What's the bird?

Mr. WYERMAN. It's called the Goffin's cockatoo.

Senator BAUCUS. Where does it come from?

Mr. WYERMAN. It's from Indonesia, but just a small island chain, the Tanimbar Islands there. But 70,000 of those have been exported, and almost exclusively to the United States. So again, it illustrates that we are one of the major leaders in this whole problem.

I think every witness has commented about how the U.S. takes the lead role in this issue. I wanted to just follow up on that point and indicate that the consumer demand, as it's called, is not really a demand for smuggled birds or necessarily these specific birds. It's that consumers don't know when they're buying a bird that they're fueling the extinction of species and inhumane treatment of birds and a vast network of illegal trade. I think many of them would prefer to buy captive-bred birds given a choice.

We believe that the whole international system of regulation has failed. These birds aren't protected under the Endangered Species Act, the Lacey Act is difficult or impossible to enforce, and CITES is not really preventing the trade that it's supposed to for the listed species.

We do support H.R. 5013, but we urge certain amendments. The main amendments we'd like to see would be to make sure that State laws are not preempted, and second, to ensure that the list of significant trade species that are subject to the immediate ban is expanded somewhat. These are the species that are being traded in very high volumes, and their immediate protection is needed. And again, this has been recommended by all of the major ornithological societies in the U.S., and it's also the position that's been taken by the U.S. Government at the recent CITES Conference.

Let me also stress that the criteria in the act for the approved list, relating to when trade can continue, are very important. We see them as the minimum necessary to ensure that the species are

conserved and that the welfare of animals is protected. We don't think those should be weakened in any way.

We think this is a good bill with those amendments. We think it will aid the 45 or more countries that have banned the export of their birds, and we urge you to adopt this bill with the suggested amendments to help conserve these species and to stop the cruel treatment of millions of animals.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much.

Next, Ms. Hanessian.

STATEMENT OF RUTH HANESSIAN, OWNER, ANIMAL EXCHANGE, ROCKVILLE, MARYLAND, ON BEHALF OF THE PET INDUSTRY JOINT ADVISORY COUNCIL, WASHINGTON, D.C.

Ms. HANESSIAN. Thank you, Mr. Chairman.

My name is Ruth Hanessian, and I'm here today on behalf of the Pet Industry Joint Advisory Council, of which I am Maryland State Coordinator. Marshall Meyers, PIJAC's Executive Vice President and General Counsel, had originally planned to testify, but he is currently in Zimbabwe at a conference of the Convention on International Trade in Endangered Species. The pet industry has been very involved with that throughout its existence.

PIJAC is a national trade association representing leading pet industry retailers, distributors, animal importers, breeders, and pet supply manufacturers. This membership comprises more than 2,000 businesses and individual members, as well as 34 affiliated pet trade associations and bird, fish, and reptile hobbyist organizations.

We firmly believe that in view of the pressures on wild avian populations, many of which are not trade-related, but rather human survival side effects on habitat, as well as the sometimes inadequate regulation in some exporting countries, a new regulatory approach to enhance conservation and to ensure humane treatment of wild-caught birds is both desirable and necessary for the United States. Therefore, PIJAC supports the approach embodied in H.R. 5013 and as set forth in the June 30, 1992 substitute version of this legislation introduced by Congressman Studts. We believe that this proposal, a compromise supported by various diverse interests, is superior to either S. 1218 or S. 1219, the bills technically pending before this committee.

H.R. 5013 has been the subject of intense negotiations involving virtually all interested parties in the past three years, and PIJAC generally supports this proposal. Our comments, therefore, are directed to the terms of H.R. 5013. We believe that several minor modifications are necessary to ensure that the envisioned process actually works to benefit the birds. The details of these concerns are contained in Mr. Meyers' written testimony, which has been submitted, and we request that this testimony be formally included in the record of these proceedings.

To briefly summarize some of the key provisions, we'd first note that H.R. 5013 would effectively restructure existing regulatory mechanisms governing the importation of wild-caught birds and, therefore, would assist the implementation of CITES. In addition, this legislation will provide better incentives for those nations in

the underdeveloped world that desire to rationally utilize their renewable natural resources under sustainable use development. It would further encourage legal birds and reduce the inevitable explosion of cruelly smuggled birds that would result from any outright prohibition on trade.

In simplistic terms, H.R. 5013 would establish three basic procedures with respect to wild bird imports. First would be species that are CITES-listed. Section 6 requires the Secretary to establish a so-called clean list of birds. With respect to non-CITES species, many of which are actually in trade, they could be imported unless the Secretary imposes a restriction under the criteria set forth in section 8. And finally, section 12 provides a system of exemptions for otherwise banned imports if such imports are made for certain specified uses, including captive breeding.

PIJAC believes that this general approach provides a pragmatic solution to ensure threatened populations are not depleted by trade and sustainable use can continue without undue and burdensome regulation. This proposed legislation will, of course, have no impact on the many other factors causing the decline of wild bird populations. The Goffin's cockatoo is specifically affected by lumbering in the islands on which it nests, and absent trees for nest sites, the population is declining in any event, regardless of trade in the species.

We recommend that additional efforts be made to eliminate the illegal trade and its attendant cruelties. At the same time, we have one major concern with the proposed mechanism as currently written. It requires the Secretary to establish various lists within one year. We feel that this time period may not be adequate, because there's a lot of work to be done to do that. We suggest that however the bill words the time limit that we clearly direct the Secretary to expedite the process of establishing the required lists.

In summary, we believe that H.R. 5013 is a significant step toward resolving the complex issue of trade in wild-caught birds. For those who support the concept of sustainable use of regulated wildlife, this bill would establish a reasonable mechanism to ensure that conservation management and international trade can work together in harmony for exotic birds.

Thank you very much for this opportunity to submit these comments on behalf of the Pet Industry Joint Advisory Council.

May I add one other thing. Your concern over the number of birds that are lost in trade always appalls me, because I trade in birds. I don't buy wild-caught birds at this time, but I checked on a current load of birds that was brought in on a chartered flight as a result of the hampering of transportation by the scheduled airlines refusing to transport wild caught birds. It was brought in on a chartered flight. It consisted of 35,000 birds that were brought legally into this country into quarantine, and the loss rate in that particular shipment was 2 percent. This is significantly lower than the loss rate would be in the wild. So the records that are being used to indicate the tremendous losses and the pictures that are used are not truly representative of the legal trade. Smuggling is something we all abhor.

Senator BAUCUS. Thank you, Ms. Hanessian. That was one shipment, though. We don't know about all other shipments, the loss rate in all other shipments.

Ms. HANESSIAN. That's correct, but you can check those easily on the legal shipments, because USDA maintains records. They are nowhere near the figures that you are constantly offered. The office is in Hyattsville. I actually went over and checked the figures, and we're talking—I get upset when we have 10 percent, which is still lower than the loss rate in the wild.

Senator BAUCUS. Well, we'll check those out.

Mr. Lilienthal.

STATEMENT OF GARY P. LILIENTHAL, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN FEDERATION OF AVICULTURE, PHOENIX, ARIZONA

Mr. LILIENTHAL. Thank you, Senator Baucus, Senator Chafee. It's a pleasure to be here today, and I'm pleased to present the position of the American Federation of Aviculture.

AFA, as we call it, is a federation of over 150 avicultural organizations as well as individual and corporate members throughout the United States who are interested in aviculture. That is the keeping, breeding, and raising of exotic avian species, species not native to the United States. And like the tens of thousands of aviculturists and the millions of your constituents who are companion bird owners, I am an aviculturist, one of the exotic bird breeders everyone is counting on to make this bill work. We're not the pet trade.

We acknowledge that intense pressures are placed on exotic bird populations by devastating habitat destruction, hunting, predation, planned eradication programs, smuggling, and even trade. We believe that by giving exotic birds and their habitats some economic value, both can be saved. But without trade as a resource, birds and their habitats have no value to people of developing nations. A rationally regulated and managed bird trade is one of the methods of giving the rain forests and their avian inhabitants value and of preserving the rain forests and the birds.

We need some changes in H.R. 5013. Legislation such as H.R. 5013 must provide rational and workable standards sensitive to the divergent interests and agendas of various countries of origin and their peoples. H.R. 5013 is close, but it's not there yet. It must ensure that aviculture will flourish by exempting and encouraging breeding of exotic birds by aviculturists and zoos and by facilitating import and export of captive-bred exotic birds. It must provide for fair and enlightened enforcement and not intimidate aviculturists from participating in this massive grassroots conservation and humanitarian effort. And it must provide that it will be the law of our land. Preemption.

This is not States protecting their internal interests. This is States dealing with foreign interests. And I would like to point out to you that approximately 20 additional States have heard legislation similar to that adopted in New York and New Jersey and have rejected it, stating that it is of a national interest. I have been at those hearings, and I have seen what has happened. In New York

there were no public hearings, and in New Jersey Senators and Assemblymen were told that the New Jersey bill was similar to a bill pending before the U.S. Congress. I'll comment further on that in a moment.

In addition, this law must allow airlines to ship birds so that avian breeding efforts by aviculturists are not adversely impacted. Today, because of the domestic and international airline ban, our avicultural efforts within the United States are being thwarted. Both of you stressed the importance of breeding exotic birds for pets. We are the bird breeders.

I'd like to make a few comments on some of the issues which have been raised today, because I think we can resolve some of the discrepancies that have been raised.

On preemption, Mr. Wyerman actually makes my job easy. He has pointed out that two States, New York and New Jersey, already have two different laws that aren't compatible. If we have 48 additional laws that are different throughout the United States, there will be no need for a Federal law, because there will be no aviculture and there will be no legal bird trade. We believe in one national policy. As far as States' interests are concerned—disease control, agricultural control—we certainly encourage, support, and have no objection to that, but we need a workable national policy when it comes to importation, sale, and transportation of wild-caught exotic birds.

As far as the position of the American Ornithological Union, they're not doing the bird breeding, we are. We know best what we need. We are a relatively fledgling group. You've heard about 10 years of records. Ten years is not a long time to get something going of the nature of our efforts. We've been very successful. We want to continue to succeed, but we want to make sure we have the ability to do so. We educate people. We educate the consumers. We don't show sensationalistic, horrific pictures of dead birds killed by habitat destruction or poisoning to make our point. That would be like showing you a picture of an airline crash and asking you to ban air travel. We believe in education, and we take positive action to stop smuggling. We've distributed this anti-smuggling poster to our government agencies along the Mexican border, to pet stores in Florida, New Mexico, California, and Texas.

Help us continue to do what we do best—breed and care for our avian companions. Help us enhance the lives of your constituents, who, by the millions, share their lives with exotic avian companions in their pursuit of happiness. If H.R. 5013 is truly to be the Wild Bird Conservation Act of 1992, it must also be the Aviculture Enhancement Act of 1992. We're not extremists and we're not zealots in this cause. We are not attempting to impose our philosophy on others. We are the moderates, and although these laws will affect us in our everyday lives, we acknowledge the need for a balanced approach on this issue.

AFA is eager to protect birds through rational, properly enforced laws. But we also recognize the needs of people and the rights of foreign states to properly utilize their natural resources. We ask you to understand that aviculture is our contribution to conservation and the quality of life. We ask you to incorporate the recommendations outlined in our written testimony into H.R. 5013-type

legislation in the Senate to ensure the future of aviculture as conservation in the United States. While other groups would resign birds to extinction in the wild before they would allow them to be imported into our country, we believe that extinction is not acceptable. We believe in aviculture, not extinction.

On behalf of the American Federation of Aviculture, I thank you.

Senator BAUCUS. Thank you very much, Mr. Lilienthal.

I'd like to first determine whether you all support H.R. 5013 or not. It's my understanding that you do. That is, Senator Chafee and I earlier introduced separate bills, different approaches, and subsequent to that time, various groups have been working out an agreed upon resolution, which essentially is H.R. 5013, and I just want to reconfirm that that's the case.

Ms. Hanessian, you favor essentially H.R. 5013. Is that correct?

Ms. HANESSIAN. Yes, we do, sir. That's our testimony.

Senator BAUCUS. Mr. Leape?

Mr. LEAPE. So do we.

Senator BAUCUS. Mr. Wyerman?

Mr. WYERMAN. We certainly support it. We would prefer that it be strengthened in a few ways which do not undermine the basic structure of the act, though.

Senator BAUCUS. But you do support it?

Mr. WYERMAN. We would support it as it is.

Senator BAUCUS. Mr. Lilienthal, do you support H.R. 5013?

Mr. LILIENTHAL. We certainly support the concept behind H.R. 5013.

Senator BAUCUS. Do you support the bill?

Mr. LILIENTHAL. We, too, believe there are changes needed before we can put our approval behind it.

Senator BAUCUS. Well, everyone else supports it right now. Do you support it?

Mr. LILIENTHAL. We only support it with the changes we feel we need, sir.

Senator BAUCUS. So you do not support it in its present form?

Mr. LILIENTHAL. Not in its present form, no.

Senator BAUCUS. I thought there was an agreement here. There is not an agreement here. All right.

Let's take preemption. Ms. Hanessian, your view on State preemption.

Ms. HANESSIAN. Particularly living in an area that is a tri-State area, essentially, if the District becomes a State, it is very difficult to have laws on things that move readily within the country that are different.

Senator BAUCUS. You tend to support preemption. That is, that States could not have separate—

Ms. HANESSIAN. Yes, I do.

Senator BAUCUS. OK.

Ms. HANESSIAN. And I would certainly challenge the assumption that New York State did not have a problem with increased smuggling. They in fact, after they passed their bill, had an outbreak of Newcastle disease, which only comes in on smuggled birds. It's not a native disease.

Senator BAUCUS. OK.

Mr. Leape.

Mr. LEAPE. We think the Federal bill is better than either of the two State bills that are in place, but we don't think as a practical matter it makes a big difference whether those State bills are preempted or not. So we don't take a position on that issue. I think either way is all right.

Senator BAUCUS. Mr. Wyerman.

Mr. WYERMAN. We feel strongly that the stronger State bills should not be preempted, that this is an area for legitimate State regulation to protect both consumers and agriculture and poultry from the disease risks of wild birds.

I might add that in New York, Ms. Hanessian's comments are completely inconsistent with the experts up there, and that one outbreak was not derived from a bird that was smuggled in just through New York. It was from a bird that came in a shipment that came that affected a lot of different States. So it's not really connected to the ban at all, and this is kind of—

Senator BAUCUS. Well, where did that shipment come from?

Mr. WYERMAN. I don't have the details on that right now, but we could certainly get it to you.

Senator BAUCUS. OK.

Ms. HANESSIAN. The purpose was to avoid wild-caught birds. The disease came on a wild-caught bird.

Senator BAUCUS. Mr. Wyerman, you said the first list should be expanded. Did I understand you correctly?

Mr. WYERMAN. We certainly would not oppose to the bill in its current form, but we think it could be strengthened to expand the first list, that's right, the immediate ban. Right now that list just covers those species that are known to be being hurt by the trade, and there's another category of significant trade species—they call them the category C species—that we think should be included as well.

Now, for those species, they've been traded in very high numbers, and there's no concrete information to prove that these species are not being hurt by the trade, and in essence, this is a violation of the CITES treaty that says once they're listed on Appendix II, article 4 requires clearly that populations be monitored and trade be controlled to make sure that it's not causing a detriment to the species throughout its entire range and to prevent them from being elevated to Appendix I. And some of those species have had to be bumped up to Appendix I because they've been hurt so badly by the trade.

Senator BAUCUS. Do any of you other three have a view on that subject, whether the list should be expanded or not?

Mr. LEAPE. The list that he's referring to was put forward by the United States at the last conference of the parties of CITES in March in Japan, and that proposal that immediate action be taken on those 46 species was overwhelmingly rejected by the parties to CITES. For that reason, I think it would be unwise for the United States unilaterally to take action on that list.

Senator BAUCUS. Ms. Hanessian, you mentioned there should be improvements. You said that you were going to submit suggested improvements in the testimony of another person for the record.

Ms. HANESSIAN. That is contained in Marshall Meyers' statement.

Senator BAUCUS. Right. Now, you just tell me, what's the major improvement you'd like to see?

Ms. HANESSIAN. As far as this particular bill is concerned?

Senator BAUCUS. Yes.

Ms. HANESSIAN. Certainly we feel that expediting it is the most important thing, from our perspective. The industry has been in a position where—

Senator BAUCUS. Expediting the passage of the bill?

Ms. HANESSIAN. Passage of the bill and listing of the species on the clean list and, if need be, on a dirty list, yes.

Senator BAUCUS. All right.

Ms. HANESSIAN. In a timely manner.

Senator BAUCUS. Any other views on expediting? I think others have mentioned the same point.

Mr. Wyerman, I think you did, too, didn't you? Somebody indicated expediting.

Mr. LILIENTHAL. I indicated expediting and facilitating importation and exportation, yes. We think that a streamlined import and export program can minimize mortality.

If I can, Mr. Chairman, I'd also like to give my comments on preemption. I think we got lost here.

Senator BAUCUS. No. You gave your views very clearly earlier. I didn't have to go to you.

[Laughter.]

Senator BAUCUS. You should be proud that you made your point so clearly that I didn't have to go to you.

Mr. LILIENTHAL. We would like to support this bill, sir, and we think we're close to doing so, and if I might, I'd like to tell you our strenuous one major problem with this bill is in the cooperative breeding exemption section. We want to make sure that it is clear that aviculturists will be able to continue to obtain birds so that they can fulfill their role under this bill.

Senator BAUCUS. Well, I was going to ask you that question. What do breeders need? I mean, there's some conflict here in the testimony. The Ornithological Union claims that there are enough birds already in the United States, apparently, and you say they don't breed, you breed. At least, your people breed.

[Laughter.]

Mr. LILIENTHAL. My birds do as well.

[Laughter.]

Senator BAUCUS. Your birds breed.

Mr. LILIENTHAL. Right.

Senator BAUCUS. So what do your birds need to breed? Some say there are already enough there to do it.

Mr. LILIENTHAL. I think what the American Ornithological Union meant—and they're not here, so I don't want to put words into their mouth, is that there are enough birds in this country to fulfill bird breeding requirements. But I think that might mean creating a selective service for all pet birds and drafting them into a breeding program. I think it was acknowledged during the Cooperative Working Group process in which we participated that there were not at this point enough birds in the hands of bird breeders to

fulfill the role of supplying captive-bred birds for the pet trade. Part of our educational process as well is to educate consumers to buy captive-bred birds.

Senator BAUCUS. Well, if you could give us some examples. Name some species that there's no way in the world breeders can breed, in your view.

Mr. LILIENTHAL. They are numerous. I can name many of them.

Senator BAUCUS. Well, name the one or two or three or four best examples.

Mr. LILIENTHAL. Yellow-naped Amazon parrots, blue-fronted Amazon parrots—I've got to keep it to birds that are legally in trade. There are some birds that are being bred in smaller numbers that cannot be traded because they are banned from trade, and I'm not going to name those. African grey parrots. These birds are not yet being bred in sufficient numbers to meet demand. But we are making progress, sir. We just don't want to be cut off in the process of getting there. Those are three species that come to mind.

Senator BAUCUS. So how many of those species are now in domestic breeding programs in the United States?

Mr. LILIENTHAL. I don't have the empirical data in front of me. We do have some data available. We have just started—as I mentioned, this is a fledgling cottage industry. This is not large commercial enterprise doing this breeding. This is a cottage industry. These are grassroots people. Your own Office of Technology Assistance in 1986 recognized our organization as at the grassroots level of conservation, and we're just starting to gather this data and get it in. We've only been doing this for the last 10 years or so, and it's very difficult in that amount of time to address these issues, gear up for it, and get everything out front.

Most of my organization, including myself, are volunteers. We're not paid to do this. We don't have a full-time staff, and we're out there with the assistance of the World Wildlife Fund and—

Senator BAUCUS. Well, it sounds like evidence here is pretty sketchy, is difficult to—

Mr. LILIENTHAL. Excuse me?

Senator BAUCUS. It sounds like evidence here is pretty sketchy, is difficult to obtain.

Mr. LILIENTHAL. Well, I think there is a lot of evidence. Evidence of the amount of mortality and evidence of status in the wild as well.

Senator BAUCUS. Ms. Hanessian.

Ms. HANESSIAN. Perhaps I can give you some specific answers to your question. In 1978, when I first went to a convention of the American Federation of Aviculture, who Gary's representing today, I asked as a retail trade person if I could please buy a captive-bred Amazon parrot from anyone at the convention, and this was a convention 1,000 strong from across the United States and foreign countries also. There was no one who had a captive-raised Amazon parrot available that would even consider selling it. These were going to very close friends, and there were very limited numbers.

Today I have available two blue-front Amazon parrots, which is one of the species that Gary's concerned about, that I've essentially created out of my own clientele in a small store. Grassroots is an understatement for this type of—

Senator BAUCUS. How much does a captive Amazon parrot go for?

Ms. HANESSIAN. Captive blue-front Amazon parrot, right now the asking price is \$1,000. An orange-wing is \$800. Depending on the perceived popularity of the species, which I don't always agree with, there are different prices for different individual animals. The African greys that we have are also captive-raised in Rockville by local residents who have gotten involved in aviculture through the efforts of the pet trade, who have initially hooked them on the concept of birds—I know you've been interested in the little Goffin's that's here today—and then they go on to become literally cottage industries in their own right.

Senator BAUCUS. OK.

Mr. Wyerman, and then I'll recognize Senator Chafee.

Mr. WYERMAN. Mr. Chairman, on a couple of those examples, the blue-fronted Amazon has been imported in vast numbers, over 50,000, over a fairly short period, so I think that example that we have heard here is one where we probably don't need to import very many more birds for purposes of establishing a genetic stock. But that example aside, we really don't have a problem with imports for captive breeding purposes. We just think there has to be the very minimal controls that are now in the bill to make sure that that exception is not used as a laundering mechanism for commercial birds.

I might also add that the Loridae Society, the Amazonian Society—Ms. Hanessian mentioned the African grey—the group that takes the lead on breeding these, the African Grey Society, they all support H.R. 5013. So there are many breeding groups that do support this approach and feel that it's very reasonable.

Senator BAUCUS. OK. Thank you.

Senator Chafee.

Senator CHAFEE. Thank you very much, Mr. Chairman.

I'm interested in this testimony, and I think some of the points made are good ones. As you know, in the first part of this hearing, I said to Governor Hayden, why should we permit any imports at all? Then the point that Mr. Lilienthal and others are making is that this gives a rationale for the preservation of jungles in the Amazonian region, for example, if there can be some yield from it, yield in the form of the birds. And that's a subject we're constantly struggling with here, what can we do to—and it also occurs in Africa likewise—what can we do to give those who are present in the areas an incentive to preserve—whether it's grazing lands in East Africa or whether it's jungle areas in South America, what incentive is there for those folks to preserve those rather than turning them into cattle ranches, for example? So there's a point there that Mr. Lilienthal and others have made.

By the way, Mr. Lilienthal, what is aviculture? I know it's breeding of birds, but is it breeding of birds for commercial reasons so that you can then turn and sell them to the pet shops, or is it just a hobby?

Mr. LILIENTHAL. It's many things, Senator, and I appreciate the opportunity to expand upon it. Yes, it is breeding birds for sale to the commercial pet market and for companion animals and the sharing of love between mankind and their companion animals. It

is also breeding birds for one's own personal pleasure and as an avocation and a hobby. We do a lot of that as well. We have certain birds that we do sell into the commercial pet trade——

Senator CHAFEE. When you say "we"——

Mr. LILIENTHAL. For example, my wife and I. We are a cottage industry.

Senator CHAFEE. OK. So you're a cottage industry. What's the industry part of your cottage?

[Laughter.]

Mr. LILIENTHAL. Just being aviculturists.

If I may finish, we have birds that we only sell to other breeders because they are rarer birds. We also participate in the Federal Government's captive-bred wildlife program, in which we breed endangered species so as to preserve them. Our organization also sponsors some breeding programs of some severely endangered and, in one case, an extinct species so that they can be reintroduced into the wild. So aviculture takes all forms. The California Condor Program was a program involving aviculture. It was done at two zoos, but it was done by people at those zoos who themselves are aviculturists. So it takes many forms.

Senator CHAFEE. Well, you indicated in an answer to a question by Senator Baucus that you didn't want to be "cut off," and I'm not sure what you meant by cut off. As I understood it, and I may be incorrect, for the strengthening of the gene pool, plus the fact that you need some breeding birds you want to be able to import, would these particular species be banned under the lists that would be prepared by the Fish and Wildlife Service?

Mr. LILIENTHAL. That is essentially correct, Senator. We would like to be able to have continued access to birds that would not qualify to be brought in commercially as pets for sale to the public through, customarily, retail stores.

The reason we are concerned about this is that, first of all, there are many birds that are not brought in for sale as pets that aviculturists are interested in. Those birds will also be covered by this legislation, and those are birds that aviculturists are interested in. We play a role in the conservation of those birds, and we would like access to those birds. In addition——

Senator CHAFEE. I see in section 12——and obviously, you're very familiar with this act——

Notwithstanding any prohibition on the importation, the Secretary may, through the issuance of import permits, authorize the importation of a bird of the species if the Secretary determines that such importation is not detrimental to the survival of the species and the bird is being imported exclusively for any of the following reasons: scientific research; as a personally owned pet of an individual after being continuously out of the country; zoological breeding; cooperative breeding programs designed to promote the conservation of the species.

That's you, isn't it?

Mr. LILIENTHAL. Yes, it is we, Senator, and the only thing we are really concerned about in this section, as is evidenced by my written testimony, is that this be developed through report language so it is sufficiently clear that it will carry out the intent of allowing us to continue to obtain birds for breeding efforts.

I'd like to point out to you that subsection (b) of section 15 really says what we're trying to say here, and we would like to ensure,

and my written testimony so states, that the programs be just clearly enough defined so that we know it will be workable, and that's all that we ask.

Senator CHAFEE. In your testimony, the Chairman asked you very directly are you in favor of this H.R. 5013, and you did not say yes. You equivocated, it seemed to me. Is it because of this particular point you're making now?

Mr. LILIENTHAL. This and two or three more, Senator, yes, and they may seem to be minor points, but they are of great concern to us. The marking section is a very important section to us.

Senator CHAFEE. The marketing.

Mr. LILIENTHAL. Marking. Section 15(a). And I heard the Assistant Secretary, Governor Hayden, say something—

Senator CHAFEE. Now, wait a minute. Section 15(a) deals with recordkeeping.

Mr. LILIENTHAL. And marking, sir.

Senator CHAFEE. Oh, I see. OK.

Mr. LILIENTHAL. Maybe the problem here, Senator, is that this appeared in a later draft of H.R. 5013.

Senator CHAFEE. The one you're concerned with?

Mr. LILIENTHAL. The section that I'm discussing now, 15(a), was not in the original proposal.

Senator CHAFEE. The one I have, section 15 says "marking and recordkeeping."

Mr. LILIENTHAL. Yes, that's the section we're concerned about.

Senator CHAFEE. "The Secretary is authorized to promulgate regulations to require marking." Is that what you're worried about?

Mr. LILIENTHAL. Yes, sir.

Senator CHAFEE. Well, it seems to me we have to give the Secretary pretty broad powers here. What's your concern about the marking?

Mr. LILIENTHAL. My concern is a very simple one, and I think I heard the Assistant Secretary say something today that was not inconsistent with meeting our concern. We are not at all opposed to the Secretary having authorization to promulgate regulations to control the importation, after enactment, of birds through any marking that's necessary on birds imported post-enactment. As far as promulgating regulations to require marking of birds already in this country or birds captive-bred within this country, we think that would be totally unworkable, would be an invasion on the privacy of numerous of your constituents and members of our organization, as well as others, and really would be for no useful purpose.

As a matter of fact—

Senator CHAFEE. Yes, I see the point you're making, and this is an area I won't claim expertise in, but it would seem to me that the Secretary wouldn't require a marking there. But I'm not sure I, as just one Senator, would want to say he's forbidden to require marking. I think we have to give him a little leeway and figure he's going to have some common sense in the application of this.

On the preemption, I know Ms. Hanessian has concerns. Well, I guess several concerns have been voiced here. Traditionally, we've been leery in this committee to have preemption. I might say one of the Members of this committee, who also is the majority leader, has been strongly opposed to preemption.

Senator BAUCUS. Very.

Senator CHAFEE. And the past chairman of the committee, Senator Stafford, was likewise. So we're always gun-shy of preempting, and I guess the attitude would be if it's so horrible for New York or New Jersey, they could go ahead and change their laws.

In summary, Mr. Leape, you're for it, right?

Mr. LEAPE. We are for it. For the bill?

Senator CHAFEE. Yes.

Mr. LEAPE. Yes, we're for the bill.

Senator CHAFEE. President Reagan used to have in front of him when we'd meet in the White House a four-sided box that would pivot and had written on it "yes, no, maybe," and something like "perhaps." But in dealing with this legislation, we can't have perhaps and we can't have maybe. So you're not given much escape room here.

Mr. Wyerman, you're for it?

Mr. WYERMAN. We definitely support the bill.

If I could just take a moment, I'd like to address a couple of the points that have been raised through others, but we could come back to it.

Senator CHAFEE. Now you're flipping it to the maybe side.

[Laughter.]

Mr. WYERMAN. No, we do support it. No equivocation on that point. There have been some other points raised that I would like to address your concerns about.

Senator CHAFEE. All right. Go ahead.

Mr. WYERMAN. For instance, in giving value to the resource, we think that's also important, but experience has shown that perhaps the best way to do that is through ecotourism. Dr. Charles Munn with Wildlife Conservation International estimates that a single free-flying macaw in Peru can bring in perhaps between \$22,000 and \$160,000 over its lifetime. That's much more than the \$30 that's going to go to the local person who captures it. There's actually not a single—

Senator CHAFEE. Do those countries—like Argentina, which, it was indicated here in the testimony, I think, is the principal exporter of birds to the U.S. Is that legal in Argentina? Do you know?

Mr. WYERMAN. Is the trade legal in Argentina?

Senator CHAFEE. Yes.

Mr. WYERMAN. Yes, the vast majority of trade coming from Argentina is legal, but there are many birds that are coming out of Argentina, that come from adjoining countries that are trans-shipped, and it's very difficult to—

Senator CHAFEE. From countries where it's forbidden?

Mr. WYERMAN. That's right.

Senator CHAFEE. Yes.

Mr. WYERMAN. It's also important to remember that this trade destroys habitat. We've seen an example in Argentina with the blue-fronted Amazon where over a very short period 100,000 nesting trees were cut down and destroyed in the efforts to capture these birds. So it's not a situation where by taking them out and giving them a good home in the United States we're saving them from rain forest destruction. Habitat destruction and trade are parallel problems that operate together.

The leading scientists indicate that for South America trade is just as serious a problem as habitat destruction. These nesting sites are lost forever once they're destroyed—some of these trees have taken 150 years to reach a state where they'll provide a nesting site. So it's a very serious problem.

Mr. LEAPE. Mr. Chafee, can I respond to that just very quickly? I think we can all agree that both trade and habitat destruction are threats to these species and that we won't protect these species by only addressing one or the other. I think we can also agree that giving value to these species as a way of encouraging habitat protection is part of the solution. It's not the only part of the solution to protecting the rain forest, but I think all of us concede that it can be an important part. You've got the hyacinth macaw species—

Senator CHAFEE. What can be an important part?

Mr. LEAPE. Giving value to these species by allowing sustainable trade.

Senator CHAFEE. That's a great ideal if you don't have the habitat destruction at the same time.

Mr. LEAPE. That's right. You mean from the trade?

Senator CHAFEE. Yes.

Mr. LEAPE. Right. I was getting to that point. I think that's right. And what this bill provides for is a mechanism to establish continued trade in species where there are rigorous procedures in place to make sure that that trade is sustainable. And I think that's important. I think all of us view that as essential to making sustainable trade a meaningful concept. None of us support continued trade that comes from the harvest of birds by cutting down nesting trees.

Senator CHAFEE. I suppose the theory would be that the very word "sustainable trade" means that they wouldn't be cutting down the trees.

Mr. LEAPE. Right. I think we all embrace that view.

Senator CHAFEE. All right.

Thank you very much, Mr. Chairman. This has been an interesting hearing. That's one of the nice things about being in the Senate. You get off into something other than free enterprise zones and enterprise zones in rural and urban areas and deal with something otherwise, such as this.

Senator BAUCUS. Such as free enterprise zones in exotic bird trade.

[Laughter.]

Senator CHAFEE. I'll say this, just one thing, if I might, Mr. Chairman.

Ms. Hanessian argued with the statistics about the loss of birds, and the Chairman said, quite rightly, that the shipment you saw where there was 2 percent loss—all I can do is quote from the testimony of the Secretary, Governor Hayden, on page 2, where he says, "Experts estimate that for every bird offered for sale in a pet store, up to five died along the way." And then they have some statistics from 1985 to 1990, and I have no reason to quarrel with his statistics, "79,000 birds died while in transit, and 258,000 died while in quarantine or were refused entry because of Newcastle Disease. In five years, this comes to over 330,000 birds."

Ms. HANESSIAN. If you back that out per year, I think you'll find your percentages are considerably lower. The reason I quoted you the figures on the most recent shipment that I checked was because we have had a significant improvement in performance both in transportation and in management in quarantine. Quarantine stations are not kind places for an animal to be, but they're essential for the protection of the poultry industry.

Mr. WYERMAN. Mr. Chafee, there's an important clarification on that point. Besides the obvious point that one shipment is not a representative example, the other important point is that when you look at a single shipment, you're looking at just one very small slice of the picture. We have several studies from Mexico, Argentina, Senegal, several places, that indicate the average pre-export mortality is about 50 percent. Then when you add on the mortality in shipment and quarantine, it can well exceed 50 percent. So those figures are pretty clear for the United States. It's 10 to 14, 17 percent for shipment and quarantine.

Senator BAUCUS. Regardless, there's a need for this bill.

Mr. WYERMAN. Yes. The precise mortality rate is not really the key question, but I think it's important for the record to be correct.

Senator BAUCUS. Now, that bird behind you, is that the bird from Indonesia that you mentioned earlier?

Senator CHAFEE. Tell us what kind of a bird that is.

Mr. WYERMAN. Well, as I said earlier, this is a Goffin's cockatoo, which is one of the species that has been hurt pretty heavily by the trade. The United States is responsible for about 70 percent of the total world imports for this species, and it comes from just a very small range of islands in Indonesia.

Mr. LILIENTHAL. Mr. Chairman, as one of the breeders of these birds in this country, if I might, they're a bird that we didn't have access to until a few years ago. It's now being bred well in this country, and it was under pressure in its habitat from habitat destruction as well as trade. It's now been banned from trade by CITES. So the system does work.

Senator CHAFEE. Now, what is the point you're making? Where is this bird indigenous to?

Mr. LILIENTHAL. It comes principally from the Tanimbar Islands and Indonesia, and the Tanimbar Islands are—I'm sure Mr. Wyerman will know as well, and correct me if I'm wrong—being heavily logged by the logging industry. This bird is losing its habitat at an alarming rate. It has also been under pressure from trade.

Senator BAUCUS. When does its feathered front go up? What causes that? She's excited. All right.

[Laughter.]

Mr. WYERMAN. I think the one thing we can all agree upon is that they do make wonderful companions.

Senator BAUCUS. OK. Thank you all very much. I appreciate your testimony.

[Whereupon, at 12:13 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

[Statements submitted for the record and the bills S. 1218 and S. 1219 follow:]

PREPARED STATEMENT OF J. MICHAEL HAYDEN

Mr. Chairman, I am extremely pleased to be here today, to help address the serious conservation problems facing exotic wild birds imported into the United States as pets.

People have kept exotic birds as pets for thousands of years, dating back as far as the ancient Egyptians and the indigenous peoples of Southeast Asia, the Caribbean, and Central America. These exotic birds have been traded internationally since at least the mid-1800's, though high volume international trade did not begin until air transport shortened shipping times. Unfortunately, today the trade in exotic birds threatens to destroy this valuable resource.

In considering solutions to the conservation problems facing wild exotic birds, we need to recognize three basic elements:

1. The United States is the world's largest importer of wild exotic birds;
2. There is a lack of existing legislative authority to do what is needed to regulate the trade; and
3. Efforts until now have not led to a consensus in this country to solve this critical conservation issue.

We support the conservation objectives in H.R. 5013. We are very concerned about the conservation of exotic bird species and the depletion of wild populations due to international commercial trade. The United States, as the world's largest importer, must play a leadership role in finding solutions to these problems. In the last 3 years for which we have complete statistics, 1988-1990, more than 1.4 million wild birds were imported into the United States alone. Approximately half of these were parrots and other species protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Experts estimate that for every bird offered for sale in a pet store, up to five died along the way. According to the U.S. Department of Agriculture, in one 5 year period from 1985 to 1990, 79,192 birds died while in transit to the United States, and 258,451 died while in quarantine or were refused entry because of Newcastle Disease, which is fatal to poultry. In 5 years, this comes to over 330,000 birds that either died before arrival in the United States, or within the first 30 days of quarantine. Due to the initial shock of capture and caging, mortalities between capture and export are reportedly even higher. From a species or population perspective, when birds die due to improper capture and handling, more birds will have to be taken from the wild to meet the demand. Our wildlife import policies must be strengthened to prevent any further U.S. contribution to the disappearance of wild populations and avoidably high mortalities of birds in transport.

CITES requires that before an export permit is issued, a country must be satisfied that animals are prepared and transported humanely, but this requirement is often ignored. The U.S. has stricter requirements that include humane transport regulations for all imported birds and mammals. Last fall, due to inhumane shipping conditions, 60 parrots from South America were seized at the Miami airport. On June 17, 1992, the Fish and Wildlife Service published a final rule revising its regulations for the Humane and Healthful Transport of Wild Mammals and Birds to the United States. These revisions are designed to help improve transport conditions and reduce transport mortalities.

The U.S. is among many countries—including Brazil, Mexico, Bolivia, Honduras, Zimbabwe, Australia, and India—that prohibit the export of their native birds for the pet market. We should support the efforts of these nations to protect their native fauna. Of the countries that do choose to export their birds, most lack the means to effectively develop and implement scientifically based management plans, and have not been able to undertake critical scientific studies that would reveal effective conservation and appropriate management of their native species.

The countries exporting the most wild birds to the U.S. are, in order of export volumes: Argentina, Senegal, Tanzania, and Indonesia. Every year each of these countries exports to the U.S. more than 25,000 birds listed by CITES. As the major market for their birds, the U.S. should assist these countries in creating the appropriate scientific infrastructures to begin effective management of their wild bird populations.

We are not opposed to the sustainable utilization of these bird species, but we are opposed to their removal from wild populations where there are indications that this activity may be harmful. We are not opposed to exotic birds as pets; when properly cared for, they provide companionship for many years. However, we are opposed to inaction while our wildlife import policies continue to contribute to the disappearance of populations in the wild, and to avoidable transportation mortalities.

Sustainable utilization is a simple concept that is often misconstrued. Webster's Dictionary defines "sustain" as "to keep in existence." Simply put, sustainable utilization of wildlife is a consumptive or non-consumptive use that allows a population to continue to exist at an optimal level. Such utilization of wildlife would conserve species and their habitats for future generations.

CITES is only as effective as the enforcement, management, and scientific infrastructure of each country that implements its decisions. A chasm exists between CITES requirements and sustainable use on one hand, and the realities of the wild bird trade, such as the poor economies and lack of scientific and management infrastructures in exporting nations, on the other. Before a permit is granted for commercial trade in an Appendix II species, CITES requires a "non-detriment finding," whereby a Scientific Authority of an exporting country determines that trade is at a non-detrimental level. While this is done in the United States, many countries do not make or require these determinations. As a result, the utilization of several species is far exceeding their capacity to recover. For most species, there have been virtually no studies to determine which uses are sustainable and at what levels.

The U.S. Fish and Wildlife Service has been instrumental in facilitating the recognition by the CITES Parties of "significant trade species" for which insufficient biological information is available. "Significant trade species" are those traded in commercial quantities. CITES recognizes more than 40 "significant trade" bird species for which trade is or may be harmful to populations. For most of these species, little or no scientific management information is available, and the required scientific findings are not made as to whether exports are detrimental to the survival of the species. Many Appendix II species have become depleted due to such international trade, with potentially serious consequences for biodiversity.

This problem exists on a global scale. Take, for instance the circumstances of the three birds most commonly imported into the U.S.—the Fisher's lovebird, the mitred conure, and the African grey parrot.

The Fisher's lovebird (*Aaaronis fisheri*) is the parrot species imported in the largest numbers into the United States from Tanzania. While more than 68,000 were imported over a recent 3-year period, there is no information on the level of trade this species can sustain, if any. In fact, all information points to significant declines in its populations. The International Union for the Conservation of Nature (IUCN) has concluded that current international trade levels are probably a threat to the survival of this species. This finding was adopted by the CITES Parties at their Kyoto meeting last Spring.

The mitred conure (*Aratinaa mitrata*) is the second most commonly imported CITES species, imported almost exclusively from Argentina. More than 50,000 were imported over the same recent 3-year period mentioned for the Fisher's lovebird.

The African grey parrot (*Psittacus erithacus*) is another commonly imported species for which insufficient information exists to meet the CITES "non-detriment" test. Over the same recent 3-year period, more than 47,000 were imported into the United States, mainly from Cameroon, Togo, Liberia, Mali, Senegal, Guinea, Cote d'Ivoire, and Ghana. These three species, and scores of others from Africa, Asia, and Latin America, are currently allowed into the United States, often without adequate assurances that CITES conditions are being met.

The U.S. Fish and Wildlife Service led our nation's delegation to the CITES Conference in Kyoto, Japan, last March. It is through the cooperation of the 115 countries that are Parties to CITES that the international wildlife trade is both monitored and regulated. The Parties work together by banning international commercial trade in species listed as threatened with extinction (Appendix I) and by regulating commercial trade in species at risk of becoming so threatened due to trade (Appendix II).

The U.S. is the world's largest importer of "significant trade" bird species that may be harmed by trade. From 1986-1988, more than 500,000 such birds were imported into the United States. Without scientifically based management, species depletion by trade will continue and more species will be placed on CITES Appendix I and threatened with extinction. One of these "significant trade" bird species—the Goffin's cockatoo—was transferred to Appendix I this past March, at the most recent CITES Conference of the Parties meeting. It is now threatened with extinction due to trade-related depletion. The U.S. has been virtually the only country importing the bird, and additional legislative authority would help prevent further bird species from becoming threatened with extinction due to trade. At the March CITES meeting in Japan, the United States played a strong leadership role on the wild bird trade issue. The CITES parties adopted a resolution calling for a consultative process, between the CITES Animals Committee and exporting countries, to

consider specific recommendations for wild species' conservation, including exotic birds, and possible trade suspensions if the recommendations are not implemented.

The United States submitted a resolution calling for a suspension in trade in wild bird species that suffer high mortalities in transport. The Parties adopted a modified version of this resolution that requires the CITES Transport Working Group—which the United States has now agreed to chair—to gather additional data, and for individual countries to suspend trade in species they determine are experiencing high mortalities. The United States was also chosen to host the next CITES conference, during the second half of 1994. Between now and that conference—which will mark the 20th anniversary of the negotiation of CITES—the United States must show world leadership by implementing the CITES resolutions adopted at the conference in Japan.

However, current legislation, including the Endangered Species Act, which implements CITES, does not provide the mechanism to adequately guarantee the preservation and conservation of wild birds imported commercially. The Endangered Species Act is only triggered after a species' population status has been seriously harmed.

Today the importation of birds listed in CITES Appendix II is allowed based on documents issued by the exporting country. Unfortunately, many of these countries are unable to implement the necessary scientific and management programs to ensure that the use of these species is consistent with CITES requirements and is not harming their populations. By the time a species is transferred to CITES Appendix I, it is nearly always too late for the population to fully recover. Our goal is to have a means to regulate the trade before the species becomes threatened. Returning to the examples of the Fisher's lovebird, African grey parrot, and mitred conure, only an export permit from the country of origin is currently needed to import them into the United States. We need the authority to implement a policy of controlling imports of these birds based on scientific principles and CITES requirements. At the same time, a fund such as the Exotic Bird Conservation Fund proposed in H.R. 5013, is needed to help countries such as Argentina and Tanzania, which currently export tens of thousands of these birds, to conduct the necessary studies and set up conservation management plans. We recognize the importance of consulting with these countries before considering any trade restrictions.

Several groups testifying today, as well as others, have for several years devoted a good deal of thought and effort toward solutions for wild bird trade problems. Most of them—conservation organizations, humane organizations, scientists, veterinarians, importers, and breeders—agree that the international pet trade in wild-caught birds is contributing to the decline of species in the wild, and that mortality remains too high.

The Department of the Interior recognizes the urgency of this matter. H.R. 5013 is based on the consensus achieved by a broad range of interested organizations. We believe it presents a fair and equitable approach to this problem. The Department believes that Congress now has an excellent opportunity to protect exotic bird resources not only through regulation, but also through conservation incentive and assistance to exporting countries.

Here is a summary of the provisions of H.R. 5013:

It would limit or prohibit U.S. imports of exotic bird species to ensure that their populations are not harmed by trade. It would also encourage wild bird conservation programs in countries of origin by both ensuring that all U.S. trade in such species is biologically sustainable and to the benefit of the species, and by creating an Exotic Bird Conservation Fund to provide conservation assistance in countries of origin.

The bill would phase out in one year the U.S. importation of 10 CITES-listed exotic birds, unless a species is on an approved list. To prevent excessive and harmful trade during the one year phaseout, the bill would place a cap on imports of each species. The cap would be based on the numbers imported in the last year for which we have complete statistics.

The bill imposes an immediate ban on certain heavily traded CITES-listed species, identified at the last CITES meeting as having significant problems; and in the interest of species conservation, it would authorize the Department of the Interior to impose an immediate ban on any other species prior to the one year phaseout.

Importation may be permitted for CITES-listed species for which a scientifically based, strictly controlled, sustainable-use management plan has been developed and implemented. In addition, H.R. 5013 would place non-CITES species of exotic birds on the approved list, unless a specific restriction or prohibition is imposed. It would also establish procedures under which any person may petition to request the establishment or removal of a restriction, quota, or moratorium.

The bill would authorize a permit system for import exemptions, based on specific criteria and for specific purposes that include scientific research, personally owned pet birds, zoological display, and cooperative breeding programs for species conservation.

A critical feature of the bill is the establishment of an Exotic Bird Conservation Fund consisting of penalties, fines, forfeitures, and appropriations. This Fund would support wild bird research and management programs in the countries of origin where they are most needed. It is modeled after the highly successful African Elephant Conservation Fund and has great potential to benefit species conservation in developing countries. The bill would also authorize up to 55 million for each of the first 3 fiscal years to carry out provisions of the Act and for the Exotic Bird Conservation Fund.

The bill would not affect necessary animal quarantine programs and the authority of the Secretary of Agriculture to regulate importation to ensure that exotic diseases are not introduced into the U.S.

H.R. 5013 establishes civil as well as misdemeanor and felony criminal penalties, along with the authorization of various enforcement activities such as the issuance of warrants, injunctions, and search and seizure of contraband, guns, traps, nets, vessels and vehicles.

The World Conservation Strategy—a joint conservation strategy document, supported by the administration and developed by the IUCN, UNEP, and the World Wildlife Fund—defines conservation as “the management of human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations.” This bill can help confirm the strong U.S. role in fostering this concept.

We look forward to working with you and seeing H.R. 5013 or similar Senate legislation to enactment and successful implementation. Thank you, Mr. Chairman.

PREPARED STATEMENT OF JAMES P. LEAPE

INTRODUCTION

Mr. Chairman and members of the committee, I am James P. Leape, Senior Vice President of World Wildlife Fund. For the past three years, I have chaired the Cooperative Working Group on Bird Trade, an independent panel of the leading organizations working to find solutions to the problems of the exotic bird trade. I appreciate this opportunity to appear before your Committee to present the views of World Wildlife Fund on the Wild Bird Conservation Act of 1992.

The need for this legislation is clear. There is abundant evidence that wild bird populations in many parts of the world are declining. The major cause of these declines is habitat loss. Habitat destruction takes place on a broad scale in developing countries today primarily because there are few economically feasible alternatives to clearing land for agriculture, timber, and human settlements.

In the tropics and sub-tropics, international trade in wild birds for the pet market is also contributing to the decline of some species. Many species are traded on the world market despite the fact that little is known about their status in the wild. Most wild birds are exported from five countries: Argentina, Guyana, Indonesia, Senegal, and Tanzania. These, and other exporting countries, simply lack the resources to determine the effects of trade on their wild populations. In addition, many birds suffer unacceptably high mortality rates during capture and transport.

Our challenge is to find ways to halt the decline of wild bird populations by working with governments and local organizations to assure that use of these wildlife resources is sustainable. Wildlife management programs have the potential to provide the basis for a sustainable trade in birds and thereby generate a two-fold return, both by reducing the excessive, unsustainable harvest of wild birds and by providing important incentives for conservation of their habitats.

The United States, as the world's largest consumer of wild birds, bears a special responsibility to help reverse the decline of wild bird populations in exporting countries. Almost half a million live birds are imported into the United States each year for sale as pets. Concerned organizations and individuals have been seeking a comprehensive solution to the problems of the wild bird trade for almost twenty years. But competing interests have always proved insurmountable. As a result, comprehensive Federal legislation has never been enacted; the only specific laws on the books today are state statutes in New York and New Jersey.

In recent years, it has become apparent that domestic and foreign captive breeding programs are capable of expanding the supply of captive-bred birds for the pet market, thereby offering an opportunity to relieve the pressure on some wild popu-

lations in exporting countries. With that in mind, World Wildlife Fund set out four years ago to find a lasting solution by building consensus among the organizations concerned with and involved in the wild bird trade. WWF convened, staffed, and chaired the Cooperative Working Group on Bird Trade, made up of a wide range of diverse organizations with a common interest in the conservation and humane treatment of birds.¹ The Working Group met more than ten times and examined a number of issues associated with the international trade in wild birds, including the decline of wild populations, inhumane treatment during capture and transport, and problems with the import and quarantine process.

In March 1990, the Working Group issued a series of detailed Findings and Recommendations. Foremost among the recommendations was that the United States should take prompt legislative action to gradually phase out over five years the import of wild birds for sale as pets and encourage the captive breeding of exotic birds for the pet market.

IMPLEMENTING THE WORKING GROUP RECOMMENDATIONS

The process of translating the Working Group's recommendations into legislation has been long and tortuous, and there have been several alternative bills introduced in Congress in the past year (S. 1218, S. 1219, H.R. 2540, and H.R. 2541). The Wild Bird Conservation Act, H.R. 5013, is the successor to those earlier bills. After much negotiation and compromise by all interested parties, it is now widely recognized that H.R. 5013 is the vehicle that offers the best hope of enacting legislation in this Congress to deal with the problems of the bird trade. H.R. 5013 is a strong conservation bill that we believe embodies a promising, comprehensive approach to solving the problems of the exotic bird trade. We believe the Wild Bird Conservation Act will help eliminate the detrimental trade in wild birds, while encouraging captive breeding and the sustainable use of birds in developing countries.

GENERAL PROVISIONS

The Wild Bird Conservation Act would create a comprehensive Federal program to end detrimental imports of exotic wild birds into the United States. A three-tiered system would be established to control imports of wild birds. It would impose an immediate ban on imports of the species most threatened by trade and phase out imports of CITES-listed species that are not sustainably managed in their countries of origin. It would also require the government to review periodically the trade in other (non-CITES) species and establish quotas or moratoria on imports if necessary for the conservation of the species. The bill would also establish an approved list of CITES species that could continue to be imported for the commercial market. Species would be added to this "clean list" only if they meet certain criteria aimed at ensuring that exports will not be detrimental to wild populations.

We offer the following comments and suggestions with respect to specific provisions of H.R. 5013.

ELIMINATING DETRIMENTAL IMPORTS FOR THE PET MARKET

The central purpose of H.R. 5013 is to end the reliance of the pet market on the unsustainable harvest of wild birds. Sections 5 and 8 accomplish this by providing for a three-tiered program to control imports of wild birds. First, imports of species most threatened by trade, as identified earlier this year in the Report of the CITES Animals Committee to the 8th Conference of the Parties, would be prohibited on enactment. Second, imports of other CITES-listed species that do not qualify for addition to the "approved list" would be prohibited within one year. Section 5 also contains an emergency provision under which imports of a particular species could be eliminated more quickly if necessary, in accordance with a series of criteria that are based on those originally developed by the Working Group. Finally, section 8 requires the Secretary of the Interior to periodically review the trade in non-CITES species and establish moratoria or quotas on imports as necessary for the conservation of particular species.

¹ Original member organizations of the Working Group were: World Wildlife Fund, the American Association of Zoological Parks & Aquariums, the National Audubon Society, the Animal Protection Institute of America, the Humane Society of the United States, TRAFFIC USA, the American Federation of Aviculture, the Association of Avian Veterinarians, the Society for Animal Protective Legislation, the Pet Industry Joint Advisory Council, the Animal Welfare Institute, the American Pheasant & Waterfowl Association, and the International Council for Bird Preservation.

This three-tiered approach has broad support. Although some have suggested that all imports of wild birds for sale as pets should be immediately banned, we support the approach of H.R. 5013 as a rational way to eliminate detrimental imports of wild birds into the U.S., while shifting the trade to a more sustainable basis.

APPROVED LIST FOR CONTINUED IMPORTS

Section 6 would establish an approved list of bird species for which imports for any purpose would continue to be allowed after the phaseout, including sale as pets. Species listed on the appendices to CITES but not included in this "clean list" would be banned from import for most purposes. We support the concept of an approved list for the reasons stated above—allowing continued trade, where sustainable, can play an important role in assuring the preservation of wild birds and their habitats.

WWF supports the initial inclusion on the approved list of only those birds commonly produced in captivity for which completely self-sustaining captive populations exist—for example, canaries, cockatiels, and budgerigars. We also believe the criteria in section 6 for adding species to the approved list are generally sound. The criteria require that the inclusion of a species on the list be based on the best scientific and wildlife management data available. At the same time, the criteria are also practical and take into account the vast biological and ecological differences among species and their habitats. The criteria also provide for assurances that trade controls can be properly enforced.

Although CITES has been in force for more than fifteen years, few if any member nations have implemented management plans for wild birds entering international trade. Recognizing this shortcoming, the CITES parties adopted at their biennial conference earlier this year a Resolution on Trade in Wild-Caught Animal Specimens that establishes an important new procedure to help developing countries generate scientifically sound management plans for commercially important species such as parrots. This vital new agreement, which requires exporting countries to conduct field studies of bird populations, habitat destruction, and levels of trade, should assist the Secretary in determining which species should be added to the approved list, while at the same time allowing the Secretary to screen out those countries or management plans that do not fully meet CITES standards. The Exotic Bird Conservation Fund established by section 14 should also provide an important new tool for assisting countries in the proper management and conservation of wild bird species subject to trade.

PROHIBITED ACTS

We believe that section 11 should be expanded to bring the Act into conformity with the Endangered Species Act and similar conservation statutes. Specifically, we suggest that in addition to prohibiting importation of birds in violation of the Act, section 11 should also proscribe the possession, delivery, carriage, transport, export, shipment, sale, or offer for sale of unlawfully imported birds. In order to facilitate effective enforcement of a statute prohibiting wildlife imports, it is usually necessary to proscribe subsequent acts involving illegally imported specimens. It will be particularly important to prohibit the transportation and sale of unlawfully imported birds, since persons other than the actual smugglers are frequently involved in these phases of the illegal transaction.

EXEMPTED IMPORTS

In addition to species on the approved list, section 12 would exempt imports of birds for certain purposes from the general import ban of H.R. 5013. Imports would be allowed for scientific research, personally owned pet birds, zoological display, and cooperative breeding programs, so long as imports would not be detrimental to the survival of the species.

We recognize the need to exempt imports of birds for certain specific purposes from the import ban. We believe that legislative history should indicate that the exemption for cooperative breeding programs should be construed broadly enough to permit reasonable imports of necessary breeding stock for avicultural operations. There is clearly a need to encourage and facilitate captive breeding efforts so that they can begin to meet the public demand for companion birds, thereby reducing the demand for smuggled birds. In addition, zoos and aviculturists can play a significant role in conservation efforts, especially if cooperative breeding programs are integrated with the recovery planning process to enhance depleted wild populations. Such breeding programs should be promoted, coordinated, and sanctioned by a recognized agency or entity with competence in the field. We therefore support the

spirit of H.R. 5013, section 15(b), which encourages the Secretary to publish regulations that "will not have the effect of deterring captive breeding of exotic birds."

CONCLUSION

The Wild Bird Conservation Act addresses an issue of vital importance to the conservation of wild birds around the world. You will find broad support for the fundamental goal of this legislation—we must halt the unsustainable trade in wild birds. We believe that the Wild Bird Conservation Act offers the best opportunity we have ever had to promote the sustainable use of wild birds and provide important incentives for conservation of their habitats. We hope you will give your favorable recommendation to this bill and pass it on to the full Senate with the few refinements we have suggested.

Thank you for the opportunity to share our views about the exotic bird trade and the Wild Bird Conservation Act. We look forward to continuing to work with your Committee to secure the passage of this important legislation.

PREPARED STATEMENT OF JAMES K. WYERMAN

On behalf of: African Wildlife Foundation; American Humane Association; American Society for the Prevention of Cruelty to Animals; Animal Protection Institute; Committee for Humane Legislation; Defenders of Wildlife; Earth Island Institute; Environmental Investigation Agency; Friends of Animals; Friends of the Earth; Fund for Animals; Humane Society of the United States/Humane Society International; International Fund for Animal Welfare; International Wildlife Coalition; Performing Animal Welfare Society; Rainforest Action Network; RARE Center for Tropical Bird Conservation; Society for Animal Protective Legislation; World Society for the Protection of Animals; and the 29 other organizations listed on Appendix I

Good morning, Mr. Chairman and members of the subcommittee. I am James Wyerman, Director of International Wildlife Trade for Defenders of Wildlife. On behalf of the 48 conservation and animal welfare organization that have called for an immediate end to the commercial trade in wild birds for pets, I am testifying in support of S. 1219 and other measures to conserve exotic wild birds. We commend the Chairman and Senator Chafee for their leadership in sponsoring legislation to redress one of the most neglected conservation issues of the past decade. We appreciate this opportunity to testify.

After a decade of well-documented reports and international condemnation of the abuses of the wild bird trade, it is imperative that we adopt legislation immediately. Our coalition, representing millions of members, believes that an immediate ban on commercial importation of wild birds is needed, as provided for in S. 1219. However, we recognize the importance of passing some legislation during this Session of Congress, and are therefore supporting a compromise bill, the Wild Bird Conservation Act, H.R. 5013 which is now moving through the House of Representatives. This bill is an important first step toward solving the problems of the wild bird trade.

We have brought a Goffin's cockatoo today, to help illustrate both why exotic birds make such alluring pets and why they are deserving of your attention and protection. This bird was bred in captivity here in the United States rather than being taken from the wild. This species has been imported from Indonesia in large numbers¹ despite a very limited range that includes only a handful of islands. It has suffered from what might be called the "Baretta syndrome," common to five cockatoo species that have become endangered largely as a result of the surge in popularity of cockatoos that followed the television show Baretta.

Showing how quickly trade can devastate wild populations, more than 70,000 of these birds were exported from Indonesia between 1983 and 1989.² As a result, experts have concluded that this species may become extinct within 5 years.³ Though

¹ A total of 6,081 Goffin's cockatoos were imported to the United States alone in 1989.

² Anon., 1992. Analyses of Proposal to Amend the CITES Appendices, p. 102. Prepared by the IUCN Species Survival Commission Trade Specialist Group, TRAFFIC, World Conservation Monitoring Center, Jan., 1992. Unpubl.

³ Anon., 1992. Proceedings of the IUCN/SSC Captive Breeding Specialist Group and the International Council for Bird Preservation Parrot Conservation Assessment Management Workshop, 14-17 January 1992. Unpubl.

recently listed for international protection from commercial trade,⁴ such protection—as so often has been the case—may come too late to save this species. Before the trade moratorium took effect in June, commercial traders were racing the clock to import as many of these birds as possible before the international ban soon takes effect. There is no justification for robbing wild bird populations for pets, since most species, like this Goffin's cockatoo, can be bred in captivity.

THE NEED FOR WILD BIRD LEGISLATION

The United States is the world's largest importer of wild birds, with more than 7.4 million birds imported between 1980 and 1991. Consumers in this country have unknowingly fueled a global pet trade that threatens the extinction of many bird species, causes the suffering or death of millions of individual birds and undermines the laws of many foreign countries. For the Goffin's cockatoo, the United States imported 68 percent of the total number of these birds which have been taken from the wild in recent years.

This is not a new problem, since we have had a decade of reports showing declining populations, high mortality and failed regulation of the wild bird trade. Tragically, this is one of the few environmental problems that offers a ready solution that would benefit consumers, pet stores, and bird breeders—as well as the birds. That solution is the prompt replacement of birds taken from the wild with birds bred in captivity, such as the one you see here, for sale as pets.

As early as 1976, a transition to captive breeding was recommended by the United States and other parties to the Convention on International Trade in Endangered Species of Fauna and Flora (CITES)⁵; yet nothing has ever been done on a national level to implement this recommendation⁶. Now is the time to act, by adopting strong legislation to end imports of wild birds to the United States. H.R. 5013, which has already been reported out of the House Merchant Marine and Fisheries Committee and the House Ways and Means Committee, has been endorsed by the administration and nearly all of the groups interested in or affected by this bill. The organizations endorsing this testimony, representing millions of members, urge this Subcommittee to adopt this bill with some strengthening amendments.

There are three pressing reasons why we need this legislation:

- Extinction: 1,000 of the world's 9,000 birds species are threatened with extinction, and the United States remains the largest importer of threatened species;
- High Mortality and Cruelty: An estimated 50–80 percent of the birds captured for the pet trade die before they reach their final destination—pet stores in importing countries;
- Failure of Regulation: The trade has proven impossible to regulate under both foreign and U.S. law, resulting in species becoming endangered, thousands of birds being treated inhumanely, and illegal trade becoming widespread.

Besides addressing these intractable problems, this Act would have the beneficial effect of promoting captive breeding in the U.S. as an alternative source of birds for use as pets.⁷ Because the cost of domestically bred birds cannot compete with the low prices of imported wild birds, commercial importers will continue to prefer wild birds at higher profit margins for however long they remain available. Breeders will not be prepared to set up large-scale breeding programs until an import ban is in effect and breeders know for sure that they will be able to sell their birds.

Increasing international support for conserving wild birds has led to many significant developments since the introduction of S. 1219 and S. 1218. Recognizing the need to protect threatened and endangered species, 83 airlines have now agreed to stop commercial shipments of wild-caught birds.⁸ Bird imports to the United States

⁴Goffin's cockatoo was placed on Appendix I of CITES, the Convention on International Trade in Endangered Species of Fauna and Flora, in March of 1992, an action which prohibits future commercial trade in this species.

⁵Established in 1973, CITES currently has Parties from 115 countries. CITES established an international system designed to prevent commercial trade in endangered species and to monitor trade in species which may become endangered unless trade is strictly regulated.

⁶New York adopted a law banning the sale of wild birds in 1984, and New Jersey adopted a similar law in August of 1991. The European Community has also adopted a system which prohibits or restricts wild bird imports on a country-by-country and species-by-species basis.

⁷Soon after Australia banned the export of its wild birds more than 30 years ago, many of their native species, such as the cockatiel, budgerigar and Gouldian finch, were commonly being bred in captivity. Similarly, pet store owners in New York found that most of the species popular as pets were still available from captive breeding sources after that State adopted a ban on wild bird sales in 1984. In both cases, the immediate prohibition on wild bird sales served as an effective incentive to begin new captive breeding operations. Consumers benefitted because captive-bred birds are widely recognized as better, healthier and tamer pets than wild-caught birds.

⁸See Appendix for complete list of airlines with such policies.

have declined by 50 percent in the past 18 months due to these embargoes without any apparent harm to U.S. pet stores.

Similarly, several of the largest pet store chains in the United States have already stopped selling wild-caught parrots.⁹ More and more pet stores are recognizing that captive-bred birds make better pets and can be sold for higher prices. Managers of these stores have learned that captive-bred birds are good for both their customers and conservation, without any adverse affects on their business. Pet stores can easily adjust to this new law, since more than 80 percent of the birds sold in this country have been bred in captivity.

Only seven commercial dealers were responsible for more than 89 percent of the total U.S. imports in 1990. These few dealers have long profited from the inhumane and destructive bird trade and only these few will be adversely affected. Notably, many of the largest bird importers are currently under criminal investigation by the Fish and Wildlife Service. This is not surprising, given the huge numbers of birds illegally imported to the United States each year.

WILD BIRDS THREATENED BY TRADE

An estimated 8 million birds are taken from the wild each year for use as pets. This trade is destroying wild bird populations at an alarming rate and is killing millions of individual birds. This is due to a variety of factors, including inadequate protection under international treaties and domestic laws, lack of enforcement of existing regulations, insufficient monitoring of wild bird populations, inhumane handling and the delicate physiology of birds. As large tracts of habitat are lost to human development, an increasing number of wild bird populations are becoming endangered. The loss of birds to the pet trade places further pressure on wild populations.

The United States imports more threatened bird species than any other country. Of the 9,200 bird species known to exist, 1,000 are now threatened due to habitat destruction, the pet trade and other factors. These threats are particularly severe for members of the parrot family, Psittacidae, which make up about 40 percent of the U.S. imports and sometimes sell for thousands of dollars apiece. Finches are the most common type of import; these small birds have little protection under international regulations and often suffer the highest mortality levels in trade.

Conservation problems are further exacerbated by the high mortality rates of birds in trade. High mortality during capture holding, transport and quarantine necessarily dictate higher numbers of birds taken from the wild to supply the trade. Between 14-20 percent of the birds imported in the past decade died en route to the United States or during quarantine, due to the stress of captivity and transport, cramped conditions, lack of adequate care in shipments, and spread of disease. These figures do not include pre-export mortality, which is estimated at fifty percent on average.¹⁰

The Moluccan cockatoo is a classic example of a species that has been decimated by the pet trade, despite the veneer of international protection (listed on CITES Appendix II since 1981). Formerly abundant throughout its limited range in Indonesia, this species was exported by the tens of thousands each year. By 1985, the Moluccan had become extremely rare in virtually all of its former range, with the exception of the virgin rain forests of the Mansuela National Park. Even this remnant population had been ravaged by trappers by 1987, when only 54 sightings were reported.

Although the European Community banned trade in that year, the United States continued to import this species in large numbers. A total of 15,749 were imported between 1987 and 1989, even though these imports exceeded Indonesian capture quotas by several thousand. Finally in late 1989 the species was placed on Appendix I of CITES, banning commercial trade. U.S. dealers continued to bring in birds right up until the last minute, importing 742 in 1990. A 1991 survey located only three pairs of birds. Finally proposed for listing on the Endangered Species Act in Decem-

⁹Petland no longer sells wild-caught parrots at any of its 130 stores throughout the United States. Similar policies are in effect at PETS MART (23 stores nationwide), Jerry's Perfect Pets (19 stores in New Mexico and Texas), and untold numbers of independent stores such as the American Bird Company in Northern Virginia and Just for Pets in Maryland. The largest pet store chain in the nation, Docket Pet Centers, recently adopted a ban on wild parrot sales at all of its company-owned stores and is in the process of extending this policy to all of its franchisees.

¹⁰The mortality level of birds in trade is greater than natural mortality. The collection of birds for the pet trade is indiscriminate, taking nestlings, juvenile and breeding-age adults and thereby placing enormous stress on wild populations. The trade does not cull the weakest birds or ones that would naturally die in the wild.

ber of 1991, a final ruling will come years too late for the Moluccan cockatoo. A 1992 survey failed to locate any birds, raising concerns that this species may already be extinct in the wild.

After the CITES ban on commercial trade of the Moluccan was adopted, dealers merely shifted to the Goffin's cockatoo, which was discussed earlier, causing a steep decline in this species in the wild. When the Goffin's was also placed on Appendix I of CITES this year, dealers again shifted to another species—the umbrella cockatoo. These shifting trade patterns are certain to recur, threatening more and more species, unless a complete ban on commercial imports is adopted.

Many other species continue to be imported in high numbers despite the absence of any data on the ability of wild populations to sustain such trade. Only a ban on imports will conserve these species. This approach is fully consistent with the requirements of CITES for listed species—commercial trade is not supposed to occur unless the exporting country has documented scientifically that the species being exported is not threatened by such trade.

Another conservation problem is the killing of rare birds not intended for trade as an inevitable by-product of the crude capture techniques. Neil Baker, a representative for the International Council on Bird Preservation, states that in Tanzania:

There is almost no control over the areas in which trapping is permitted. To obtain such species as Green-backed Twinspot and Tambourine Dove, mist nets are placed in forests which also contain rare and endemic species. Many of these are not attractive and therefore not traded. Instead they are eaten or discarded, often in damaged condition.¹¹

Proponents of the trade in wild birds claim that the trade can operate to preserve habitat and promote conservation by providing economic incentives. While considerable comment has been generated internationally on the potential conservation benefits of sustainable utilization of wildlife resources, there are as yet no documented cases where utilization of exotic birds for export has contributed in any way to the conservation of species or its habitat and the maintenance of biological diversity. Instead, the trade has caused both the depletion of species and the destruction of habitat.

According to a 1991 report by Argentinean scientist Dr. Enrique Bucher, about 100,000 trees were damaged or destroyed between 1981 and 1989 as a direct result of the collection of one species, the blue-fronted amazon parrot. This practice left more than 95 percent of the nest sites unusable for future nesting. The effects of this eradication are not fully known, but trappers have said that birds are becoming harder to find in areas where this capture method has been used.

A Federal ban on commercial imports is needed to prevent other species from going the way of the Moluccan cockatoo and blue-fronted amazon. As with many other species, protection under CITES has not been enough to ensure their survival.

INHUMANE TREATMENT OF BIRDS IN TRADE

Another problem with the trade in exotic wild birds is the inhumane treatment of millions of birds. More birds will die than survive before reaching their final destination—pet stores in importing countries. Death occurs during each stage of the trade: capture, holding for export, transit, quarantine, and awaiting sale in the pet store. Sale prices for wild birds are adjusted to allow dealers to profit despite shockingly high mortality rates.

Studies have been conducted on the capture of wild birds and their treatment prior to their export from various countries in Africa, Latin America and Asia. These studies have come to similar conclusions: an estimated 50 percent of the captured birds die prior to export and their treatment during capture and holding for export is unregulated in terms of humane standards.¹²

Mortality figures cited by foreign governments and exporters are often low and do not take into account the mortality suffered by species that are not traded. As stated by Neil Baker in Tanzania:

There is no doubt that the mortality rates being quoted are far too low. Trappers use mist nets and lime indiscriminately. Our investigators have seen hundreds of dead birds in mist nets and many more damaged from liming, being released only to die within a short period.¹³

¹¹Letter from Neil Baker, ICBP Tanzania Representative, to Kimberly Young, ICBP Pan America Representative, October 30, 1991.

¹²Greta Nilsson, *The Bird Business*, Washington, D.C.: Animal Welfare Institute, 1981.

¹³Supra, note 11.

Once captured, birds are often fed inappropriate food by the trappers, and many of the birds succumb to the stress of captivity and disease within a few days of capture. Captured birds may then be transported long distances to holding facilities where they await export. The crates in which birds are carried are often overcrowded and poorly ventilated, and do not have adequate food and water. Conditions in export facilities are often unregulated, and some facilities—such as those in Senegal—are crowded with up to 200,00 birds at a time.¹⁴

Suffering from dehydration, starvation, heat exhaustion, and injury, the surviving birds are loaded into airline cargo bays for transport to the United States. Overcrowding, extreme temperatures and the stress of captivity cause thousands of birds to die during transit to the United States. Upon arrival, birds have been found crushed to death on the bottom of crates or drowned in water containers.

Despite regulations adopted by the International Air Transport Association intended to minimize mortality during transport, large numbers of birds continue to die in consignments. Seven separate shipments in 1989 had over 1000 birds dead in each shipment.¹⁵ Airlines that have banned the commercial shipment of wild birds admit that shippers rarely follow the international regulations and that, even under good transport conditions, mortality can be high.

Birds imported to the United States are quarantined to prevent the spread of disease to poultry and humans. Ironically, disease may spread when birds from different countries are quarantined in the same station simultaneously. At private quarantine stations, overcrowding and unsanitary conditions are typical—and often fatal. In 1989, of the total 461,861 birds imported, 4 percent were dead on arrival and 10 percent died in quarantine.¹⁶

TRADE WITHOUT REGULATION

Wild populations of many species are declining because of over-trapping and many species may soon face extinction if new controls are not adopted. Neither U.S. laws, foreign export bans, international treaties, nor voluntary airline regulations have been able to stop the abuses of the wild bird trade.

Current domestic laws are inadequate because the heavily traded and threatened species are not listed under the Endangered Species Act and their importation cannot be strictly controlled under the Lacey Act.¹⁷ The listing process under the Endangered Species Act (ESA) is too slow to prevent species from becoming endangered while waiting for listing.¹⁸ Although 27 species of parrots are currently listed as endangered under the ESA, only one parrot species—the red-tailed parrot—has been added to the endangered and threatened list within the past five years.

None of the parrots added to Appendix I of CITES within the past five years has yet been added to the ESA list, and numerous species are waiting to be listed. Species awaiting listing include such birds as the hyacinth and scarlet macaws, Moluccan cockatoo and Tucuman amazon. For these four species, capture for the pet trade is indicated as a principal reason for their decline in the wild.

Although the Lacey Act already prohibits the importation, sale, purchase or acquisition of wildlife taken in violation of foreign laws and treaties, this prohibition is impossible to enforce. Illegally traded birds often enter the domestic market before violations can be verified. Up to one-third of the birds imported to the United States are estimated to be imported illegally.

Prior regulatory attempts by exporting countries and the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) have proven futile, in the face of the lucrative U.S. market for wild birds. CITES established an international system designed to prevent commercial trade in endangered species and to monitor and control trade in species which may become endangered unless trade is strictly regulated. But CITES regulations designed to protect bird species are being

¹⁴Peter Knights and D. Currey, "Will Europe Ban Wild Bird Imports?," in *Defenders*, Washington, D.C.: November/December 1990.

¹⁵Nilsson, 1989. *Importation of Birds into the United States 1989*. *Defenders of Wildlife*, Washington, D.C.

¹⁶Id.

¹⁷The Animal Welfare Act requires the Department of Agriculture to promulgate regulations to protect the welfare of warm-blooded animals in commerce, but birds have to date been excluded from the regulatory definition of "animal" and therefore from the scope of these regulations.

¹⁸According to a recent *Defenders of Wildlife* report, *Saving Endangered Species*, 3,600 candidate species are now awaiting listing and more than 300 of these "candidates" have been declared extinct since 1984.

widely ignored by exporting countries and bird dealers, who continue to capture and sell thousands of protected birds without complying with CITES requirements.

Several of the major exporting countries have to date failed to adopt CITES implementing legislation. Three of the largest bird exporters, Senegal, Tanzania and Guyana have not even designated a Scientific Authority to make the scientific "non-detriment" findings required by CITES as a prerequisite to allowing commercial trade. Under Article IV, commercial trade in species listed on Appendix II (which includes the entire parrot family, except for three species) is prohibited unless the Scientific Authority of the exporting country has made a finding that such trade would not be detrimental to the species being exported. In addition, trade must be controlled at levels which allow the species to be maintained throughout its range and well above the level at which the species may become eligible for inclusion in Appendix I.

In practice, many species of birds are being exported without conducting the necessary population studies and without any scientific information on whether wild populations are able to sustain current trade levels. Even when exporting countries have fixed export quotas for certain species, the quotas have not been based on scientific information and have routinely been exceeded. Permits are often granted without making any effort to determine whether the requirements of the treaty have been satisfied. Major smuggling rings, involving forged CITES permits in Tanzania and Argentina, have recently been uncovered. Recognizing the pervasive illegalities in Tanzania, the CITES Secretariat has now advised importing parties not to accept as valid any permits issued by that country unless those permits have been verified by the Secretariat.

The United States is not the only country that is seeking to curb the abuses of the wild bird trade. The European Economic Community has long banned imports from particular problem countries and the European Parliament recently went even further in passing a resolution calling for a ban on all wild bird imports. A minimum of 45 countries, including the United States, United Kingdom, Brazil, Mexico, and Venezuela, have banned the commercial export of their wild birds.

Yet hundreds of thousands of birds are still being exported to the United States from the few countries which still remain open to the trade.¹⁹ These countries also serve as staging areas for the export of birds extracted illegally from neighboring countries where export has long been banned. When such birds are imported to the United States, it is a clear violation of the Lacey Act.

For example, one study reported that at least 50,000 Venezuelan parrots were illegally shipped out of the adjoining country of Guyana during a single trading season.²⁰ Similarly, Senegal—the world's largest exporter of birds—exported 5,925 African grey parrots to the United States in 1989 even though this species is not native to that country. Through this universal subterfuge, Venezuela loses its birds through Guyana; Gambia loses its birds through Senegal; and similarly Brazil, Bolivia and Paraguay lose their birds through Argentina.

On average only 25 percent of incoming bird shipments are inspected, and even these are not always properly identified by species or exporting countries. In fact, 42 percent of the total imports in 1989 were imported without any identification of their species. Identification is often difficult—if not impossible—due to the limited training of inspectors, the similar appearance of many species, changing coloration of immature plumage, and the combined difficulties of distinguishing different species. Worse, dealers sometimes dye birds and cut tail feathers to mislead inspectors.

BILLS RELATING TO THE WILD BIRD TRADE

Two bills were introduced in June of 1991, S. 1218 and 1219, and, although these bills differed in detail, both called for an end to the commercial importation of all wild birds and the substitution of captive-bred birds to supply the pet market. Over 200 conservation and humane groups endorsed S. 1219, which provides for an immediate ban on commercial imports, strictly controlled exceptions, and no preemption of State laws.

S. 1219, the Wild Bird Protection Act, would immediately ban the commercial importation and sale of wild-caught birds, require marking of non-exempt bird species sold in the U.S., and require licensing of persons who import birds or buy wild-caught birds. Continued importation of birds would be allowed for purposes of zoo-

¹⁹In recent years, the countries exporting the largest numbers of wild-caught birds to the United States were Senegal, Argentina, Tanzania, Indonesia, Cameroon, and Peru.

²⁰Desenne & Strahl, 1991. Trade and the conservation status of the family Psittacidae in Venezuela, *Bird Conservation International* 1:153-169.

logical exhibition, scientific research, and captive-breeding. S. 1219 would implement the CITES treaty and ensure the conservation of wild avian populations by allowing the sale of only captive-bred birds for pets. The Wild Bird Protection Act does not prevent current bird owners from keeping or selling their previously purchased birds.

This bill would also reduce smuggling of wild birds by requiring that birds sold in commerce be marked in a way that best enables enforcement officials to identify wild-caught birds and for consumers to identify captive-bred birds. Without an enforceable system for identifying both captive-bred birds and wild-caught birds, consumers may inadvertently support the illegal wild bird trade by purchasing smuggled birds laundered through pet stores.

Another bill, S. 1218, Exotic Bird Conservation Act, would have allowed a five-year phase-out of the trade and does not provide adequate protection for bird species endangered and threatened by the trade. A prolonged phase-out period would benefit only the 7 dealers who were responsible for 89 percent of the birds imported in 1990, while risking bird populations that may not be able to sustain 5 more years of trade. S. 1218 also would have allowed unlimited imports for captive breeding purposes, and would have made marking wholly voluntary—an unenforceable proposition.

Recently, the House Merchant Marine and Fisheries Committee and the House Ways and Means Committee marked-up and reported out the Wild Bird Conservation Act, H.R. 5013. This is the successor bill to H.R. 2540 and H.R. 2541, the House companion bills to S. 1219 and S. 1218, respectively. H.R. 5013 is designed to ensure that U.S. commercial trade in wild birds is not detrimental to species in the wild and is conducted in a humane and sustainable manner.

My comments will be directed primarily to H.R. 5013, as reported by the House Committees, since this compromise bill offers the best prospect for passage during this Session of Congress. H.R. 5013, based on a draft by the Fish and Wildlife Service, is now supported by a wide variety of groups, including representatives of the pet industry, bird breeders, conservation and scientific groups, and animal welfare groups.

RECOMMENDED AMENDMENTS TO H.R. 5013

All of the organizations supporting this testimony support H.R. 5013, but strongly urge this Subcommittee to adopt the following amendments, which would enhance the intended conservation effect of this bill.

1) The Federal law should not preempt more stringent State laws.

A new Section 13 (f) should be added on page 21, line 9, as follows:

(f) This Act does not preempt any State law which is more stringent than this Act and the regulations adopted under this Act.

A Federal law regulating the importation of wild birds is likely to preempt State laws on the same subject matter unless an amendment is included which shows a clear intent not to preempt. State laws that have already had a beneficial effect in reducing the sale of wild birds should not be preempted. Allowing stricter State laws would be fully consistent with virtually all of the other major Federal environmental acts, including those regulating clean air, clean water and endangered species. Moreover, protecting both poultry and consumers from the potential hazards of wild-caught birds is a matter that should remain open to further State regulation, in the interests of protecting public health and consumer protection.

States such as New York and New Jersey, which have already adopted strong State laws in this area, should not be forced to abandon established regulatory regimes that have had positive impacts in both conserving wild birds and helping consumers.

2) Bird species identified as significant trade species should be included in the immediate moratorium (Section 5(a)).

It is crucial that all birds identified by CITES as significant trade species be immediately banned from trade. Significant trade species are by definition subject to the highest levels of trade and so are likely to suffer the greatest conservation problems due to the trade. H.R. 5013 places an immediate moratorium only on the "Category B" species, a list of ten species for which the trade has clearly been shown to threaten their survival. And unfortunately for one Category B species, the red-vented cockatoo, protection may have come too late in light of reports that it may already be extinct in the wild.

Conspicuously omitted from the immediate moratorium are many more CITES species which are being traded in significant quantities, despite the absence of scientific evidence that the species can survive such trade levels. For these species, past experience shows that there is likely to be a detrimental effect as a result of the

uncontrolled trade. As previously discussed, trade in these CITES Appendix II species without proof that such trade will not threaten survival of the species is a clear violation of Article IV of CITES.

Limiting the moratorium to Category B species falls short of implementing the requirements of CITES and therefore puts several species at serious risk. Because of inadequate information on effects of trade and/or population status for Categories C, D, and D* species, these birds arbitrarily have been denied the protection under H.R. 5013 that theoretically already exists under CITES.

The case of the Tucuman amazon shows why these heavily traded species warrant protection even though proof of adverse trade effects may be incomplete. For several years, this species was listed as a significant trade species for which there was insufficient information on which to base a judgement, up until the time when it was put on CITES Appendix I, banning all commercial trade. At the time it was listed on Appendix I, population levels had declined to an estimated 1,000 to 10,000 birds. H.R. 5013 allows trade to continue for one year in species in the same category which the Tucuman's was in, an approach which may lead to extinction in the wild.

In the most recent report to the CITES Animals Committee regarding the CITES significant trade species,²¹ several interesting comments appear with regard to species that are not currently included in Category B. The following are examples of highly threatened species that are now listed as Category C, meaning that the impact of current trade levels and/or conservation status is insufficiently known:

- Blue-streaked lory—With a very limited range of only a few Indonesian Islands, and no conservation measures in effect, Indonesia nonetheless allows an annual harvest quota of 2,000. These quotas are often exceeded. "No information has been provided explaining the basis for setting the quotas; . . . population surveys are not carried out."²² Listed as globally threatened by the International Council on Bird Preservation.

- African grey parrot—" . . . certainly rare or uncommon in some countries . . . and has probably decreased in some areas in most countries;" in Cameroon, trappers state that "they needed to go progressively further to catch the numbers they required;" in Ghana, "uncommon and locally distributed, illegal export having greatly reduced the population;" in Nigeria, "now considered to be rare and threatened;"²³ Senegal exports several thousand each year, even though the species is not native to Senegal; such exports raise serious questions on the likelihood of a high volume of illegal trade.

- Chattering lory—"levels of trade . . . ranged as high as 7,909 in 1983," despite limited range in northern Malaku Islands of Indonesia; export quota fixed at 5,900 for 1991 though no population studies have been done to assess ability of the wild population to sustain this level of trade."²⁴

For all of these species and others not meeting the unduly narrow definition of Category B species, H.R. 5013 would fail to accord the immediate protection from trade which is needed to ensure their survival as a species. Clearly the CITES requirements are not being met for most of the listed species now being traded commercially in significant numbers.

Although H.R. 5013 does create emergency powers for the Secretary to suspend trade in those species which are deemed to be most threatened by the trade, there is no assurance that this authority will be invoked in time to save these threatened species. Because of serious declines in wild populations of significant trade species and high commercial trade levels, these species deserve immediate protection under H.R. 5013. Trade should be disallowed unless it would meet the criteria established in H.R. 5013 for Approved Species. This approach is fully consistent with the requirements of CITES Article IV and with the proposal submitted by the U.S. Government at the Eighth Conference of the Parties to CITES, to suspend trade in all of the significant trade species.

3) Omit the word "breeding" from Sec. 12 (3), line 10.

Section 12 (4) properly allows an exemption from the import moratoriums for cooperative breeding programs, provided that the programs meet certain minimal criteria. The exemption allowed in Section 12 (3) for "zoological breeding" is not needed since any breeding for zoological purposes is already covered under subsec-

²¹ Anon., 1991. Review of Significant Trade in Animal Species Included in CITES Appendix II, Draft Report to the CITES Animal Committee, Prepared by the World Conservation Monitoring Centre, IUCN/SSC Trade Specialist Group, TRAFFIC. Unpubl.

²² Id.

²³ Id.

²⁴ Id.

tion (4). Subsection (3) should be amended to refer only to "zoological display programs" or "zoological exhibition."

The current reference in subsection (3) to zoological breeding is confusing and problematic in its implication that zoological breeding under (3) may not be subject to the same standards for cooperative breeding under (4). Clearly zoological breeding programs were intended to be covered under (4), as evidenced by the reference in subsection 12(4)(B) to zoological organizations. This apparent error appeared only in the most recent draft and is not consistent with any of the previous bills, produced after extensive negotiations among a wide variety of interest groups.

4) Biennial review of trade in non-CITES species should be required.

Section 8(a)(1) requires the Secretary to "review periodically the trade in species of exotic birds that are not listed in any Appendix to the Convention." To ensure that this important duty is carried out with some minimum regularity, this section should be amended to require such review on no less than once every two years.

5) A citizens suit provision should be added.

A citizens suit provision, comparable to that provided for in the Endangered Species Act or S. 1219, Section 10, should be included in H.R. 5013. Given the extremely limited enforcement resources of FWS, citizens suits for injunctive or other relief should be available to ensure that the purposes of this Act are met. This would also ensure that private parties would be afforded relief if the Secretary fails to implement this Act.

6) Other provisions

One provision of H.R. 5013 is very important and should not be subject to any weakening amendments. The current wording of the criteria for listing species on the approved list will be effective in limiting the exceptions to those species which are subject to a management plan that conserves the birds and their welfare, while preventing illegal or unsustainable trade. These criteria should be applied by the Secretary of the Interior as mandatory requirements, rather than discretionary guidelines.

Furthermore, exporting countries that continue to engage in the wild bird trade must be required to meet all of the applicable provisions of H.R. 5013. Otherwise, unregulated trade will continue, causing detriment to wild populations, cruel treatment of birds and even more illegal trade. Strict enforcement of this law will aid the conservation efforts of the many countries which have already banned the export of their native birds.

H.R. 5013 now provides for a three-tiered system, with an immediate ban taking effect for the most threatened species, a ban after one-year on CITES species²⁵, and restrictions on non-CITES species after the Secretary makes findings within some indeterminate time. The coalition in support of S. 1219 remains concerned that treating non-CITES species differently fails to accord adequate protection to these species. Trade in non-CITES makes up a significant part of the total U.S. imports and includes some of the species that are subject to the highest mortality levels. Another problem is that unless all bird species are accorded the same level of protection, commercial trade may shift to new species or species previously not traded in large numbers. This has often occurred in the past, after commercial trade was banned by listing particular species on Appendix I.

Treating non-CITES species differently will also create intractable enforcement problems. As previously noted, only 25 percent of incoming bird shipments are inspected, on average, by the Fish and Wildlife Service. Non-CITES and CITES birds are often shipped together, crowded by the hundreds into small cages. Even ornithological experts would have difficulty identifying all of the more than 700 species that have been imported in recent years. Poorly trained FWS inspectors have little hope of identifying the many look-alike species, particularly when they show only their juvenile plumage. This enforcement obstacle is well illustrated by the fact that 193,477 (42 percent of total imports) were imported in 1989 without their species being identified on their quarantine forms. Of these unidentified birds, 4,522 belonged to families of birds that include CITES-listed species.

For all of these reasons, the coalition in support of S. 1219 remains very concerned about the practicality of treating non-CITES species differently in implementing the stated purposes of this Act.

ADOPT H.R. 5013 WITH AMENDMENTS

Although the United States has long banned the collection, sale or export of our own native bird species, our current commercial practices encourage the taking of

²⁵ Unless this species has been placed on the Approved List pursuant to Section 6.

wild birds from foreign countries even when many of those countries have also imposed their own export bans. This inconsistency and the environmentally unsound practices of the wild bird trade can be ended by enacting legislation parallel to H.R. 5013 without delay.

In order to prevent further endangerment of wild bird species, stop the shockingly inhumane treatment of wild birds in transit and create an enforceable system of regulation, the aforementioned groups strongly urge this Subcommittee to adopt legislation parallel to H.R. 5013 with the suggested amendments. Thank you, Mr. Chairman.

APPENDIX I—LIST OF ORGANIZATIONS SUPPORTING THIS TESTIMONY

Action for Animals' Rights (CA)
 African Wildlife Foundation
 Albert Schweitzer Council on Animals and the Environment
 American Humane Association
 American Society for the Prevention of Cruelty to Animals
 Animal Advocates of Iowa
 Animal Care and Welfare/SPCA (PA)
 Animal Legal Defense Fund
 Animal Lifeline of Iowa
 Animal Protection Institute
 Animal Protection League of Johnson County (IA)
 Animal Protection Society of Iowa
 Animal Rights Information Service, Inc. (NY)
 Blackhawk Humane Society (IA)
 CEASE
 Committee for Humane Legislation
 Defenders of Wildlife
 Earth Island Institute
 Environmental Investigation Agency
 Friends of the Earth
 Franklin County Animal Shelter
 Friends of Animals
 Fund for Animals
 Haven Humane Society
 Humane Education Network
 Humane Society of the United States/Humane Society International
 Hunterdon County SPCA (NJ)
 Humane Society of Harford County (MD)
 Humane Society of Larimer County (CO)
 International Fund for Animal Welfare
 International Wildlife Coalition
 Iowa Alliance for Animals
 Iowa Federation of Humane Societies
 Iowa State Humane Society
 Johnson County Humane Society
 Massachusetts Society for the Prevention of Cruelty to Animals
 Pennsylvania Raptor and Wildlife Association
 People for the Ethical Treatment of Animals
 Performing Animal Welfare Society
 Rainforest Action Network
 RARE Center for Tropical Bird Conservation
 Society for Animal Protective Legislation
 SPCA of Ann Arundel County (MD)
 SPCA Serving Erie County (NY)
 University of Iowa Animal Coalition (IA)
 Washington Humane Society
 Women's Humane Society of Philadelphia
 World Society for the Protection of Animals

APPENDIX II—AIRLINES WHICH HAVE ADOPTED POLICIES PROHIBITING SHIPMENTS OF
EXOTIC WILD-CAUGHT BIRDS FOR THE PET TRADE

Aer Lingus	Garuda Indonesia
Aerolineas Argentinas	GB Airways
Aerovias Venezolanas S.A.	HeavyLift Cargo Airlines
Air Algerie	Iberia *
Air Bridge	Iceland Air
Air France	Japan Airlines
Air Jamaica	Japan Air Systems
Air Mauritius	KLM Royal Dutch Airlines
Air New Zealand	Korean Air
Air Niugini	Ladeco S.A.
Air United Kingdom	Lan Chile Airlines
Air Zimbabwe	Lauda-air
Alitalia	LOT Polish Airlines
All Nippon Airways	Lufthansa German Airlines
ALM Antillean Airlines	Maersk Air Ltd.
American Airlines	Malaysia Airlines
Arrow Air	MALEV Hungarian Airlines
Austrian Airlines	Martinair Holland N.V.
AVIANCA	Mexicana Airline
British Air Ferries	Northwest Airlines
British Airways	Olympic Airways
British Midland	Pakistan International Airlines
Britannia	Pan American World Airways
BWIA International Airline	Philippine Airlines **
Canadian Airlines International	Qantas ***
Cathay Pacific Airways	Royal Jordanian Airline
Challenge Air Cargo	Sabena World Airlines
China Airlines (Taiwan)	Scandinavian Airlines System
Cimber Air Ltd.	Singapore Airlines
Continental Cargo	South African Airways
CSA Czechoslovak Airlines	Swissair
Dan-Air	TACA International Airlines
Dannair Ltd.	TAP Air Portugal
Danzas Corporation	Thai Airways
Delta Air Lines	Trans World Airlines
DHL	Turkish Airlines Inc.
Egypt Air	United Airlines
El Al Israel Airlines	US Air
Emirates Sky Cargo	Varig
Ethiopian Airlines	VIASA
Federal Express	Virgin Atlantic
Finnair	

* Partial ban only: Applies to all birds listed as CITES Appendix I, II, or III

** Ban applies only to the United Kingdom

*** Ban on carriage of all species of native wild birds from Australia and all other countries on its flights.—July 1992

PREPARED STATEMENT OF N. MARSHALL MEYERS

Mr. Chairman and members of the subcommittee, my name is Marshall Meyers, General Counsel of the Pet Industry Joint Advisory Council (PIJAC). PIJAC is a national trade association representing the leading pet industry retailers, distributors, animal importers and breeders, and manufacturers. PIJAC's membership consists of more than 2,000 businesses and individual members as well as 34 affiliated pet trade associations and bird, fish and reptile hobbyist organizations.

We are here today to discuss the issue of the future regulation of the importation of wild-caught birds. S.1218 and S. 1219 have been introduced in the Senate, while H.R. 5013 is the bill upon which the House of Representatives is working. Since H.R. 5013 represents somewhat of a consensus on the issues presented, we will today comment on the terms of this proposal. ¹ To a large extent, as noted below, most of

¹ For purposes of these Comments, the June 30, 1992, version of H.R. 5013 is used as a reference point.

PIJAC's concerns with pending legislation can, we believe, be handled by appropriate language in the Report accompanying the final bill. Such a method of proceeding will obviate the need for any substantial change in H.R. 5013 itself.

INTRODUCTION AND BACKGROUND

Exotic birds have played an important role in society as companion pets for thousands of years. Now, however, pressures on wild avian populations and their habitat, as well as inadequate regulation in a number of exporting countries, require new approaches to enhance conservation and humane treatment of wild-caught birds. Improved regulatory mechanisms here and abroad, incentives to increase captive breeding, and increased pet industry involvement in conservation management, are all objectives of a responsible pet industry.

In order to achieve these goals, PIJAC, the largest pet industry trade association in the world, has actively participated in the Cooperative Working Group on Bird Trade convened by the World Wildlife Fund²; serves as a Non-Governmental Observer at Conferences of the Parties of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); and provides funding to the International Union for the Conservation of Nature (IUCN) for studies to better understand the issues involved in the trade of exotic species.³ PIJAC has sought, and continues to seek, adoption of a rational, comprehensive Federal approach to improving regulatory mechanisms governing the international trade in wild-caught birds for pets.⁴ PIJAC, through its support of CITES and the World Conservation Strategy, recognizes the necessity of working with conservation and humane communities to develop and implement new methods to achieve these objectives.

In March 1992, Traffic International, a unit of the World Wildlife Fund, published a 165 page treatise which analyzed the wild bird trade in the five largest exporting countries—Argentina, Guyana, Senegal, Tanzania, and Indonesia.⁵ This study includes a detailed management framework for the wild bird trade, a framework which would permit continuation of trade subject to specific guidelines and improved regulation.

The proposed Wild Bird Conservation Act of 1992, H.R. 5013, strives to achieve these objectives and, with the changes suggested herein, deserves the support of this Committee. PIJAC strongly believes that a restructuring of the existing regulatory mechanism governing the importation of wild-caught birds will assist the implementation of CITES and will provide better incentives for those nations in the underdeveloped world that desire to rationally utilize their renewable natural resources under sustainable use development.

Therefore, PIJAC's members advocate utilization of sustainable, renewable wildlife resources. We also advocate improved and innovative legislation which not only provides incentives for species habitat conservation, but also establishes components of a management program in a range State desiring to utilize its renewable resources. Such components include:

- Monitoring
- Export and import controls
- Animal welfare standards and,
- Local community benefits.

These principles—the economic and conservation benefits of wildlife utilization, and the non-detrimental effects of limited harvesting—apply equally to the use of birds, mammals and reptiles as to the management of fishery, game birds, and fur bearing animals. In fact, there is a greater need to realize the less obvious potential of the smaller fauna.

Moreover, the assurance of humane care in the importation of wild birds requires reasonable laws and regulations. For example, the U.S. Fish and Wildlife Service as well as the international airline community (IATA) have adopted regulations on the

²The work product of this Working Group forms the basis of many concepts found in H.R. 5013 and S. 1218, the Exotic Bird Conservation Act of 1991.

³PIJAC representatives also serve on the IUCN Working Group preparing a policy for sustainable use of wild species, the IUCN/SSC Specialist Group on Sustainable Use of Wild Species, the IUCN/SSC Trade Specialist Group, the CITES Humane Transport Working Group, and the CITES Animals Committee. PIJAC has also participated in CITES' study on significant trade in Appendix II Species since its inception in 1983.

⁴A Federal approach is absolutely necessary to avoid an uncoordinated proliferation of State regulations which will necessarily run counter to the national and international policies of the United States as embodied in the various international agreements and treaties.

⁵Perceptions, Conservation and Management of Wild Birds in Trade, Jorgen B. Thomsen, Stephen R. Edwards, Teresa A. Mulliken, March 1992.

humane transport of wild birds entering the United States,⁶ and the U.S. Department of Agriculture quarantine rules are specifically designed to screen imported birds to prevent the introduction of diseases lethal to poultry.⁷

For H.R. 5013, or any other bill, to be effective, the listing criteria must be clear, reasonable and attainable. The period to convert, and the method for converting, to any new system must be carefully analyzed to ensure that (1) it can be achieved within the time period prescribed, (2) it provides for an orderly transfer by an industry which has already been crippled by the failure of airlines to abide by their common carrier obligations to carry legal bird imports, and, (3) underdeveloped nations desiring to continue to engage in sustainable use of their wildlife are provided an opportunity to meet the criteria being imposed by the United States. Furthermore, H.R. 5013 must be sufficiently flexible to ensure aviculture access to breeding stock and, most importantly, to ensure that restrictions are not imposed which are more stringent for captive bred progeny than for wild-caught birds.

THE PROPOSED LISTING MECHANISM FOR CONTINUED IMPORTATION OF WILD-CAUGHT
BIRDS IS REASONABLE AND PRAGMATIC

Sections 6 and 8 of H.R. 5013 would establish listing mechanisms for approving certain bird species for which importation could continue for any purpose including the pet market. Section 6 calls for establishment of a "clean list" for CITES-listed species while Section 8 would establish a "dirty list" for non-CITES species. The list of approved CITES species—Section 6(a)—would include CITES species which the Secretary has determined meet certain criteria. All non-CITES species could be imported unless the Secretary imposes a restriction after considering other criteria set forth in Section 8. Exemptions for prohibited species would be available under Section 12 for certain uses, including captive breeding. This approach provides a pragmatic solution so that sustainable use can continue without undue and burdensome regulation.

Birds appearing on the CITES appendices would undergo Departmental review prior to being added to the U.S. "clean list". The criteria applied by H.R. 5013 call for United States review of the exporting nation's management programs, including CITES' compliance, as a condition precedent to accepting CITES birds with CITES export documentation. The approach taken by H.R. 5013 in implementing this concept, however, creates several peculiar anomalies.

First, Article VII of CITES, and the Resolutions adopted by the Parties, encourages captive breeding of Appendix I Endangered Species.⁸ Progeny produced from such birds are treated under the Treaty as if regulated under Appendix II⁹, thus allowing international trade in such offspring. Any legislation passed by the United States Congress must follow the same approach. The new Section 7 with respect to qualified breeding facilities would appear to achieve this objective.

The second anomaly involves the manner in which species listed under CITES Appendix III would be handled. Unlike species listed under Appendices I and II which undergo CITES' review, Appendix III species are listed by a CITES Party to assist the listing Party's domestic controls. The listings are not subject to CITES' review to determine the biological or trade status of the species. Thus, numerous species are listed on Appendix III simply as a convenience to one country while the same species is abundant and in some instances treated as a pest species in other countries. Therefore, to avoid unwanted and unnecessary regulatory review, at the very least, it should be made clear in the Report language that with respect to Appendix III species, any review should be less rigorous than for Appendix II species.

Therefore, PIJAC submits that the legislative history must clearly reflect the need to differentiate between (1) Appendix II species and Appendix III species. To do otherwise, would distort the objectives of the Act by prohibiting imports which are

⁶Indeed, the transport mortality statistics for bird shipments over the past ten years have declined significantly from 7.2 percent in 1982 to 3.7 percent in 1989, the last normal year before airline embargoes. Similarly, the quarantine process has improved to reduce mortality. Yet, in response to "social" pressure from animal rights activists, airlines around the world have abandoned their common carrier obligations by individually and with conscious parallelism refusing to carry wild-caught birds—even though there is no U.S. or international ban on this trade. Also see, 50 CFR Part 14.

⁷USDA bird quarantine regulations appear in 9 CFR Part 92.

⁸CITES Appendix I lists species classified as endangered. Wild-caught birds on Appendix I may not be traded in international commerce for commercial purposes. Appendix I species and captive bred offspring thereof may be traded domestically under CITES and Federal law.

⁹CITES Appendix II lists species not presently endangered, but which may become so unless trade is strictly regulated. Export permits are required when the exporting country finds that trade in the particular species is nondetrimental to survival of the species in the wild.

legitimate under CITES and which should be available to the trade. Moreover, the Department should be directed to implement these provisions in a fair and equitable manner and to insure that such implementation is not used as an indirect ban on trade.

AN ORDERLY TRANSFER TO THE NEW MECHANISM IS ESSENTIAL

As a practical matter, implementation of the listing process will necessarily impose a substantial burden on the Secretary. The time involved to obtain data, to consult with range States, and to comply with the public notice and comment procedures will be substantial. It probably cannot be effectively achieved within six months, nine months or even a year. The Secretary would be required to review CITES Parties' management plans and other data to ensure "the ability of the country of origin to implement the Convention. . . ."

With respect to non-CITES species, the Secretary would have to review data as to species population, species uses, disease, predation, and other factors possibly detrimental to the survival of the species, as well as the adequacy of the regulatory and enforcement mechanisms in every country where the species is found, even countries not exporting the species. Most of these species have been subjected to the CITES Significant Trade analysis and were not categorized as problem species.

Therefore, the Secretary must be provided adequate time to review the CITES species and to determine which species presently allowed in trade could no longer be traded to the United States. To properly implement the new mechanism with respect to non-CITES species, the Secretary should be required to review within a prescribed time period those species to determine which species might require remedial measures (quotas, moratoria, transport restrictions, etc.) even though the CITES review process has not identified them as a problem species. The 12-month period presently contained in H.R. 5013 may not be sufficient. If the 12-month period is retained, therefore, the Report accompanying this legislation should make it clear that the Secretary must act expeditiously to meet the required deadline.

THE LISTING CRITERIA

Conceptually, PIJAC supports establishment of meaningful criteria for assessing the population and ensuring that the exporting country does in fact have in place a management program which monitors trade, evaluates population changes and provides incentives for conservation and benefits the local people. The important point from a legal and administrative perspective is that the harvest is from a site-specific population and any assessment must focus on that population, and not on the entire range of the species. PIJAC submits that H.R. 5013 effectively accomplishes these objectives.

EXEMPTED IMPORTS UNDER SECTION 12

Section 12 provides exemptions for importing species otherwise banned. Imports would be allowed for scientific research, personally owned pet birds, zoological display, and cooperative breeding programs, only if such imports would not be detrimental to the survival of the species. Captive breeding per se would be limited only to those circumstances where the breeding programs are "designed to promote the conservation of the species in the wild by enhancing the propagation and survival of the affected species."

Exemptions are clearly warranted to ensure that genetic diversity can be maintained by private aviculturists and to encourage captive breeding in commercial quantities so as to reduce the demand for wild-caught specimens of species which fail to meet the criteria in Sections 6 and 8. In addition, PIJAC submits that the legislative history should clearly indicate that the cooperative breeding program exemption allow for reasonable imports of breeding stock. Absent access to such birds, it is unlikely that a sufficient number of birds not appearing on the clean list could be bred in commercial quantities to meet the public demand. Smuggling will inevitably result.

IMPORTATION OF CAPTIVE-BRED BIRDS FROM QUALIFYING FACILITIES

Section 7 of H.R. 5013 now provides for the importation of captive-bred birds from qualifying facilities. PIJAC supports this concept.

At the same time, the legislation (or at least the Report accompanying the final bill) must make it clear that small breeders operating qualifying facilities should be permitted to export to the United States through third parties. Obviously, such third party exporters would have to submit documentation demonstrating that such birds originated in a qualified facility. Furthermore, any fees imposed for processing

requests for qualifying under Section 7 must take into account the size and financial ability to pay of such small breeders. This mechanism is the only economically viable way for small breeders to be able to sell their birds for the United States market.

CONCLUSION

H.R. 5013 is a significant step forward in resolving the complex issue of trade in wild-caught birds. For those that support sustainable use of regulated wildlife, this bill may establish a reasonable mechanism to ensure that conservation management and international trade can work together in harmony. By refining the criteria, including a mechanism for importation of captive bred specimens, allowing aviculturists an exemption to acquire breeding stock, and establishing a procedure for the orderly conversion to the new listing approach, we believe that the so-called Wild Bird Conservation Act is the best opportunity to promote sustainable use and increase cooperation between the trade and the environmental and humane communities.

On behalf of the pet industry I would like to thank you for the opportunity to submit our testimony. We look forward to working with you on this important matter.

PREPARED STATEMENT OF GARY P. LILIENTHAL

EXECUTIVE SUMMARY

Aviculturists, that is, people who keep, breed and raise birds, are deeply concerned about the conservation of avian wildlife, both in their natural habitat as well as in managed environments. AFA is a federation of the avicultural organizations listed after the title page to this testimony. These organizations are comprised of the tens of thousands of aviculturists of the United States—your constituents—who, along with millions of United States citizens who share their lives with companion birds, care deeply about exotic birds.

AFA acknowledges that intense pressures are placed on exotic (non-native) bird populations by devastating habitat destruction, hunting, predation, planned eradication programs, smuggling and unregulated trade. In the spirit of the Earth Summit, we are committed to the concepts of biodiversity, sustainable yield and renewable resources. We believe that habitats must be preserved and that giving habitat value, either intrinsic or through natural resources yielded, will help ensure habitat survival. A rationally regulated and managed exotic bird trade is one of the methods of giving avian species and their habitat value.

AFA is acutely interested in and concerned about the impact of legislation such as S.1218 and S.1219 on Aviculture. In 1991, AFA supported, and today continues to support, the avicultural principles of S.1218, The Exotic Bird Conservation Act of 1991, and continues to believe that S.1219 would be severely detrimental to Aviculture and the protection of exotic bird populations. AFA recognizes that the extreme polarity between these two Senate bills has resulted in a situation which requires a change in focus to a different concept from those proposed by either S.1218 or S.1219.

In light of that, AFA will focus its comments in this testimony on the concept for wild bird protection contained in the most recent legislation being considered by our Congress. That legislation is H.R. 5013 which is presently pending before the United States House of Representatives. A copy of the most recent draft of H.R. 5013 furnished to AFA is attached to this testimony, and AFA's comments are directed to the concepts contained in that draft. This bill may be the only opportunity for the passage of rational and workable legislation. AFA is committed to the passage of sound avian conservation legislation; however, in order to fulfill its potential and promote and protect Aviculture in the United States and wild exotic bird populations in their native habitats, AFA submits that H.R. 5013 and any Senate counterpart to H.R. 5013 must contain important changes. With respect to this, AFA respectfully requests that the Senate consider the following:

A. The greatest pressure on exotic avian species in their countries of origin is not due to trade. Trade adds value to exotic avian species, and by adding value creates an incentive for preserving them and their habitats. By giving exotic avian species and their habitats value for the avian resources they yield, protecting and preserving avian species and their habitats becomes more desirable than destroying them.

B. Sufficient mechanisms, laws, treaties and regulations presently exist to protect species in the wild and should be utilized and enforced.

C. Prohibition of trade is not in itself a method of conservation of avian species, but merely a decision not to trade in birds. In fact, such prohibitions may actually doom a species if its habitat is destroyed or it is hunted to extinction.

D. Excessive restrictions or prohibitions on trade in exotic avian species will only promote smuggling. AFA and aviculturists abhor smuggling. Do not confuse the horrors of smuggling with legal trade.

E. Mortality in legal trade is exaggerated by highly visible anti-trade groups which seek to impose their moral philosophy on all of the people in our country. United States Department of Agriculture figures show mortality in legal trade to be significantly lower than these groups would ask us to believe.

F. Aviculture is a valuable conservation tool for species in jeopardy in their habitats and for saving exotic avian species from extinction. Many endangered species, even some that are extinct in the wild, are being bred by your constituents in managed environments within the United States. AVICULTURE IS CONSERVATION and should be promoted in the United States as well as in countries of origin.

G. AFA acknowledges that the legal importation process can and should be improved. At the same time, both importation for breeding by aviculturists and, where appropriate, importation for companion animals must be preserved.

While AFA could support the general philosophy of a Wild (Exotic) Bird Conservation Act, AFA believes that H.R. 5013, as written, will not fulfill its intent and will be anti-conservation and will promote smuggling.

i. H.R. 5013 (Section 12(4)) does not properly recognize aviculture as one of the best insurance policies for saving exotic avian species from extinction in that such legislation will inhibit, not promote, captive breeding in the United States and management in foreign countries.

ii. The standards established in H.R. 5013 (Sections 6 and 8) for placing exotic birds on the Approved List or for imposing a moratorium or quota are so unworkable and unrealistic that they will be tantamount to an outright ban while disguised as permissive legislation.

iii. The marking and recordkeeping provisions of Section 15(a) will inhibit avicultural activities in the United States and act as a disincentive to avicultural breeding programs and not produce any benefit for protecting exotic avian species, but will unnecessarily interfere with the personal freedoms of your constituents.

iv. H.R. 5013 Section 6(b) does not properly recognize captive breeding or aviculture in foreign countries as a conservation tool and the means for providing an incentive for preservation of avian wildlife and its habitat.

v.-H.R. 5013 Section 11(b) establishes an unconstitutional presumption of guilt until innocence is proven.

vi. H.R. 5013 does not address unnecessary confiscation by United States Fish and Wildlife Service which is often not in the best interest of the birds confiscated.

vii. H.R. 5013 should establish a national policy with respect to the importation and sale of exotic avian species to avoid further state-by-state adoption of a checkerboard of inconsistent laws in this area. H.R. 5013 focuses on trade and global conservation which are national interests.

If the Senate deems it appropriate to address the issue of trade in non-native birds through legislation such as H.R. 5013, then AFA recommends the following modifications in their order of importance to aviculture:

1. Section 12(3) and (4): Exotic avian species which are permitted to be lawfully exported by their countries of origin and otherwise lawfully permitted to be imported into the United States should be exempt from any limitation on importation or sale for purposes of breeding by qualified aviculturists and/or zoos. The report to accompany legislation should dictate that a "cooperative breeding program" should be implemented by or in conjunction with avicultural, zoological and conservation organizations which certify that aviculturists and/or zoos are participating in cooperative breeding programs and are authorized to acquire imported wild birds. To encourage participation, the "cooperative breeding program" would be designed to provide for the exchange of information and the listing of offspring held by participants and available to other participants. Importers and the Secretary would be allowed to rely on the Certification. This single exemption would replace the exemption for "Zoological Breeding and Display" under Section 12(3) and merge Sections 12(3) and 12(4) into one exemption.

2. Sections 6(c) and 8(a): Sufficient time should be given to the Secretary to establish the Approved List. One year is not realistic (Section 5(c)). Since the Secretary is required to report to Congress in two years (Section 14(c)), at least eighteen (18) months should be provided to establish the Approved List or for imposing a moratorium or quota. The criteria for placement of exotic birds on an Approved List as found in Subsections 6(c) and 8(a) and (b) should be deleted and replaced with more

workable criteria. Under such new criteria the Secretary should approve for importation and sale, without restriction, avian species, otherwise legal to be traded, where their countries of origin have in place, for such species to be traded, a "management plan" appropriate to the species and their habitat and which is designed to provide for humane treatment and to minimize mortality in trade of the species. Such a plan should also take into account both appropriate management of species in their habitats as well as other valid reasons for permitting trade which would otherwise not be allowed to be considered under the current standards in H.R. 5013.

3. Section 15: Section 15 should be deleted and replaced with a simple provision authorizing the Secretary to require marking and recordkeeping only of birds imported after enactment. Section 15(b) should be moved to and merged with Section 13(d).

4. Section 6(b): The provision for placement on the Approved List for importation and sale of captive bred birds should be reworked to allow maximum participation by foreign breeders and to facilitate the importation of foreign captive-bred birds and the exportation of U.S. captive-bred birds. In addition, birds predominantly captive-bred and which are not in or permitted in trade should be placed on the Approved List. The focus on captive-bred birds will reduce pressure on wild populations and preserve species under pressures other than trade.

5. Section 11(b) should be deleted as it creates a presumption of guilt until innocence is proven.

6. The report to accompany legislation should dictate that the Fish and Wildlife Service should not seize exotic birds where adequate provisions can be and are made to ensure that the evidence will be preserved and that birds will be kept safe and healthy until the outcome of legal proceedings. In no event should birds be allowed to be seized from innocent parties not participants in illegal activity.

7. The report to accompany legislation should clearly set out that H.R. 5013 is national policy with respect to the importation and sale of exotic avian species and that legally held avian species may be readily transported throughout the United States.

AFA recognizes the necessity and appropriateness of making adjustments in the trade in exotic birds. As noted, AFA worked for three years as part of a coalition of conservation, avicultural and trade groups which last year filed S.1218. AFA asks the Senate to recognize that aviculture—the keeping, breeding and raising of exotic avian species—and aviculturists are an essential part of the solution to environmental pressures on exotic avian species.

AFA hopes that the Senate will not take steps to unduly restrict our avicultural activities. Aviculture is our pursuit of happiness. It is the aviculturists of the United States whose lives will be most impacted by the implementation of H.R. 5013-type legislation. In the spirit of AFA's commitment to aviculture and the concepts of conservation, biodiversity, renewable resources and habitat preservation, we ask you to understand that aviculture is our contribution to both conservation of avian species and the quality of life of the citizens of our country.

INTRODUCTION

The American Federation of Aviculture ("AFA"), a non-profit organization under Section 501(c)(3) of the Internal Revenue Code, acts as a federation for avicultural organizations and individual members interested in aviculture throughout the United States as well as foreign countries. The organizations comprising our Federation are listed after the cover sheet of this testimony. The origins of aviculture, the keeping, breeding and raising of exotic birds, can be traced to Ancient Egypt. Today in our country, tens of thousands of people raise and breed exotic avian species, and millions of people in our country share their lives with exotic avian companions. It is the quality of these persons' lives and the lives of their avian companions which is enhanced through aviculture. It is the lives of these millions of our citizens which will be impacted by legislation like S.1218, S.1219 and the most recent legislation to be filed with Congress, H.R. 5013, which will be the focus of this testimony.

Unlike most of the persons testifying before you today, I am not only a representative of an organization, I am also a part of what that organization represents. I am a second-generation aviculturist and for almost forty years have carried on my father's tradition of keeping and raising avian companions. Also, like virtually all of the members of my organization, I am not paid for the work which I perform on behalf of my organization; I do this because of my commitment to and love for birds. Through our Federation, our members, hundreds of bird clubs and avicultural organizations throughout the United States and their members, as well as many of the millions of your constituents who share their lives with exotic avian companion animals whether parakeets, canaries, finches or parrots as well as raise and breed an

extensive variety of exotic avian species, express their concerns and interests, fund research and educate themselves and the public in the pastime of aviculture.

Our organization began its educational efforts by responding to our Federal Government's treatment of exotic avian species in the United States. Early in the 1970's, the practices of our government raised grave concern among those persons in our country who cared about and had great love for avian species. Due to misconceptions about exotic avian species, our government was needlessly destroying endangered, threatened and beloved companion exotic birds in the United States. Through the American Federation of Aviculture, a close working relationship has now been established with the Department of Agriculture and the Department of Interior, and we have been able to change misconceptions and work cooperatively with the Department of Agriculture and the Department of Interior in preventing smuggling, preserving and breeding endangered species, and improving aviculture in the United States. The Department of Agriculture now works with our organization to ensure proper importation and quarantine of exotic avian species, and our Fish and Wildlife Service now places endangered avian species which have been confiscated from smugglers into breeding consortia and has enhanced the viability of these species through cooperation with aviculture and aviculturists. While there is still much to do, these agencies deserve credit for their efforts on behalf of aviculture.

I. In order to understand how legislation like S.1218, S.1219 and H.R. 5013 will impact aviculture and aviculturists in the United States, an historical perspective is important.

A. The gravest pressure on exotic avian species in their countries of origin is not due to trade. Trade may in reality create an economic incentive for preserving exotic avian species and their habitats.

It is important to note that S.1218, S.1219 and H.R. 5013 deal with exotic avian species, that is, birds not native to the United States. Birds in foreign countries are under grave pressure from numerous sources in the wild. Trade in avian species gives exotic birds economic value in their countries of origin and a reason for protecting them and their habitat. Allowing birds to continue to be viable, renewable natural resources enhances the protection of these species and their habitat. Aviculturists offer these birds good homes, the chance to reproduce, and in some cases, sanctuary from hostile environments. Life in the wild, contrary to what some would have you believe, is not easy. The gravest pressure on exotic avian species in their countries of origin is not due to trade, but from habitat destruction due to mankind's development of areas for industry and agriculture. In Third World developing countries which cannot feed their own people, it is understandable that protection of avian species is far from paramount. It is well recognized and agreed among all of the groups concerned with this issue that every four days a portion of our planet approximately the size of the state of New York is cleared of vegetation. Without controlled trade or use of a country's natural resources, the only viable option to making habitat valuable is deforestation for agriculture or industry. With the clearing of this habitat, the creatures which inhabit that area, including exotic avian species, are displaced or killed. Certainly, allowing them to be used as renewable natural resources is a much more humane alternative and, in fact, encourages the preservation of habitat by allowing it to yield a resource, creates a condition for income for local people, and allows them to feed themselves by trading in birds. The bird trade is not like most other animal trade. We deal in live birds. It is ironic and emphasizes the misunderstanding of the nature of the problem that H.R. 5013 allows the importation of "dead" specimens while restricting the importation of live birds.

In addition to pressure from habitat destruction for economic reasons, exotic avian species are under pressure from local uses that include hunting for food and killing for feathers. Also, birds in developing nations are being severely impacted by the use of pesticides. It is well recognized that if a native needs to hunt birds to feed his family, he may be required to kill dozens of birds each month for this purpose; but if he is allowed to sell birds, from the sale of one bird he can feed his family perhaps for weeks. Thus, the birds have value, and they and their habitats will be preserved.

In addition to habitat destruction and local use, another major pressure upon exotic avian species in certain countries is eradication of birds as pests. In certain foreign countries native birds feed on local crops. In fact, in Australia, which allegedly protects its fauna by prohibiting its export for sale as companion animals or for breeding by aviculturists, millions of avian species are slaughtered annually through governmentally sanctioned programs of poisoning, shooting and other methods of avian genocide. Aviculturists abhor this practice and condemn it. If the

Senate is interested in and humane groups are truly concerned about preserving exotic avian species' lives, then they should join with AFA in expressing outrage to countries like Australia which slaughter its avian species but will not allow them to be exported for companion animals or breeding. Ironically, legislation like H.R. 5013 would condone the destruction of these species by making it illegal to import those species into the United States even from countries which allow trade of their species as they would not have a management program for conservation of unwanted species as required by H.R. 5013 Section 6(c). While many countries choose not to permit trade in their exotic avian species, and our country and its citizen aviculturists abide by this choice, as noted above, many of these countries do not protect and preserve their birds or their habitats; they merely create a prohibition to their export for appearances of conservation. In fact, such prohibitions may actually doom a species if its habitat is destroyed or it is hunted to extinction. It should be clearly understood that a prohibition against trade is not a method of conservation of avian species, but merely a decision not to trade in birds.

Another significant pressure on exotic avian species is smuggling. Ironically, the more laws which are passed which unduly restrict or prohibit the legal import of exotic avian species, the more smuggling is encouraged. Since smuggling is illegal by definition, smugglers abide by no laws requiring humane treatment and care of avian species, and therefore smuggling sacrifices exotic avian species. Legitimate, responsible importers take steps to ensure the well-being of birds in trade. A dead bird is not worth anything to an importer; it is a loss. Many of the stories which you are told and pictures you are shown by anti-trade activists are of smuggling activities rather than legal trade, and a distinction should be made in this regard. Do not be misled—restrictive bills like H.R. 5013 will increase smuggling.

B. Mortality in trade is exaggerated by anti-trade advocates who seek to impose their philosophy and morality on elected representatives and their constituents.

Reports of figures of mortality in capture, transport, quarantine and eventual sale of exotic avian species are exaggerated and sensationalized by well-funded anti-trade activists to obtain the desired adverse reaction from our government and the public—to stop the bird trade. These figures which have been reported to you are grossly overstated by those groups which are dedicated to stopping the trade in exotic avian species at any cost but do not address the issue of pressures in the wild from other sources. Look carefully at the sensational figures which are paraded before you. Groups dedicated to stopping avian trade for their own personal agendas characterize mortality with words like "it is estimated that", "up to" or "as many as" when, in actuality, these groups have no complete data to support their claims. Ask them to give you scientifically complete and empirically based studies supporting their assertions. In fact, they are unable to do so. Typically, one group seeking to stop trade makes an estimate of mortality to justify its purpose. Then other groups quote those estimates as if they are fact. In reality, the only empirical figures with respect to importation and quarantine of exotic avian species are maintained by our own United States Department of Agriculture. These figures show mortality in importation and quarantine to be fourteen [14 percent] percent in fiscal year 1990 and fifteen and one-half (15.5 percent) percent in fiscal year 1991. Natural mortality of avian species in general is reported to be high in the wild without trade. Some of this is due to habitat destruction, some is due to natural or other non-trade related causes; however, there are no means available to clearly identify this mortality just as there are no real figures like those cited by groups dedicated to stopping the bird trade for their own reasons.

The trade figures used by the anti-trade activists do not tell the whole story. They are for sensationalism, to pressure you, our lawmakers, and, in their newest attack, to convince commercial airlines not to carry birds even within the United States (a practice which has been severely detrimental to our avian breeding and conservation efforts). Please do not be misled by these figures. Additionally, the horrible pictures you may be shown by these groups are not the whole story. We acknowledge that some shipments have resulted in unacceptably high losses, and we are working to change that by correcting the cause of it, not by prohibiting the entire practice. According to the United States Department of Agriculture figures, our efforts are working. Mortality has declined over recent years. On the other hand, shipments which have zero mortality are never reported to you. Be assured, such shipments do occur. It must be understood that any pictures of problems with legal trade which you are shown are counted within the low mortality figures which are reported by our U.S. Department of Agriculture. However, many of the pictures shown to you actually depict the horrors of smuggling, and all groups agree that smuggling is to be abhorred and prosecuted. H.R. 5013 is not about addressing smuggling; it is about the restriction of legal trade. Moreover, AFA believes that such legislation may ac-

tually promote smuggling by excessively inhibiting legal trade, thereby increasing the value of and demand for illegal birds and by providing a mechanism, under the marking provisions of Section 15, for smugglers to mark smuggled birds and pass them off as domestically bred. AFA combats smuggling with educational programs, not restrictive laws. Sufficient laws against smuggling already exist, and AFA, as discussed in E below, assists our government in enforcing them.

C. Aviculture is a valuable conservation tool for species in jeopardy in their habitats.

One only need look at the several endangered species listed in the United States Endangered Species Act to see the case which aviculture makes with respect to the value of captive breeding for preservation of avian species. Most endangered species have not been allowed to be traded since 1973—almost twenty years. Yet many of their numbers continue to decline in the wild. Where countries to which these species are indigenous do not or cannot pass, enforce and fund far-reaching laws with respect to the preservation of these species and their habitats, species will continue to decline, due not to trade but to pressures in the wild. However, on the brighter side, the side we will ask Congress to build into H.R. 5013, breeding of avian species by aviculturists and zoos in the United States has enhanced and increased the populations of endangered species and has created a condition where their extinction will be prevented. If many of these species had not been or are not placed in the hands of aviculturists and/or zoos, they may become extinct. The following are some examples.

The world-renowned California Condor is a perfect case in point. Many animal rights and conservation groups fought the rescue of the Condors by our government, preferring to leave them to their fate in the wild. Tragically, during this fight by well-funded groups against the United States Fish and Wildlife Service, which resulted in a lawsuit by these groups against our government, one of the few remaining Condors died in the wild. AFA supported our government in the immediate rescue of the Condor and the bold Condor breeding program, and the success of this program is now proven. It is interesting to note that some of the groups which fought so vigorously against the Condor being brought in, bred and protected now seek to share in the credit for the success of the Condor program. These are some of the same groups asking you to ban trade today through bills like H.R. 5013 and S.1219 and to make the same mistake with foreign avian species that these groups were willing to make with the Condor. We are shocked that they will not yet recognize the plight of these birds and the value of aviculture and zooculture.

The members of our organization participate in and support the breeding of endangered species to protect them from extinction and to provide adequate numbers of these species for potential reintroduction into safe habitats when the technology and habitat protection exist to do so. In fact, several years ago, the Venezuelan Audubon Society contacted our organization and requested that AFA organize, fund and carry out a breeding consortium for their tiny Venezuelan Black-Hooded Red Siskin, a bird which was severely endangered in the wild and not traded due to its listing on the United States Endangered Species list. They contacted us because none of the groups proposing to ban trade have any ongoing programs for captive breeding. In response to the Venezuelan request, the American Federation of Aviculture has created the Red Siskin Breeding Consortium and, with the cooperation of the United States Fish and Wildlife Service, our members are breeding these birds in the United States for their future preservation.

In addition, under the United States Fish and Wildlife Service Captive Bred Wildlife Registration Program, a number of aviculturists and zoos throughout the United States are breeding endangered species and, in some cases, have bred them to a point where even the Fish and Wildlife Service considers these species to have become prolific in avicultural collections. This is a true conservation and avicultural achievement and a testament to the foresight of the Fish and Wildlife Service in recognizing that aviculture is one of the primary methods of saving endangered species.

Another case in point is the Socorro Island or Grayson's Dove, a small bird which is extinct in the wild as a result of the introduction of predatory non-native cats into its habitat. This bird had never been a part of the pet trade, but, thankfully, like many other species, aviculturists had been interested in it. Recently, one of the islands comprising the Socorro Islands was cleared of these cats. At the same time this bird, although extinct in the wild, has flourished in the aviaries of aviculturists in the United States. The ironic part of this story is that aviculture owes a great portion of the breeding success of this species to the fact that as a result of its being extinct in the wild, there were no laws to interfere with aviculture's efforts to save this species by breeding it in our aviaries. Thanks to the efforts of Dr. Luis Baptista

of the California Academy of Science, arrangements are being made to introduce aviculturally raised specimens of this bird back into its habitat. If this bird had not been safeguarded by aviculture, it would have remained extinct in the wild . . . gone forever.

Another example of how aviculture has saved species from extinction is our country's own Nene Goose, indigenous to Hawaii. This bird had almost become extinct, but thanks to captive breeding efforts of aviculturists, zoos and private foundations, it is now being re-established in the State of Hawaii.

A final case in point which graphically illustrates the conflict between breeding of avian species by aviculturists versus allowing avian species to fend for themselves in the wild is the only remaining parrot indigenous to the United States or its territories—the severely endangered Puerto Rican Parrot. Several years ago, despite great controversy after a failed release program by Fish and Wildlife biologists, a decision was made to bring a number of the Puerto Rican Parrots into a controlled breeding environment. Some of the birds were left in the wild, and some of the birds were brought into an aviary. Those birds in the aviary environment have bred and established themselves, and their population is growing. Two years ago, however, the wild population of the Puerto Rican Parrot, a species fully prohibited from trade, was devastated by Hurricane Hugo which ripped through the Caribbean, destroying the habitat of the Puerto Rican Parrot. This, it should be noted, is a bird which is heavily protected from poaching, hunting, smuggling, and even its habitat is protected, and yet it is not immune to natural disasters. By stark contrast, the birds in the controlled breeding environment suffered no ill effects from the hurricane and continue to reproduce.

D. Sufficient mechanisms presently exist to protect avian species in the wild and should be utilized.

It is important to note that while the pet trade may be deemed to have placed pressure on some species, several methods for addressing this exist and have functioned. The Convention in International Trade in Endangered Species of Flora and Fauna (CITES) analyzes the effects of trade on avian species. In the last seven (7) years no fewer than nineteen (19) species of exotic avian wildlife have been listed on Appendix I of CITES, a non-trade status. Recently, the CITES nations meeting in Kyoto, Japan, in responding to a request by the United States Fish and Wildlife Service, rejected a U.S. proposal for a ban or moratorium on some forty-three species in trade. The countries of origin and countries dealing with these species have recognized the need to more carefully address trade in these species, but have rejected a ban or moratorium as the proper solution to this problem. Each sovereign country is free to adopt, and in many cases has adopted, trade-regulating or prohibiting policies. Our Congress and our government should give full faith and credit to the decision of these nations and to CITES but should not impose an industrialized nation's values on these developing nations. Guidance and assistance are appropriate; dictating policy is not. In fact, the provisions Sections 6 and 8 of H.R. 5013 are a form of economic blackmail in that they would force countries of origin to comply with United States-imposed conservation standards in excess of current treaties as a condition to trade in their natural resources with the United States. Help them make the right choices; do not tell them what choice to make.

E. Excessive restrictions or prohibition on trade in exotic avian species will only promote smuggling.

In the 1930's, Australia adopted an import/export ban on all avian species. According to our avicultural counterparts in Australia, smuggling of exotic avian species into Australia is rampant. Even with laws permitting legal importation into the United States, the United States Fish and Wildlife Service estimates that over one hundred thousand exotic birds are smuggled into the United States every year. Of these, the Fish and Wildlife Service reports, approximately one thousand are disposed of through auctions and distribution to breeding consortia. What would logically follow, if you accept the estimated smuggling figures, is that the U.S. Fish and Wildlife Service cannot stop approximately 100,000 illegal birds even with legal trade in place. One can only imagine what would happen if legal importation were prohibited or so severely restricted that it became totally impractical or unrealistic.

AFA and all dedicated aviculturists throughout the United States abhor smuggling. Smuggling by definition is illicit, and, therefore, smugglers do not come under the same scrutiny as the legal trade with respect to control over humane conditions during importation imposed by the United States Government under the Lacey Act. We would not be surprised to learn that smuggling kills more birds than all of the legal trade. Aviculturists do truly care about all birds and would object to any measure which would result in increased smuggling. In addition, smuggled birds pose a great threat to aviculture in that, due to their inherent illegality, smuggled birds

are not processed through the U.S.D.A. Quarantine System and therefore pose a threat of disease to aviculturists' flocks as well as to the U.S. poultry industry.

AFA is one group which has taken meaningful action to stop smuggling. We have distributed anti-smuggling public service announcements to television stations. We have educated our members on recognizing smuggled birds and have printed the U.S.D.A. anti-smuggling hotline number in our bi-monthly publication, *The Watchbird*. Our bilingual anti-smuggling poster has been distributed to the U.S. Department of Agriculture and U.S. Department of Interior as well as pet stores along the Mexican border for posting in an effort to educate and inform people of the illegality of smuggling and its serious legal and animal health consequences. AFA has been commended by the Department of Agriculture and Department of Interior for its anti-smuggling efforts.

II. AFA acknowledges that the legal importation process can and should be improved.

Since 1988, AFA has participated as and remains a member of the Cooperative Working Group on the Bird Trade and is a co-proponent of S.1218, the Exotic Bird Conservation Act of 1991. Today, AFA continues to support the avicultural principles and purposes of S.1218 as being the appropriate tool for improvement of the trade in exotic avian species and for enhancing aviculture and its conservation and companion animal benefits. If H.R. 5013 could be similarly molded, then AFA could support its goals.

III. AFA could support legislation modeled after the general concept of H.R. 5013; however, AFA believes that, if it is not modified, legislation like H.R. 5013 will not fulfill its intent and will be anti-conservation, anti-avicultural and will promote smuggling.

A. Aviculture is one of the best insurance policies for saving exotic avian species from extinction. AVICULTURE IS CONSERVATION. Subsection (4) of Section 12 should create an exception allowing importation of birds for breeding by aviculturists.

In 1986, Congress' own Office of Technology Assessment in its publication "Grassroots Conservation of Biological Diversity in the United States" cited the American Federation of Aviculture as the grassroots organization for promoting the saving of (exotic) avian species. H.R. 5013 as it is presently drafted is anti-avicultural legislation and would stop aviculture from continuing to fulfill its promise as recognized by Congress' own technical arm. Zoos cannot, and readily admit that they cannot, breed birds in the numbers and with the same success as private aviculturists; yet legislation like that proposed under H.R. 5013 would exempt birds for zoological display, but make it more difficult for our citizen aviculturists to obtain them for breeding purposes. In fact, more than ever, zoos are relying upon private aviculturists to breed and preserve greater numbers as well as the more difficult species found within aviculture. Aviculturists are less encumbered by the space, budgetary, personnel and political constraints facing zoos. A perfect example of this is a pair of endangered Cuban Amazon Parrots which were eventually placed in a private aviculturist's aviaries through the efforts of the U.S. Fish and Wildlife Service. These birds, which are prohibited from trade, had been seized, along with other Cuban Parrots, from smugglers coming out of Cuba and were subsequently distributed to aviculturists and zoos as a part of a breeding consortium. The relevance of this to the inability of the zoos to deal with these species is that this specific pair of birds was originally destined for a zoo, but the zoo employees were on strike and could not take the birds. Aviculturists do not go on strike. We were ready to accept and properly house and care for those birds. Aviculturists' birds receive round-the-clock attention, a better diet than most people, and for those who state that the bird trade exploits birds, let me assure you that it is our birds which exploit us. If you or anyone you know has a companion bird, you know that this is true.

In line with this observation, AFA believes that there is no basis to exempt birds from the ambit of H.R. 5013-type legislation for the purpose of "zoological display" (Section 12(3)) as this serves no conservation purposes. The exemption for "zoological display" [Section 12(3)] should be deleted. In light of the focus of H.R. 5013, it does not seem appropriate for birds not on the Approved List [H.R. 5013 Sections 6 and 8 discussed in B below] to be housed and displayed singly in zoos. If zoos want to display birds for educational purposes, then they should either display birds on the Approved List or import birds under the proposed breeding exemption and display them in a breeding environment. This will be far more educational to the public. On many occasions zoos import more species than they need as small shipments are uneconomical. If zoos were allowed to import birds not on the Approved List strictly for "zoological display", surplus species which could be imported under the exemption for "zoological display" might find their way into the pet trade. Without the

deletion of the proposed exemption, there would be no way to control this. This would thwart the conservation intent of H.R. 5013.

Additionally, the exemption found in Section 12(4), if not clarified, could be unworkable and restrictive and is more a scientific or biologist's exception. The exemption contained in Section 12(4) for importation for "cooperative breeding programs" for "conservation of the species" may be unworkable because it requires a "cooperative program" "developed and administered by, or in conjunction with an avicultural organization . . . that meets standards developed by the Secretary." The exemption in Section 12(4) provides for no mechanism which would allow for a determination and certification of such a "program" so that importers would know for whom they could import or to whom they could provide birds for breeding. It must be made clear that the "cooperative aspect" of the "program" "developed and administered by, or in conjunction with, an avicultural . . . organization" intends to encourage people to participate in the sharing of information such as housing, nutrition, breeding, hatching and raising techniques and the availability of offspring, not a formal "program" with strict rules and reporting and marking requirements which would be intrusive by the government and discourage one of the great grass-roots conservation cottage industries in our country—Aviculture. This legislation should not be allowed to be used by the Secretary to inhibit Aviculture and breeding exotic avian species. For this reason, Section 15(b) should be merged with Section 13(d). Additionally, it must be understood that the result of such breeding of exotic species in the United States will be to take pressure off of species in the wild, thereby promoting their conservation and maintaining them in the wild by reducing demand for them in legal as well as illegal trade. A strong U.S. Aviculture that is breeding and raising exotic birds will be a powerful tool for reducing the demand—both legal and illegal—for wild-caught exotic birds; however, this must go hand-in-hand with a rational program for importation, based on sound and rational principles sensitive to the needs of birds and people, of both wild-caught and foreign captive-bred exotic birds.

Instead of those two exemptions (Sections 12(3) and (4)), AFA proposes that one workable exemption be adopted which would allow the importation of birds for breeding by aviculturists and zoos. Zoos should participate in the "cooperative breeding programs" as well. To make this proposed exemption work, participants would be allowed to import and/or acquire imported birds whether or not on the Approved List (Section 6) or under a moratorium or quota (Section 8) for breeding provided they participated in the "cooperative breeding program" described in the previous paragraph. Participants in that program should be certified by an "avicultural, zoological or conservation organization", and the importer and the Secretary should be able to rely on this certification. The United States Fish and Wildlife Service should be directed in the report to accompany legislation to expedite and facilitate the importation of exotic avian species for breeding purposes.

The proposed breeding exemption will not only promote conservation through providing for propagation of these exotic avian species, but will have a self-limiting effect and control over the importation and persons propagating these species. Not only is this proposal far more workable and more easily implemented, but it is also far more oriented toward conservation of all of these species which would be within its ambit. If the same results occur from the importation and breeding of these birds as has occurred for the U.S. Fish and Wildlife Service Captive-Bred Wildlife ("CBW") Endangered Species Program for aviculturists, then this exemption will serve as a successful conservation tool for breeding birds and actually serve to lessen and, we would hope, eliminate smuggling, and it will assist in removing the dependence of aviculturists and zoos on wild-caught specimens as breeding programs flourish.

This system will also serve as a conservation tool in that the birds, which are allowed to be exported by their countries of origin where they are suffering from habitat destruction and similar pressures, will be bred and preserved from extinction and maintained in the aviaries of U.S. aviculturists so that they do not become extinct and so that they are able to be reintroduced when safe habitats are available.

In assessing this, one should remember that there has been no trade in wild populations of endangered birds for almost twenty years, yet some of them continue to decline in the wild. Thanks to aviculture, they prosper in aviaries in the United States. If they cannot be maintained in our aviaries like the Grayson's Dove of the Socorro Islands was, they may become extinct. Aviculture is quite proud of its success in this area and deserves credit for this success; we want to continue our efforts. H.R. 5013 as drafted will not allow us to continue. AFA itself encourages captive breeding of avian species through its prestigious first breeding award program. This program serves as an incentive to aviculturists and zoos to breed exotic avian

species. It is AFA's strong belief that if countries of origin determine that their avian fauna should be exported for breeding purposes, our government should facilitate this. This proposed breeding exemption is far different from the Approved List which will be discussed in B below as the breeding exemption would be limited to importation for breeding purposes only. If we are going to limit the trade in avian species for companion animals as proposed in H.R. 5013 Sections 6 and 8 [B below], then we must modify Sections 6 and 8 to make them workable and we must provide for continued access to breeding stock by aviculturists.

The first change in this legislation would be to merge Section 12(3) and (4) into one exception providing for "cooperative breeding programs designed to promote the conservation of the species and maintain the species in the wild by enhancing the propagation and survival of the species and developed and administered by or in conjunction with an avicultural, conservation or zoological organization that meets the standards developed by the Secretary." In the report to accompany legislation the "cooperative breeding program" should be described as a program for the sharing of information by participants on the keeping and breeding of exotic avian species and for the listing of species by participants available to other participants. The report should also provide that participants in such a program would be certified by the organization which had developed or administered the program or which was working in conjunction with the breeder so that the certified aviculturist or zoo would be able to import or acquire imported wild birds for breeding.

B. Trade in certain species for companion animals is beneficial and in keeping with responsible conservation and biodiversity principles. Sections 6(c) and 8(a) of H.R. 5013 must be modified to ensure the fulfillment of this goal.

Many sovereign nations deem certain of their avian species to be a renewable natural resource or have determined for other valid reasons that trade in these avian species is desirable and appropriate. In every country which exports birds to the United States, CITES requirements as well as those countries' individual trade laws are required to be observed. The United States under the Lacey Act already has the means to enforce this. It is difficult to understand why our country, which is also making its own hard choices in balancing the environment, species' habitat protection and human needs, cannot acknowledge that undeveloped nations will need to make choices as well. In this case, through legislation like H.R. 5013, we have the opportunity of providing for biodiversity and to balance the preservation of avian species with the reality of development and habitat pressure and provide a workable option.

The United States should not, however, impose the standard contained in H.R. 5013, Subsections 6(c) and 8(a) as the criteria for determining whether or not foreign countries should be allowed to export their species for the companion animal trade. The imposition by an industrialized and developed nation of such criteria on a developing nation's use of its natural resources, including its exotic avian wildlife, is inappropriate, unfair, unfounded and unrealistic. While AFA strongly believes that a policy to ensure the appropriate use of these species for export for sale as companion animals should be in place, that policy should be one that is appropriate to the species and its habitat as determined by the government and proper authorities of the countries of origin of these species. In fact, our own country probably could not live up to the standards which it seeks to place on developing foreign countries for use of their species under H.R. 5013 Subsections 6(c) and 8(a). For example, under Subsection 6(c)(1), the country of origin may not want or be able to conserve a species which is being deliberately eradicated. Should it then not be allowed to be in trade? Our nation must recognize that these countries have concerns and issues different from what we might consider important. There must be balance. The standards established in H.R. 5013 for placing birds on the approved list or creating a moratorium or quota are so unworkable that they would be tantamount to an outright ban while disguised as permissive legislation. AFA recommends the adoption of a simple standard for placement of birds on an Approved List (Section 6) or leaving discretion to the Secretary as to the merit of a moratorium or quota (Section 8) and that the Secretary be given sufficient time to implement these programs.

The standard should be reasonable and flexible so as to allow appropriate management of different species in their varying circumstances in their countries of origin. In this way our country would be creating an incentive for sound conservation and wildlife management by promoting and supporting determination by other countries to regard their wildlife as a valuable renewable resource to be both preserved and traded or permitting trade where other valid reasons therefor exist. At the same time, our government could assist countries through education and guidance—not dictatorial standards which will not work. A determination along these lines, in addition to the safeguards of management decisions of foreign nations and

the working of CITES, would allow proper oversight by the Fish and Wildlife Service without imposing value judgments that the birds will always do better in the wild than in the aviaries of aviculturists or companion bird environments. Such a method would serve the humane, conservation, avicultural and companion animal communities as well as the interests of the birds.

AFA believes that for this bill to be meaningful and workable, in addition to the exemption for importation for breeding purposes under Section 12 recommended in A above, under Sections 6 and 8 birds should be placed on an "approved list" for importation for any purpose or be free from any moratorium or quota where the Secretary determines, based upon data furnished from the country of origin, that a management plan exists appropriate to the birds and their habitat and where such trade is designed to be carried out in a humane manner and so as to minimize mortality. This would take into account trade which maintains a sustainable yield, deals in a renewable resource or is appropriate for other valid reasons. The Secretary should be given sufficient time, eighteen (18) months, to act and report back to the Senate in two (2) years. The Senate should direct the Secretary to use trade in wild exotic birds as a conservation incentive in countries of origin and not allow legislation like H.R. 5013 to become a disincentive to conservation and aviculture.

C. Any provision for marking of exotic birds bred in the United States or currently in the United States prior to enactment of legislation would be of no use in conserving wild birds, would inhibit U.S. breeding of exotic birds, would facilitate smuggling, would be unenforceable and would intrude on the personal activities of your constituents for no productive purpose.

The marking provisions of Section 15 appeared very late in the consideration of H.R. 5013 at the House of Representatives Committee level. In fact, AFA is puzzled as to why parts of this provision are included in this type of legislation at all. AFA acknowledges that marking or recordkeeping of birds imported after enactment might assist the Secretary in enforcing legislation as these are the birds which need to be monitored to enforce Section 11(a). However, AFA sees no productive purpose for marking or recordkeeping as to birds already in the United States or domestically bred in this country, and sees good reasons why such a provision could be counterproductive or, at best, ineffective. Birds currently imported into the United States are marked as a part of the U.S. Department of Agriculture mandatory quarantine process so they can be properly identified as legally imported and quarantined birds. AFA proposes that this system be continued. To allow for marking of birds currently in this country or bred by your constituents, the aviculturists of the United States, would be non-productive, unenforceable and interfere with breeding programs. It will create unnecessary costs for aviculturists and our government while serving no useful purpose. There are tens of thousands of exotic bird breeders and millions of pet bird owners in the United States; to enforce this provision would be impossible. Additionally, the marking of birds hatched after enactment would give smugglers a vehicle for passing off smuggled birds as domestically bred. The method is simple. If marked birds are legitimized by legislation, smugglers would take young birds from the wild, mark them in the only way recognized—placing a seamless leg band on their leg (these can only be placed on baby birds)—and then raising them to maturity and selling them as domestically bred in the United States. AFA currently educates the public by telling them to get to know the breeder from whom they buy. However, if overly restrictive laws are passed, then demand for legal birds will be unfulfilled and smugglers will find unwitting purchasers. Finally, the concept in Section 15(2) is so exemplary of legislation which is unworkable that it is almost humorous. Many of the larger exotic birds live between 30-60 years. However, such birds are full grown at 90-120 days. How will the secretary distinguish a bird hatched one year after enactment as opposed to that hatched 2 or 20 years before?

The marking and recordkeeping provisions of Section 15 should be redrafted to provide that the Secretary is authorized to promulgate regulations to require marking or recordkeeping that the Secretary determines will contribute significantly to the ability of the Secretary to ensure compliance with the prohibitions of Section 11 for any bird that is imported after enactment. As previously mentioned, Section 15(b) should be merged with Section 13(d).

D. H.R. 5013 should promote captive breeding and management in foreign countries as a sound conservation tool.

As drafted, H.R. 5013 has attempted to recognize the value of aviculture in foreign countries as a conservation tool and a means for providing an incentive for preservation of avian wildlife and its habitat. H.R. 5013 Section 6(b) must be clarified to permit importation of exotic birds bred in controlled environments in foreign countries. AFA believes the definition of Section 7(b) is proper; however, AFA is con-

cerned that only wealthy or large facility owners will be able to qualify as contemplated in Section 7(a). Small scale aviculturists are the backbone of every avian breeding effort. Aviculture is a true cottage industry. This is so in the United States and foreign countries. There must be a workable method for qualifying foreign bird breeders which will encourage breeding of exotic avian species subject to the criteria in Section 7(b). It is a true aviculturist's lament that our country did not allow, let alone encourage, breeding of our native species in the years before we recognized the need to conserve our avian fauna. If we had, our only native parrot species, the Carolina Parakeet, along with the Passenger Pigeon and other species, might not be extinct today. Clearly these birds did not vanish due to trade. They were hunted and their habitats destroyed. Therefore, it should be apparent that undue restriction on or a ban of trade will not solve the problem; it will make the eventual result permanent—Extinction! AFA does not accept extinction. We believe in Aviculture, not Extinction. Let there be more Grayson's Doves and fewer examples like the Carolina Parakeet. Facilitating trade in foreign-bred birds will serve as an incentive for avian propagation in foreign countries and result in the placing of value on the lives of these avian species and their preservation as a valuable renewable resource. An aviculturist from one of our most valued trading partners, Canada, has already expressed concern over Section 6(b)(2) as evidenced by the letter attached to this testimony.

The limitation on trade in foreign captive-bred birds in Section 6(b)(1) could act as an anti-conservation disincentive to trade in legitimate captive-bred birds. If, as AFA hopes, the intent of this section is to create a list of birds in trade which are virtually only captive-bred and, therefore, there is no need to qualify facilities, AFA understands this provision. However, a provision such as that contained in Section 6(b)(1) could be counterproductive if Section 6(b)(2) is not properly implemented. Proper implementation of Section 6(b)(2) will allow importation of legitimate (that is non-wild caught) foreign captive-bred birds and act as an incentive for foreign captive breeding, which, like U.S. captive breeding, will relieve pressure on wild populations. However, limiting trade in legitimate captive-bred birds, as might occur under Section 6(b)(1), can result in greater pressure on wild populations. While one might think that AFA's concern might be unfounded due to the logical desire to focus trade on captive-bred birds rather than wild-caught, it is interesting to note that due to current practices of our U.S. Fish and Wildlife Service, it is far easier to export wild-caught imported exotic birds from the United States to foreign countries than it is to export U.S. domestically bred exotic birds. This policy by our own government discourages U.S. Aviculture and encourages importation of wild-caught birds. The fact that the Secretary has been unable to shift this focus to encourage U.S. Aviculture by facilitating export of U.S.-bred exotic birds gives AFA grave concern as to the ability to effectively implement this and other provisions of legislation which would promote valuable conservation activities.

It is the recommendation of the American Federation of Aviculture that the exemption in Section 6(b) be clarified so as to instruct the Secretary to facilitate qualification of foreign captive-bred exotic birds and importation and sale of foreign captive bred exotic avian species into the United States and also to facilitate the export of U.S. captive-bred birds.

E. H.R. 5013 establishes an unconstitutional presumption of guilt until innocence is proven.

In Section 11(b), H.R. 5013 requires a party relying upon an exemption to prove the validity of that exemption in connection with any claimed violation of any exemption or permit under H.R. 5013. This reversal of the burden of proof, the presumption of guilt until proven innocent, is preposterous and, we would hope, totally unacceptable to Congress. AFA is so amazed by the presence of this section in H.R. 5013 that it trusts that the very nature of its premise would suggest its inappropriateness and that there would be no need to explain the reasons for its removal. An exemption would exist statutorily. The burden of proof of any violation is and should be on the governmental agency alleging the violation. For example, would a U.S. citizen acquiring a bird imported after enactment of H.R. 5013-type legislation be in violation of the provisions of law if they could not prove the proper findings had been made by the Secretary? This is an absurd standard and must be addressed. Our law enforcement authorities already have a distinct advantage over citizen aviculturists due to the sheer financial burden imposed in defending oneself.

Section 11(b)-type provisions should be deleted.

F. As a part of considering H.R. 5013-type legislation, Congress should address one of the significant issues contributing to the decimation of exotic avian species within the United States—unnecessary and inappropriate confiscation of breeding and companion birds by the United States Fish and Wildlife Service.

In the report to accompany H.R. 5013-type legislation, Congress should direct the Fish and Wildlife Service that exotic avian species in this country should not be confiscated from private aviculturists (as distinguished from commercial importers) unless the Fish and Wildlife Service has just cause for concern for the preservation of evidence or the health or safety of the birds and then only if the aviculturist was actually involved in the alleged illegal activity. The Fish and Wildlife Service has, in its efforts to enforce laws with respect to the importation of exotic avian species, established a sad record of safeguarding the lives of confiscated birds. Customarily the Fish and Wildlife Service confiscates birds which are deemed by them to be a part of an ongoing investigation or suspect of illegal activity whether or not their owners have been indicted or charged, or whether or not the owners are even suspected of being a participant in any illegal activity. That is, someone else may have been suspected or accused of illegal activity, but the birds, even though then held by a totally innocent party, could still be confiscated and placed in jeopardy. We are not dealing with inanimate objects which are illegal, "per se." These birds become part of the lives of your constituents. Often these confiscated birds are placed with private parties or zoos which are incompetent to house or care for the birds. This activity causes grave stress to these birds which have established themselves in their aviary homes and exposes them to stress and disease from unfamiliar birds and surroundings and inappropriate care.

A case in point is the recent seizure of four extremely rare and valuable birds by the Fish and Wildlife Service from a person who was neither indicted nor charged with any violation. The Fish and Wildlife Service could have made an arrangement with the aviculturist for the posting of a bond with appropriate sureties in lieu of confiscating these birds. This person was well known, responsible and had no record of past illegal activity. Furthermore, failure to abide by such a bond could have carried more severe penalties for the aviculturist than any violation of the law pursuant to which the birds were seized. Instead of pursuing the avenue which would have been most sensitive to the safety and welfare of and least disruptive to the birds, the Fish and Wildlife Service seized the birds, would not tell their owner of their location nor allow them to be checked by the owner's veterinarian. Of the four birds seized, to date, two have died. Those two birds are virtually irreplaceable, and their value exceeds Thirty Thousand (\$30,000.00) Dollars. One of them was part of a pair for breeding. Moreover, and more important than the monetary loss, the loss of these birds caused extreme emotional distress to the aviculturist who cared for them. In some cases it is perceived by aviculturists that the Fish and Wildlife Service confiscates birds to intimidate persons from keeping exotic birds even though such activity is legal. Due to most private aviculturists' financial inability to fight Federal confiscation, the legality of these confiscations is rarely finally determined. Thus, the aviculturist and the birds are denied due process. Additionally, our organization is amazed that the humane community has not raised a hue and cry over this unnecessary loss of avian life. Exotic avian species should not be confiscated unless there is no viable option available and then only if the preservation of the birds as evidence or their health and safety would be compromised if they were not seized. In no event should birds be seized from innocent parties.

In the report to accompany legislation, Congress should direct the Fish and Wildlife Service not to seize birds where a viable alternative exists. In no event should birds be seized unless a person possessing them was the individual actually involved in the alleged illegal activity.

G. If Congress deems it appropriate to adopt H.R. 5013-type legislation, then it should be adopted as national policy with respect to the importation and sale of exotic avian species.

To the anti-trade activist community which seeks to impose its moral philosophy on those who wish to pursue agendas which are not the same as theirs, legislation like H.R. 5013 is not enough and is announced as being only a part of their program. It has been suggested by these groups that in addition to their believing that their moral philosophy should be forced upon all who might disagree with them, upon adoption of H.R. 5013-type legislation, they intend to continue their crusade to stop all trade in exotic avian species by seeking more restrictive laws in each individual state in our country. These activists care little for the rights or the quality of the lives of your constituents and fail to comprehend aviculture.

The commitment of these groups to "getting it all their way" is most recently illustrated by their actions with international and domestic airlines. When S.1219 was pending, these groups, using their well-known pressure tactics, prevailed upon many of these airlines not to carry legally acquired birds to the United States. In addition to depriving the public of their right to use these U.S. certified common carriers, in their zeal to have it their way, these groups have caused some of the

airlines, which are really just trying to avoid trouble with these groups, to stop carrying birds even within the United States.

It has been suggested by members of these groups that if we would not oppose legislation which would serve their interest (S.1219), then they would have the airline ban lifted. Their action is inhibiting many aviculturists' breeding efforts in the United States by interfering with interstate movement by aviculturists and zoos of birds lawfully held within the United States for many years. We hope the Senate will investigate this and take any appropriate action with respect to this disruption of interstate commerce.

It is the stated intent of a number of the members of the anti-trade community, while working for passage of restrictive legislation like H.R. 5013, to go to each state, state-by-state, to sponsor laws banning the sale of wild-caught birds within each state. If the activity addressed by legislation like H.R. 5013 is a state concern, then there is no reason for Congress to act in this area. AFA recognizes that of the dozens of states where such legislation has been presented, only two states, New York and New Jersey, have adopted exotic bird laws. It is noteworthy that these states ban the sale of wild-caught birds, but, even though they share borders physically, their laws are not consistent. In New York, the first state to adopt such a law, legislators were told that there was no opposition. This was untrue. New York aviculturists were never told of the law, and no public hearings were held. In New Jersey, aviculturists were told that the law being proposed mirrored proposed Federal legislation (S.1218) supported by aviculturists. This was likewise untrue. All other states in which such legislation was proposed, after hearing, rejected it and said it was a Federal and international issue.

Aviculturists are extremely concerned that unless the Senate indicates that such legislation is a national issue, a patchwork of inconsistent state laws will be proposed and could be adopted thwarting this conservation effort. While AFA is sensitive to the problem posed by pre-empting existing state legislation, AFA could not find a bill such as H.R. 5013 acceptable if it did not create a uniform policy. However, AFA would understand if that national policy were to exclude legislation existing in the states (New York and New Jersey) on the date of enactment of Federal law.

If legislation like H.R. 5013 is, as the American Federation of Aviculture believes, of national concern, then Congress should, in the report to accompany such legislation, establish such legislation as being henceforth the national policy for the importation, sale and transport of exotic avian species.

CONCLUSION

If the Senate deems it appropriate to address the issue of trade in non-native (exotic) birds through legislation, then the American Federation of Aviculture recommends that the most practical way of accomplishing this is through legislation modeled after the draft of H.R. 5013 currently pending before the United States House of Representatives provided the following modifications are made:

1. Section 12(4): Exotic avian species which are permitted to be lawfully exported by their countries of origin should be exempt from any limitation on importation or sale for purposes of breeding by qualified aviculturists and zoos. Legislation should dictate that this be implemented by the Secretary allowing importation for participants in "cooperative breeding programs." Such programs should be developed, administered by or in conjunction with avicultural, zoological or conservation organizations and should involve participation by the aviculturist or zoo in a simple exchange of information on breeding, raising, nesting, housing and other relevant data and the making of offspring available to participants. A participant should be certified for so long as they participate in this program so that they will be able to import, or purchase from importers for breeding purposes, wild-caught birds not on the Approved List. The enhancement through aviculture or zooculture of captive breeding will result in decreased pressure on and increased survival of wild birds in their natural habitats. The zoo display exemption should be deleted and the zoo breeding exemption (Section 12(3)) should be merged into Section 12(4).

2. Sections 5 and 8: The criteria for placement of exotic birds on an Approved List as found in Section 6 or for imposing a moratorium or quota as found in Section 8 should be deleted and replaced with more workable criteria. Pursuant to these criteria the Fish and Wildlife Service would approve for importation and sale, without restriction, avian species where their countries of origin have in place, for species to be traded, a "management plan" appropriate to the species and their habitat and which is designed to provide for humane treatment and to minimize mortality in trade. Such a plan should take into account both appropriate management of species in these habitats as well as other valid reasons for permitting trade.

3. Section 15(a) should be deleted and replaced with a provision authorizing recordkeeping and marking only of birds imported into the United States after enactment insofar as necessary to enforce the provisions of Section 11. Section 15(b) should be merged with Section 13(d).

4. Section 6(b): Foreign captive-bred birds should be placed on the Approved List (Section 6(a)), and the Secretary should be instructed to facilitate importation of legitimately captive-bred birds from aviculturists in foreign countries by ensuring the ability of all aviculturists who fulfill the provisions of Section 7 to be able to have their birds imported into the United States. Additionally, the Secretary should be directed to facilitate importation of foreign captive-bred birds as well as exportation of United States-bred birds.

5. Section 11(b) should be deleted as it creates a presumption of guilt until innocence is proven.

6. The report to accompany legislation should dictate that the Fish and Wildlife Service should not seize exotic birds from aviculturists where adequate provisions can be and are made to ensure that the evidence will be preserved and that the birds will be kept safe and healthy until the outcome of legal proceedings or where aviculturists are not a part of any suspected illegal activity.

7. Legislation should clearly set out that, except for state legislation existing on the date of enactment, such Federal legislation is national policy with respect to the importation and sale of exotic avian species and that legally held avian species may be readily transported throughout the United States.

On behalf of the American Federation of Aviculture and the tens of thousands of aviculturists and millions of companion bird owners in the United States, we appreciate the opportunity to inform and educate Congress and the public of an important aspect of a major grassroots conservation effort within our country and of the enhancement of the lives of our citizens through the great love of aviculturists and individual companion bird keepers for their avian companions. Our efforts are designed to enhance the quality of life for people in our country who share their lives with avian companions, to promote the conservation of exotic avian species through propagation of these species within the United States and to help preserve these species from extinction. While our organization recognizes the necessity and appropriateness of making adjustments through a vehicle like H.R. 5013 to address problems with the current system, we ask the Senate to recognize that AVICULTURISTS are a vital part of the solution to the problem of pressure on species created by humankind's development of our planet. The Senate must understand that we cannot make people in foreign countries save birds with words. Laws are just words. We must give these people incentives to save birds. If legislation like H.R. 5013 is reworked into something that is sensible and will allow people in foreign countries as well as in the United States to comply with it in a reasonable way, then it will act as an incentive to save birds. A law which will have so many pitfalls that no one can comply with it is not really a law—it is a ban. Bans will only result in the destruction of avian wildlife and habitat, an increase in smuggling and the denial of your constituents' ability to share their lives with avian companions and an opportunity to enhance their lives through Aviculture.

In addressing these issues, we hope that Congress will see that aviculture—the keeping, breeding and raising of exotic avian species in the United States—and aviculturists are an essential part of this solution and not take any steps to unduly restrict our ability or take away our right to pursue these efforts and to pursue that which gives us happiness. Aviculture is our pursuit of happiness. Unlike the anti-trade groups which do not want us to have birds in our homes or aviaries because they do not philosophically believe in it, and do not consider the birds' plight in a disappearing wild and would resign some of the species to extinction, we believe that EXTINCTION IS NOT ACCEPTABLE and that AVICULTURE IS CONSERVATION. We believe in AVICULTURE, NOT EXTINCTION. If H.R. 5013-type legislation is truly to be the WILD BIRD CONSERVATION ACT OF 1992, it must also be the AVICULTURE ENHANCEMENT ACT OF 1992. Help us make our country proud. Help us to do what we do best—breed and care for our avian companions—and enhance the quality of the lives of the citizens of the United States—your constituents—through preserving their right to share their lives with their exotic avian companions, while at the same time enhancing our conservation activities with respect to these birds. In the spirit of the efforts of the world community to deal with the issues of bio-diversity, we ask you to understand that aviculture is our contribution to both conservation and the quality of life. Please preserve it.

AMERICAN FEDERATION OF AVICULTURE

MEMBER ORGANIZATIONS

Name	State	Name	State	Name	State
American Cockatiel Society.	FL	Ann Arbor Cage Bird Club.	MI	Arizona Aviculture Society.	AZ
Aviary Association of Kern.	CA	Avicultural Society of America.	CA	Avicultural Society of Utah.	UT
Boston Society for Aviculture.	MA	Butte County Bird Club.	CA	California Game Breeders Association.	CA
Central Alabama Avicultural Society.	AL	Central Florida Bird Breeders.	FL	Central Pennsylvania Cage Bird Club.	PA
Commonwealth Avicultural Society.	VA	Connecticut Association for Aviculture.	CT	Dallas Cage Bird Society.	TX
Foothill Bird Fanciers....	CA	Fort Worth Bird Club....	TX	Gold Coast All Bird Club.	FL
Jacksonville Avicultural Society.	FL	Greater Kansas City Avicultural Society.	MO	Greater Omaha Cage Bird Society.	NE
Greater Pittsburgh Cage Bird Society.	PA	Hookbill Hobbyists of Southern California.	CA	Kansas Avicultural Society.	KS
Kentuckiana Cage Bird Club.	IN	Las Vegas Avicultural Society.	NV	Long Beach Bird Breeders.	CA
Maryland Cage Bird Society.	MD	Mid-America Cagebird Society.	NV	Minnesota Companion Bird Association.	MN
Missouri Cage Bird Association.	MO	Motor City Bird Breeders.	MI	National Capital Bird Club.	MD
New Hampshire Avicultural Society.	NH	Norco Valley Bird Breeders.	CA	Northwest Exotic Bird Society.	WA
Orange County Bird Breeders.	CA	Philadelphia Avicultural Society.	PA	Rocky Mountain Society of Aviculture.	CO
San Diego County Bird Breeders.	CA	San Diego County Canary Club.	CA	Santa Clara Valley Bird Club.	CA
Arizona Seed Crackers Society.	AZ	South Bay Bird Club.....	CA	Sun Coast Avian Society.	FL
Sunshine State Cage Bird Society.	FL	Valley of Paradise Bird Club.	CA	Washington Budgerigar Society.	WA
West Valley Bird Society.	CA	Western Bird Breeders Society.	CA	Wisconsin Cage Bird Club.	WI
Golden Crescent Cage Bird Club.	OH	North County Aviculturist.	CA	Finger Lakes Cage Bird Association.	NY
Delaware Valley Bird Club.	PA	Greater Brandon Avian Society.	FL	Middle Tennessee Cage Bird Club.	TN
West Florida Avian Society.	FL	Avicultural Society of Tucson.	AZ	Parrot Breeders Association.	VA
Avicultural Society of Puget Sound.	WA	Exotic Cage Bird Society of New England.	MA	Emerald Exotic Bird Society.	OR
Utah Pheasant Society..	UT	Charlotte Metrolina Cage Bird.	NC	Massachusetts Cage Bird Association.	MA
Boston Cockatiel Society.	MA	Greater Memphis Bird Club.	TN	Colorado Cage Bird Association.	CO
Cascade Canary Breeders Association.	WA	Hi Desert Bird Club.....	CA	Society of Parrot Breeders & Exhibitors.	NH
South Sound Exotic Bird Society.	WA	International Dove Society.	TX	Rose City Exotic Bird Club.	OR
Chester County Bird Breeders.	PA	International Softbill Society.	TX	Great Lakes Avicultural Society.	MI
Exotic Bird Club of Florida.	FL	Coastal Avian Society....	CA	New Mexico Bird Club..	NM
Town & Country Feathered Friends.	MI	Front Range Avian Society.	CO	Broome County Caged Bird Club.	NY

AMERICAN FEDERATION OF AVICULTURE—Continued

MEMBER ORGANIZATIONS

Name	State	Name	State	Name	State
Anthracite Bird Club.....	PA	Gateway Parrot Club.....	MO	Buffalo Hookbill Association.	NY
Erie Cage Bird Club.....	PA	Tri-State Bird Club & Foundation.	VA	Gulf Coast Bird Club.....	FL
Central Indiana Cage Bird Club.	IN	Southwest Florida Bird Club.	FL	Gainesville Bird Fanciers.	FL
Golden Triangle Parrot Club.	Canada	Finch Society of San Diego County.	CA	Greater Rochester Hookbill Association.	NY
Birds of a Feather Avicultural Society.	NH	Gulf South Bird Club.....	LA	Arizona Avian Breeders Association.	AZ
Imperial Bird Club.....	FL	Plano Exotic Birds Association.	TX	Black Hills Cage Bird Club.	SD
Raleigh-Durham Caged Bird Society.	NC	Greater Spokane Avicultural Society.	WA	Avicultural Association of San Francisco.	CA
Contra Costa Avian Society.	CA	Tennessee Valley Exotic Bird Club.	TX	Redwood Exotic Bird Society.	CA
Northwest Bird Club.....	OR	Northeastern Avicultural Society.	NH	Avian Insights Bird Club.	WI
Central Coast Avicultural Society.	CA	International Aviculturists Society.	FL	Bi-State Avicultural Association.	AL
Yuma-Imperial Exotic Bird Club.	CA	Capitol City Bird Society.	CA	South Carolina Bird Briddies.	SC
Kenosha Exotic bird Club.	WI	Alamo Exhibition Bird Club.	TX	Central California Avian Society.	CA
Santa Barbara Bird Club.	CA	Ventura County Bird Club.	CA	Western New England Cage Bird Society.	MA
Tri-County Bird Club.....	PA	Monterey Bay Cage Bird Club.	CA	Dakota Feather & Fur Club.	ND
San Diego County Game Bird Breeders.	CA	Blue Ridge Caged Bird Society.	VA	Redwood Empire Cage Bird Club.	CA
World Parrot Trust.....	England	Cage Bird Club of NE Tennessee.	TN	B.E.A.K.S.....	MI
Treasure Coast Exotic Bird Club.	FL	Cage Bird Club of Charlotte County.	FL	Palmetto Cage Bird Club.	SC
Parrot Society of South Florida.	FL	The Aviary Bird Club of Central Virginia.	VA	Capital Feathered Wings Bird Club.	MI
Avis Northwest Bird Club.	WA	Rose City Hookbill Society.	CT	Bird Fanciers of Oklahoma.	OK
Mid-Oregon Bird Breeders.	OR	South Mississippi Cage Bird Society.	MS	Emerald Coast Avian Society.	FL
Gulf Coast Gamebird Breeders.	TX	West Suburban Caged Bird Club.	IL	Delmarva Cage Bird Club.	MD
Feather Fancier's Society.	NJ				

STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

I would like to commend Senator Baucus, Senator Chafee and the other members of the subcommittee for addressing the issue of the importation of wild birds into this country. I submit this statement both as supporter of similar legislation in the House and as a Representative from one of the two States that have already enacted laws barring the importation of wild-caught birds to supply the pet industry.

I am very proud that New Jersey has adopted a tough law banning the importation and sale of wild birds. New York enacted a law banning the sale of wild birds several years earlier, and is now seeking to adopt strengthened regulations. These State initiatives certainly deserve great praise, but I believe that an immediate nation-wide ban on the importation of wild-caught exotic birds is the most effective way to stop this cruel trade which is devastating the populations of several species.

Since the United States accounts for the largest market for these birds, a ban on importation would help to remove the major economic incentive for removing these birds from their natural habitat.

The House Merchant Marine and Fisheries Committee, of which I am a member, has approved language representing a compromise from much stronger legislation introduced last year, known as the Wild Bird Protection Act. Rep. Gerry Studds, the Chairman of the subcommittee on Fisheries and Wildlife Conservation and the Environment, has worked tirelessly and assiduously to bring together the various sides of this controversy, in the interest of getting a law on the books this year. Although compromises by nature do not completely please anyone, the bill we approved in Committee in the House is a sensible approach to stabilizing and restoring wild bird populations while spurring a domestic captive breeding industry to supply consumer demand for pets.

It had always seemed clear to me and other supporters of measures to protect wild birds that Federal legislation should not undermine, preempt or supercede the laws currently on the books in New Jersey and New York or indeed any other State that should enact more stringent laws. During a colloquy at a Fisheries Subcommittee hearing between Chairman Studds and Rep. George Hochbrueckner of New York, it was stated by the Chairman that there is no intent to preempt State laws. That is part of the hearing record, making the intent of the House abundantly clear. It is my opinion that this intent underlies the measure before the Senate today.

In an effort to ensure continued progress—and resist backsliding—in the fight to end the importation of wild birds, I hope that the Senate will similarly indicate its intent that the Federal act in no way preempts current or future State laws. In this same spirit, I would certainly urge Senators to resist any attempts to insert language into the act that explicitly allows for preemption of State laws.

STATEMENT OF DR. STEVEN R. BEISSINGER, COMMITTEE ON BIRD TRADE, THE
AMERICAN ORNITHOLOGISTS' UNION

The American Ornithologists' Union (AOU) is the largest and oldest organization of professional ornithologists in the United States. Representing over 5500 scientists from the U.S. and 66 countries around the world, the organization is dedicated to the study of birds and their conservation.

The U.S. is the largest importer of exotic birds. International regulations have been unable to control this trade, which increasingly threatens the existence of wild bird populations and entire species. In July 1990 the AOU formed a subcommittee of five distinguished ornithologists to develop recommendations for the need and configuration of legislation to control the importation of exotic birds. The findings of this committee (Beissinger et al. 1991) resulted in a Resolution passed by the AOU in 1991 that calls for a moratorium on the importation of all live exotic birds for commercial purposes (see Appendix). The AOU has resolved that current numbers of wild-caught live exotic birds being imported into the U.S. are indefensible and that the sale of these wild-caught birds must be stopped as soon as possible. Similar resolutions were passed by all other major scientific societies of ornithologists in the United States: The Cooper Ornithological Society, the Association of Field Ornithologists, and the Wilson Ornithological Society (see Appendix).

The AOU believes that there is a strong need to pass a "Wild Bird Conservation Act of 1992." Earlier versions of H.R. 5013 provided incentives to transform an international trade gone awry into a sustainable one, and the AOU strongly supported its passage. However, the amended bill being considered today will guarantee the conservation of only a some wild birds, while legislating into perpetuity markets that will continue to jeopardize the existence of the majority of species in the trade.

Unless H.R. 5013 is amended substantially to promote the conservation of most wild birds, the AOU believes it should be renamed the "Exotic Bird Trade Act of 1992" to better reflect its revised structure and emphasis. At the very least, the word "conservation" should be removed from the title, or the word "bird" should be qualified, to indicate the limited scope of the proposed legislation. The AOU is seriously concerned with (1) the ten excluded bird families, many of which include endangered or declining species; (2) the potential laundering of wild birds under the current definition of a "qualifying facility"; (3) the inadequate scope of the proposed immediate moratorium; (4) the three-tiered approach to regulation, and the absence of regular, periodic review of trade in non-CITES species; (5) the unwarranted distinction between zoological breeding programs and cooperative breeding programs; (6) the absence of international sanctioning of cooperative breeding programs; (7) the

absence of a clear statement indicating that this Act shall not preempt stricter legislation adopted by the individual States; and (8) the failure to provide the Secretary with the authority to suspend importation of species based on their potential to spread diseases or become established as pests. Below the AOU outlines the amendments needed to give H.R. 5013 a truly meaningful role in wild bird conservation:

1. Eliminate Excluded Families of Birds [Sec. 4 (2B)(ii)]—There is no justification for excluding species from the ten families of birds from a bill to promote the conservation of exotic birds. Except for the Dromiinae, all of these families include species or species populations that are listed as endangered under the Endangered Species Act, or are listed as rare or vulnerable to extinction by IUCN and the International Council for Bird Preservation. The Cracidae and Gruidae include some of the most endangered species in the world. In addition, wild populations of many other species in all of these families have been declining rapidly in recent decades and will undoubtedly become endangered in the near future.

These ten avian families should be subject to the same trade restrictions as other bird families. Furthermore, an exemption from import legislation is not needed for breeders of these families since importation of these families would be covered in the Act under the list of Approved Species. Instead of excluding these families, let the Fish and Wildlife Service evaluate which species should or should not be traded. Because most game birds of economic importance are primarily captive-bred and would be placed on the "clean list" of captive-bred species anyway, no exemption for them should be included in the definition of exotic bird.

Excluding these so-called "game birds" from this legislation will actually create a market for them. Traders, no longer able to export species they have traded for years, will switch to these species which up until now have primarily been captive-bred. And they will find a ready market for wild birds in zoos, and among breeders and private collectors. Only a handful of the species in these families are covered by the ESA or CITES, yet populations of many of the rest are declining in the wild. For example, Ocellated Turkeys are not on CITES, nor are they listed as endangered species, but they are declining rapidly in certain portions of their range (Collar and Andrew 1988). They are bred in captivity, but they are also taken from the wild. Similarly, this legislation would endorse greater importations of many other species of cracids, pheasants, and cranes which are considered at risk of extinction by IUCN but are not on CITES or listed under ESA and are imported by private breeders. And what private breeder wouldn't want to import White-eared Pheasants from China, even though they are very rare in the wild, because the captive population in the U.S. suffers from inbreeding. Unfortunately, history has repeatedly shown rapid shifts in unsustainable trade from species listed in CITES to those that have not been listed in CITES.

If this exemption is left in H.R. 5013, it will defeat the purpose of the bill, unless, of course, the title is changed to the "Wild Bird Conservation Act Excepting Cracidae, etc." There will be little impetus to develop organized, cooperative programs to manage the genetic diversity of captive populations of these ten families since wild stock will always be available. The bill will actually foster the mismanagement of birds that are not only threatened by habitat destruction, but are often hunted throughout their range by local peoples. These families were exempted from this legislation because of persistent pressure from a small group of game bird breeders. This is a prime example of a special interest group dictating a bill instead of basing legislation on sound scientific principles.

2. Refine "Qualifying Facility" to Prevent Laundering of Wild Birds—The legal channels for the importation of captive-bred birds provided in this legislation will create an economic stimulus to launder wild-caught individuals through these channels and make trade difficult to regulate. Enforcing trade regulations that allowed importation of captive-bred birds will require the development of adequate marking systems to detect the laundering of wild-caught birds through captive breeding facilities. Presently no marking system is completely reliable. Except for a handful of species that are only bred in captivity, the only means of assuring that birds from a qualifying facility are captive-bred is to require that blood samples from each bird and its parents accompany each imported bird for analysis of parentage using DNA fingerprinting. Thus, we suggest that the term "qualifying facility" in Section 4(5) be defined as "an exotic bird breeding facility which can unequivocally prove that all birds for sale have been bred in captivity and that meet the other criteria included in the list published by the Secretary under Section 7."

3. Expand the Immediate Moratorium to ALL Traded Species—Section 5 of the Act establishes an immediate moratorium on the importation of exotic species in the "Report to the Animals Committee" adopted by the 8th meeting of the Conference to the Parties of the Convention. This would conserve only ten parrot species

which are included in this report: Fischer's Lovebird (*Agapornis fischeri*); Yellow-headed Amazon (*Amazona oratrix*); Green-cheeked Amazon (*A. viridigenalis*); Golden-capped Conure (*Aratinga auricapilla*); Grey-cheeked Parakeet (*Brotogeris pyrrhopterus*); White Cockatoo (*Cacatua alba*); Coffin's Cockatoo (*Cacatua goffini*); Red-vented Cockatoo (*Cacatua haematuropygia*); Lesser Sulphur-crested Cockatoo (*Cacatua sulphurea*); and Chattering Lory (*Lorius garrulus*). However, many species of birds in the trade are being overexploited and an immediate importation ban is likely to be beneficial to their conservation. Since aviculturists have had continued access to wild-caught birds for decades, all species in commercial aviculture are in captivity in numbers (30-50 wild-caught individuals) that support sufficient genetic diversity for captive breeding if this endeavor is pursued cooperatively. There is no evidence that smuggling would increase as a result of an immediate phase-out, especially since current levels of smuggling are already thought to be high (James 1992). For these reasons, we strongly recommend that an immediate moratorium be placed on the importation of all species for a period of one year, while the Secretary prepares a list of approved species as prescribed in Section 6 of the Act.

4. Eliminate the "Three-Tiered" Approach to Regulation, and Require Regular Review of Species Not Included in Appendices to the Convention—There is no justification for a three-tiered approach to regulating trade, and such an approach is inconsistent with the original purposes of the Act. Trade in bird species not listed in the CITES Appendices should be regulated in the same sustainable manner as those that are listed. Wild populations of many heavily traded species—such as some finches, sunbirds and tanagers—are declining rapidly and yet are still not protected under CITES or ESA. Furthermore, non-CITES and CITES birds are often shipped together, and possess similar appearances especially in their juvenile plumages. U.S. Fish and Wildlife inspectors, most of whom are not trained in bird identification, will have great difficulty distinguishing between CITES and non-CITES species, making this provision extremely difficult and costly to enforce. This identification problem, together with the relatively low overall rate of shipment inspection, suggests that substantial illegal trade in endangered and threatened species could continue if H.R. 5013 is adopted in its current form.

If, however, CITES and non-CITES species are to be treated differently under the Act, the AOU believes that the Secretary should be required to conduct a review of the status of species not included in any Appendix to the Convention at regular intervals, not exceeding every two years. Therefore, we suggest amending Section 8 (a)(1) from "review periodically. . ." to "review biennially. . .". Furthermore, the Secretary should be required to place a moratorium on non-CITES species in cases where similarity of appearance could promote trade in congeneric species protected under CITES or the ESA. We therefore recommend amending Section 8 (a)(2)(ii) to read: "finds that a moratorium or quota is necessary for the conservation of the species, closely related species of similar appearance, or is otherwise consistent with the purpose of this ACT; or. . .".

5. Eliminate the Exemption for Zoological Breeding Programs—Zoological breeding programs are only warranted if they are established to conduct research, and are organized, multi-institutional efforts. Because importation can be authorized for research [Section 12(1)], or for cooperative breeding programs [Section 12(4)], the AOU believes that a distinction between "zoological breeding programs" and "cooperative breeding programs" is unwarranted. We suggest, therefore, that Section 12(4) be modified to read simply: "Zoological display programs at public facilities."

6. Permit Importation of Exotic Birds for Cooperative Breeding Only for National and Internationally Sanctioned Programs The wording of Section 12(4) allows the continued importation of large numbers of birds because keeping birds in captivity has been construed by many aviculturists as "conservation." To avoid the promotion of captive breeding as a thinly veiled rationalization for keeping exotic birds in captivity in private collections, all cooperative captive breeding programs should be both nationally and internationally sanctioned. Such programs must be fully integrated with efforts to conserve and/or re establish wild populations in the countries of origin of these birds. The ownership and control of these birds must be given up to a central authority. Thus, append to the end of Section 12(4)(B): "and sanctioned by an appropriate agency(s) in the country(s) of the species' origin(s)."

7. The Federal Law Should Not Preempt More Stringent State Laws—Several States, such as New York and New Jersey, have already adopted strong laws to regulate the commercial trade in exotic live birds, and these laws have had a very positive impact on conserving wild bird populations and promoting captive breeding for commercial purposes. Federal regulation of the exotic bird trade should not undermine or preempt extant State regulatory regimes or prevent any State from adopting regulations restricting the live bird trade that are stricter than those included

in H.R. 5013. We therefore recommend adding a provision to the bill (Sec. 3) clearly stating that "H.R. 5013 does not preempt any State Law which is more stringent than this Act and the regulations adopted therein."

8. Add the Potential to Spread Disease and Pest Status to Findings and Authority of Bill—Because of inadequate quarantine facilities, the importation of live exotic birds poses significant risks of disease transmission to native bird species, poultry, or other birds held for legitimate purposes such as exhibition or scientific study. Furthermore, the numbers of exotic species establishing themselves—so far mainly in urban environments but perhaps eventually spreading throughout the country—may cause native bird populations to decline. Details of these problems are given in the Appendix.

To indicate the seriousness of threats of disease and pest status posed by imported exotic birds, add the following phrase to the findings at the end of Sec. 2(1) "and that trade has led to the spread of avian diseases around the world and the inadvertent establishment of exotic species in the wild." In accordance, add the following phrase to the Sec. 3(3) to complete the list of appropriate reasons why trade should be suspended: "(C) exotic birds do not pose significant threats of spreading disease to native species and poultry, or becoming established in the wild as exotic species." Add the following phrase to the end of Sec. 5(b)(1)(A) to complete the list of appropriate reasons why the Secretary may prescribe specific trade quotas: iv. trade in species poses the potential of spreading exotic disease or becoming established as an exotic pest in the U.S."

THE MAGNITUDE OF THE INTERNATIONAL TRADE IN BIRDS AND ITS EFFECTS ON WILD POPULATIONS

In recent years, international trade in exotic birds for pets and aviculture has grown greatly (Nilsson 1990, Thomsen and Mulliken 1992). Estimates of the current annual magnitude of the live trade in exotic birds range from two to five million individuals (Inskipp 1990). Accurate data on the scale of internal (nonexport) trade in birds are not available, although this trade is also thought to be substantial in many countries.

The United States imports more birds than any other country. Nearly two million birds from 85 countries were legally imported into the United States between 1986 and 1988 (Nilsson 1990). Forty-three percent of these birds were parrots primarily from Latin America, while about 54 percent were finches (Estrildidae, Fringillidae, and others) primarily from Africa. The remaining 3 percent represented 77 different families of birds.

Parrots represent the largest monetary share of commerce. The United States accounts for 47 percent of all parrots sold internationally, and perhaps 80 percent of the trade in Latin American parrots, followed by the European Economic Community and Japan (Thomsen and Mulliken 1992). Approximately 1.8 million parrots from Latin America, nearly all captured from the wild, were legally exported for trade from 1982 to 1988 (Thomsen and Mulliken 1992). The actual numbers taken from the wild for commercial activities were probably several times as large, when internal trade, illegal export (e.g., 150,000 parrots per year smuggled through Mexico; Thomsen and Hemley 1987), and high mortality rates of birds harvested from the wild (e.g., 60 percent die before exportation in Mexico; Inigo-Elias and Ramos 1991) are considered. The actual numbers of wild Latin American parrots harvested for international trade between 1982 and 1988 may have been almost four million birds (Thomsen and Mulliken 1992).

This trade increasingly threatens the existence of wild bird populations and even entire species. Although nearly all exporting countries are members of the Convention on International Trade in Endangered Flora and Fauna (CITES), and many exporting countries have adopted trade regulations, the domestic and international laws which are supposed to ensure that trapping for trade does not result in species decline have been largely ineffective (Thomsen and Mulliken 1992). Together, trade and habitat destruction now clearly represent the two major conservation problems afflicting these and many other kinds of birds worldwide.

International trade affects many groups of birds, but principal problems have been seen with parrots, which as a group are unable to sustain much pressure on wild populations (Inskipp et al. 1988). Collar and Juniper (1992) concluded that 42 of approximately 140 species (30 percent) of Latin American parrots are currently at risk of extinction. For 22 (52 percent) of these species, trade is a major cause of endangerment.

Examples of parrots now critically threatened by trade include Spix's Macaws [*Cyanopsitta spixii*], Hyacinth Macaws [*Anodorhynchus hyacinthinus*], Tucuman Amazons [*Amazona tucumana*], Coffin's Cockatoos [*Cacatua goffini*] and Red-

crowned Amazons [*Amazona viridigenalis*] (Collar and Juniper 1992). Although parrots are most threatened by trade, other birds are also affected (Nilsson 1989).

Little information is available on how trade is affecting most nonendangered birds. However, if the Blue-fronted Amazon [*Amazona aestiva*] is any indication, trade is probably having a strong effect even on many common species. Over 45,000 Bluefronted Amazons were exported from Argentina between 1982 and 1986. It is virtually inconceivable that this species can continue to sustain such harvest levels much longer, as evidenced by its disappearance from many areas of its range (Beissinger and Bucher 1992a).

Captive breeding is the major source of individuals in trade for only a relatively few species—Budgerigars [*Melopsittacus undulatus*], Cockatiels [*Nymphicus hollandicus*], Canaries [*Serinus canaria*], Zebra and Bengalese Finches [*Amandava subflava* and *Lonchura domestica*] most Agapornis lovebirds, several species of Cockatoos [Cacatua], and a number of Australian finches (e.g. *Chloebia gouldiae*, *Poephila cincta*, *Poephila acuticauda*). For most other species, essentially all individuals in trade come directly from wild sources, either trapped as free-flying adults or taken as nestlings. In many areas, the harvest of nestlings of species that nest in tree cavities involves destruction of nest trees, posing a further stress on wild populations limited by nest availability (Beissinger and Bucher 1992b).

On the basis of the information presented above, the American Ornithologists' Union has resolved that current numbers of wild-caught live exotic birds being imported into the United States for commercial activities are indefensible and that the sale of these wild-caught birds must be stopped as soon as possible.

GENERAL PRINCIPLES TO GUIDE INTERNATIONAL TRADE IN LIVE EXOTIC BIRDS

The issues relating to the governance of the international trade in live exotic birds are complex. Biological, political, social, and economic factors each affect the conditions under which trade has been or should be implemented. Little serious thought has been given to the implications of these factors, but especially to the role of biology.

If there is to be a trade in live exotic birds for commercial purposes, the AOU believes that it is important to state from a biological standpoint what conditions must be fulfilled. Focusing primarily on the implications for conserving wild bird populations in the countries of origin as well as in North America, the AOU has developed seven principles to provide a basis for guiding an international trade in live birds and legislation designed to regulate it.

1. The importation of live exotic birds should be sustainable. It should not pose risks for wild populations of species that are imported. There is no justification for commercial endeavors to result in the extinction of species in the wild, as been the case for several parrots as trade is currently practiced. Although CITES provides some protection for a small set of species listed in its Appendix I, even some of these have been imported in significant numbers relative to wild population sizes (e.g., the Hyacinth Macaw; Nilsson 1990). There is no reason that any of the 1100 bird species threatened with extinction (Collar and Andrew 1988) should be imported for commercial purposes. Importation of these species should be restricted to internationally recognized breeding or recovery efforts, legitimate scientific investigations, and public exhibition or education programs.

If importation of wild birds is to continue, it must be done on a sustainable basis; it must be implemented in such a way that it does not pose threats to wild populations. Important biological information is needed to determine what levels of harvest would be sustainable (Beissinger and Bucher 1992a,b). This information has not been gathered for any species in the trade, and most export quotas are not based on scientific data (Thomsen and Mulliken 1992). Export quotas for most countries need to be lowered drastically. Biological data suggest that there is a good potential to harvest some parrots in a sustainable manner through habitat management operations (Beissinger and Bucher 1992b), although no "ranching" projects with free-flying birds have been attempted to date. Careful evaluations of the biological, social, and economic problems of implementing harvest programs must be conducted before mechanisms are put in place to encourage or discourage such programs (Beissinger and Bucher 1992b).

2. The importation of live exotic birds should not pose significant risks of disease transmission to native species, poultry, or other birds held for legitimate purposes such as exhibition or scientific study. Under current regulations, all birds imported to the United States are held for 30 days of USDA-regulated quarantine and tested only for Exotic Newcastle Disease (VVD). This period is too brief to allow the detection of other slow-acting pathogens, many of which have recently been imported into collections of captive birds and potentially could be transferred to native spe-

cies (Cooper 1989, Nilsson 1990). Difficulties with one disease alone (VVND), which caused a massive loss to the poultry industry in 1972 and continues to strike periodically since then, suggests that enormous economic losses may occur if the importation of wildlife species from foreign lands continues and the current, inadequate, Federal quarantine regulations are not changed. Significant improvements in quarantine procedures are needed, including much longer quarantine periods and testing for many more disease; no quarantine system has yet proven to be even close to foolproof in preventing importations of diseases. The massive extinctions of native Hawaiian birds, caused in part by diseases to which many species had no prior exposure, stand as a sobering example of the potentials of exotic diseases to have tragic consequences (Warner 1968, Ralph and Van Riper 1985).

3. The importation of live exotic birds should not result in significant potentials for the establishment of feral populations. Vast uncontrolled experiments in introductions of exotic species are already underway in our country as a result of continued importations. The numbers of exotic species establishing themselves (Long 1981, Thomsen and Mulliken 1992), so far mainly in urban environments but perhaps eventually spreading throughout the country, may cause native populations to decline. This increases the threat of extinction for native species and may permanently distort ecosystems. These experiments represent a foolhardy tampering with natural systems.

4. The importation of live exotic birds should be consistent with U.S. policies concerning the use of native species. For many decades, the United States has prohibited most commercial uses of native wildlife species, although there are several legal forms of utilization of wild birds. For example, sport hunting and falconry are carefully regulated, require licenses, and require that wild populations of game birds or raptors be managed in a sustainable manner. However, non-native wildlife (e.g., exotic birds) have been largely exempt from regulations. So although it is illegal to market or hold native bird species, except under permit, it is quite legal to practice these same activities with most non-native birds without a permit. This poses unfortunate ethical inconsistencies in how we treat wildlife species. Maintaining one approach to native wildlife and another to foreign wildlife is a double standard that is difficult to defend. To be ethically consistent, the trade in live exotic birds should be regulated in the same manner that the United States regulates accepted commercial uses of native wildlife.

5. The importance of live exotic birds should be governed by regulations that are economically feasible, practically enforceable, simple, and effective. Regulations should not preclude scientific studies of birds in captivity, international recovery efforts, or public exhibitions for educational purposes. Attempts to achieve effective regulation of the bird trade pose a number of serious interrelated problems. Complicated regulations imply complicated bureaucracies and significant expense, and are susceptible to failure because of underfunding and difficulties in addressing complexities. Simplicity in regulations is an important goal. For example, if legal channels for the importation of captive-bred and ranched birds were provided in legislation, the economic stimulus to launder wild-caught individuals through these legal channels would be large, making the trade more difficult and costly to regulate than by a complete ban. Enforcing trade regulations that allowed importation of captive-reared or ranched birds would require the development of adequate marking systems to detect the laundering of illegal birds. Presently no marking system is completely reliable (Beissinger and Bucher 1992b). More resources must be invested in enforcing any legislation, including stronger fines and sentences for convicted smugglers, if legislation is to effectively deter current widespread smuggling.

6. Captive breeding of exotic species for aviculture must be self-sustaining (i.e., without requiring the continued importation of wild-caught birds) and be conducted humanely. Captive breeding for aviculture should become a self-sustaining enterprise that does not require the constant importation of wild birds. Currently, the importation of wild birds for commercial aviculture is fueled in part because it is often less expensive for aviculturists to import adult wild-caught birds and begin production immediately than to wait for years for captive-reared juveniles to become mature (Clubb 1992). Aviculturists do not need continued access to wild birds for captive breeding stock because all species of commercial importance are already represented in sufficient numbers in captivity (Allen and Johnson 1991) to constitute a viable gene pool under active, cooperative management (30 to 50 birds per species); species with fewer individuals in captivity are obviously not of commercial importance. Instead of supplementing captive birds with wild imports, private aviculturists must adjust their practices toward the goal of self-sustaining captive populations by cooperating to establish studbooks to maintain genetically viable, captive gene pools. Humane care of captive birds, from the transporting and holding

of birds in export and import centers (e.g., quarantine facilities) to the housing of birds in commercial breeding facilities, must be a priority.

7. Captive breeding of exotic birds as a conservation strategy should be pursued only as a last resort, and only as part of internationally recognized and structured programs. The promotion of captive breeding as conservation by aviculturists is sometimes a thinly veiled rationalization for keeping exotic birds in captivity in private collections. Captive breeding of exotic birds for conservation must be fully integrated with preservation and reintroduction efforts, and should be internationally coordinated (Derrickson and Snyder 1992), with explicit sanction from the U.S. Fish and Wildlife Service and an appropriate agency(s) in the country(s) of the species' origin(s). Aviculturists committed to conservation could play a significant role in future reintroduction programs if adequate control over disease threats can be achieved, and the ownership and control of birds is given up to a central authority (Clubb 1992, Derrickson and Snyder 1992). However, the many problems associated with captive breeding (financial costs, behavioral and genetic deterioration during captivity, programmatic continuity, disease control, and the difficulty in achieving consistent breeding in many species) argue for using this technique only with great discretion (Derrickson and Snyder 1992).

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STATEMENT OF SIDNEY J. BUTLER, EXECUTIVE DIRECTOR, AAZPA CONSERVATION CENTER

On behalf of the American Association of Zoological Parks and Aquariums (AAZPA) I thank you for the opportunity to submit comments in support of the Wild Bird Conservation Act.

AAZPA represents 162 accredited institutions and over 6,000 individual members. Conservation is the highest priority of AAZPA, and many of our members are significantly involved in the conservation of exotic birds.

As a member of the Cooperative Working Group on Bird Trade, AAZPA was actively participated with House Merchant Marine & Fisheries Committee staff in drafting H.R. 5013, which has been reported out of both the Merchant Marine and Fisheries Committee and the Ways and Means Committee. H.R. 5013 is the product of years of discussion and effort, and we believe that the bill takes appropriate action to protect exotic birds. H.R. 5013 contains the following provisions:

- Establishes an immediate moratorium on the importation of those species which the Convention on Trade in Endangered Species (CITES) Animals Committee has identified as being imperiled because of trade

- During the first year after enactment, authorizes the Secretary of Interior to take emergency action to suspend the importation of any species listed on a CITES Appendix to protect that species

- Beginning one year after enactment, prohibits the importation of the rest of the CITES species unless they are added to an approved list published by the Secretary of Interior

- Allows the Secretary to establish a quota or moratorium on the importation of non-CITES species on a species-by-species basis

- Allows the issuance of permits for the importation of birds not on the approved list for the purposes of scientific research, zoological breeding or public display, or cooperative breeding programs

- Establishes an Exotic Bird Conservation Fund to provide financial and technical assistance for exotic bird conservation projects

- Requires the marking of birds imported to, or bred in the United States after the date of enactment

AAZPA supports the language in H.R. 5013 and will be pleased to work with you to ensure the passage of this important legislation.

Thank you for your consideration.

NEW YORK ZOOLOGICAL SOCIETY
BRONX, NEW YORK
July 15, 1992

Hon. Max Baucus
United States Senate
Committee on Environment and Public Works
Washington, DC.

DEAR SENATOR BAUCUS:

Throughout this century, the New York Zoological Society (NYZS) and its field science division, Wildlife Conservation International (WCI), have been at the forefront in bird conservation, reducing the threats of the wild bird trade at all levels. Based on our analysis, When A Bird in the Hand Means None in the Bush, which is enclosed, the wild bird trade as it currently exists must stop now. NYZS believes that a moratorium for a specific period of time could effectively accomplish this goal. The aim of this moratorium would be to replace the present bird trade with

one that is effectively regulated and is based only on captive bred birds and on birds harvested from sustainably managed wild populations.

In June 1991, a package of four bills, two in the Senate (S. 1218 and S. 1219) and their House companion bills (H.R. 2541 and H.R. 2540 respectively), were introduced that would end the importation of wild caught birds into the United States for sale as pets. In March 1992, Congressman Studds, Chairman of the House Subcommittee on Fisheries and Wildlife Conservation and the Environment introduced an alternative, H.R. 5013, which was drafted predominantly by the Fish and Wildlife Service. At the June hearing on this bill before this subcommittee and the subcommittee on Trade, I testified in support of a modified version of H.R. 5013 on behalf of NYZS, WCI, the American Association of Zoological Parks and Aquariums, and twelve different bird breeding associations. In late June the House Merchant Marines and Fisheries Committee voted in support of a substantially revised and improved version of H.R. 5013. It is anticipated that the House Committee on Ways and Means will fully support this bill at its scheduled mark-up and vote near the end of July.

The New York Zoological Society supports H.R. 5013, "The Wild Bird Conservation Act of 1992," as a significant effort toward ending the current practices of the wild bird trade. While the bill does not impose a complete moratorium on US imports of wild caught birds, it does impose a moratorium within one year of enactment on all bird species listed on CITES (the Convention on International Trade in Endangered Species). The bill also imposes an immediate moratorium on imports for bird species that are significantly affected by international trade based on the Significant Trade Review for the eighth meeting of CITES in Japan this past March. An approved list of species, designated by country and by operation where appropriate, would be developed by the Secretary of Interior for captive bred birds and wild birds of CITES species when several important criteria are met. However, H.R. 5013 allows for continued imports of wild birds from non-CITES species unless the Secretary of Interior imposes a moratorium or quota based on finding that certain criteria are not being met. Since the wild bird trade is causing population declines for many parrot species, all listed on CITES, H.R. 5013 will make a significant contribution to conserving the species most affected by the current US wild bird trade.

Since the early 1980's, NYZS has recognized the need for national legislation on the wild bird trade. We helped design the regulations for the seminal 1984 New York Wild Bird Law, which prohibits the sale of wild caught birds as pets, and helped pass the stronger 1991 New Jersey Wild Bird Act. With the United States as the single largest market for wild caught birds, national legislation is vital if we hope to redirect the bird trade toward captive bred birds and wild birds that are harvested sustainably. In anticipation of the Senate Subcommittee on Environmental Protection hearing in late July on S. 1218, S. 1219 and other pending legislation, we submit our enclosed analysis as part of the record and we urge you to support H.R. 5013 or its Senate companion bill if one is introduced.

Sincerely,

DR. DONALD BRUNING
CHAIRMAN AND CURATOR OF ORNITHOLOGY

FIGHTING THE THREATS OF THE WILD BIRD TRADE

Throughout this century, the New York Zoological Society (NYZS) and its field division, Wildlife Conservation International (WCI), have been at the forefront in bird conservation, reducing the threats of the wild bird trade at the international, national and local levels. NYZS started the successful captive breeding programs in the United States and Indonesia for the endangered Bali Myna and the Palin Cockatoo, both threatened by the pet bird trade, the former from domestic demand and the later from international trade. WCI population surveys of the hyacinth macaw in Brazil and NYZS efforts on the Palm Cockatoo resulted in both being listed on Appendix I of CITES (the Convention on the International Trade in Endangered Species), thus prohibiting international commercial trade in these species.

WCI field research is currently addressing the ecology, effects of the wild bird trade, habitat management and ecotourism potential for macaws in Peru and Brazil. A WCI assessment of the wild bird trade in Venezuela, which prohibits the export of its birds, found an extensive illegal trade that is threatening several species and discovered that current controls have failed. Society efforts have also focused on designing conservation plans for the endangered yellow-shouldered parrot on Margarita Island in Venezuela, the Bahama Parrot, and other Caribbean parrot species.

To build the institutional base for bird conservation around the world, NYZS and WCI staff have established several wildlife conservation organizations in various countries. NYZS also co-founded the Parrot Specialist Group for ICBP (the Interna-

tional Council for Bird Preservation) and the IUCN/SSC (the International Union for the Conservation of Nature and Natural Resources/Species Survival Commission). NYZS Chairman of Ornithology, Don Bruning, served as secretary for the Group from 1980 until becoming its chairman from 1987-1991.

NYZS legislative efforts have involved the successful fight in the early 1900s to stop the US plume trade, for which birds were being killed to supply feathers for ladies' hats, and the passage of important US laws that regulate the bird trade and protect native bird species. Outside the US, the Society's fight against the devastation to species of birds of paradise by the plume trade in Papua New Guinea culminated in a national law in the 1970s which prohibits the export of bird feathers. To protect the Bali Myna, NYZS launched a campaign in 1982 to stop the domestic pet trade which has left only 20 birds in the wild in 1990.

Recognizing the limitations of current US and international regulations, NYZS helped design the regulations to implement the seminal 1984 New York Wild Bird Law, which prohibits the sale of wild caught birds as pets, and also helped pass the similar, yet stronger, New Jersey Wild Bird Act in 1991. NYZS and WCI are also working with the conservation community to enact similar national legislation. NYZS also assists in law enforcement in the US, with CITES, and in other countries by training customs officers, offering expertise in court, and by having produced color posters of the macaws, cockatoos, and amazon parrots for CITES to improve the ability of customs officers to enforce regulations on birds in international trade.

Founded in 1895, NYZS is a unique worldwide organization dedicated to preserving the Earth's wildlife and ecosystems. NYZS publishes the award winning *Wildlife Conservation* magazine, and operates the leading conservation and education centers at the Bronx Zoo, the Central Park Zoo, the New York Aquarium and its affiliated Osborne Laboratories of Marine Sciences, and Wildlife Conservation International. WCI has the largest field staff of any international conservation organization, and currently conducts 140 field projects in 45 countries throughout Central and South America, Asia and Africa.

WHEN A BIRD IN THE HAND MEANS NONE IN THE BUSH:

A CALL TO STOP THE CURRENT PRACTICES OF THE WILD BIRD TRADE

Position Statement

The New York Zoological Society (NYZS) and its field science division, Wildlife Conservation International (WCI), believe that the trade in wild caught birds as it currently exists must be stopped. The bird trade should be restricted to captive bred birds and birds harvested from wild populations that are shown to be managed for sustainability. A temporary moratorium is necessary as soon as possible to allow an opportunity to protect critically threatened species and to design appropriate international and national regulatory controls on the trade.

The Wild Bird Trade Is Causing Population Declines

Bird populations around the world are declining as a result of a variety of factors. The primary threats are from habitat destruction, the bird trade, and overhunting. For many species, especially some parrots, the international bird trade for pets is the most immediate threat. About 3.5 to 5 million wild birds, mostly songbirds and psittacines (parrots, macaws and cockatoos), currently are reported to enter the international commercial trade each year. However, mortality during capture and transport can be significant, and estimates suggest that a minimum of 15 to 20 million birds are caught each year to supply the trade. Because documentation of the bird trade is poor, especially for songbirds, these figures are conservative.

The bulk of the bird trade is for pets. The United States and Europe are the predominant markets for birds in international trade, but many tropical nations have significant domestic pet bird markets as well. The United States is the world's largest single market for imported birds. In the last decade at least 8.5 million birds, over 85 percent captured in the wild, were imported or smuggled into the country. When mortality is factored into these figures, at least 16 million birds were captured in the wild for the US market in the 1980s. However, imported birds comprise less than 15 percent of the overall market which is dominated by US captive bred birds. However, the US has imported about 250,000 parrots a year for the past decade, nearly half of the documented world trade in parrots. The US trade in imported parrots, though a small segment of the overall US bird trade in volume, is valued at \$300 million a year and has placed many species of parrots in jeopardy.

Many psittacines, which are especially valuable in the trade, have suffered precipitous declines. Over 40 species are listed by the International Council for Bird Preservation (ICBP) as threatened specifically by the international trade. Densities of

birds in regions which have been exploited for the trade are low. WCI field censuses, for instance, indicate that macaw populations throughout much of the Bolivian rain-forest, which remains relatively intact, have been decimated by the heavy trading in the 1970s and early 1980s. Unexploited populations in adjacent areas of Peru, which prohibits exports from the Amazon region, are relatively healthy. In Venezuela, another country that prohibits bird exports, WCI field studies indicate substantial illegal movement of psittacines that are caught in Venezuela into adjacent countries for export. See the attached, "Details on the Effects of the Wild Bird Trade," for further information from WCI research on various aspects of the wild bird trade.

Local Communities and National Development Do Not Benefit from the Wild Bird Trade

Most of the profits from the wild bird trade go to middlemen and dealers. In a recent analysis by TRAFFIC-International of the five top exporting countries, only one nation claimed to receive significant government revenue from fees it levied to regulate the international bird trade. Rural peoples derive the least economic benefit from the wild bird trade, yet they are usually the primary trappers of wild birds. On average, a trapper realizes about 1-2 percent of the retail price of a wild bird. There is no reinvestment of profits to ensure the sustainability of the harvest: the trapper does not have the means, while the buyer and dealer are opportunistic and simply move to other areas when the yield declines. Over-exploitation of wild bird populations forces the trappers to turn to other sources for supplemental income.

As populations of species that are important to the bird trade dwindle, countries lose an important natural resource and a part of their biological heritage. The decline in bird populations, especially of parrots, makes it ever more difficult to develop other economic options such as ecotourism or possible sustainable harvesting projects. Though many countries have imposed laws to protect their wild bird populations, smuggling across national borders is common because of ineffective regulation and the lack of stringent controls in adjacent countries and in major consumer nations.

Current Controls of the Wild Bird Trade are Failing

The Convention on the International Trade in Endangered Species (CITES), which regulates the international trade in wildlife, and national laws that control or prohibit the export of wild birds in over 100 countries, have not been able to effectively control the trade. Species such as the Spix's macaw of Brazil are virtually extinct because of habitat loss and the trade by specialized collectors. Many species, like the Hyacinth macaw and Moluccan cockatoo, are now endangered because of the trade and were recently listed on Appendix I of CITES, which prohibits international commercial trade. This listing recognizes the precarious state of these species and illustrates the loss of an economically important natural resource. Populations of other species that were once abundant, like the Blue-fronted, Yellow-headed, and Green-cheeked amazons; Goffin's, Lesser sulphur-crested, and White cockatoos; and the Fischer's lovebird are being rapidly depleted. It is ironic that so many parrot species are threatened by the international trade while at the same time they are covered by CITES.

A primary reason for this failure is the inability of many exporting countries to comply with Article IV of The Convention. Article IV applies to Appendix H of CITES which requires an export permit to trade in the listed species. Article IV specifies that an export permit can only be issued based upon a determination that the export is not detrimental to wild populations. Even when methodologies exist, few exporting countries have the resources to make this determination, enforce CITES or their domestic laws, or check the accuracy of required documents. No baseline surveys of bird populations have been completed by the five top exporting countries which base their export quotas on past export trends as opposed to biological data indicating the trade level a species can sustain. As a result, the wild bird trade remains largely unregulated. The problem is compounded by the fact that no one exporting country can by itself stem the illegal trade in wild birds without regional and international cooperation and assistance.

Controls on the bird trade have also been ineffective in consumer nations, the developed countries with more resources available to regulate the trade than exporting countries. Yet, for most consumer nations, there is little inspection of shipments, validation of documents, collection of import data, or other enforcement efforts. The US and United Kingdom are the only two countries that compile comprehensive data on all bird imports, not just species covered by CITES, and mortality levels in transit or in quarantine. Even the US, which has some of the most protective wildlife laws and sophisticated enforcement capabilities, has been unable to effectively control the wild bird trade. Two powerful laws include the 1900 Lacey Act,

amended in 1981, which prohibits commerce in wildlife taken in violation of any State, Federal, or foreign laws, and prohibits the importation of animals under inhumane conditions; and the 1973 Endangered Species Act (ESA), which prohibits any activity that would affect a species listed as endangered or threatened under the Act. Yet, none of the psittacines listed on Appendix I of CITES in the past five years have been listed on the ESA. The US has never adequately financed the agencies to enforce and implement these and other laws that affect the bird trade. Only 65 inspectors are on duty to inspect over 83,000 shipments into the US a year.

A Temporary Moratorium Is Needed

NYZS and WCI believe that it is essential to end the wild bird trade as it currently exists. We believe that a moratorium for a specific period of time could effectively accomplish this goal. The aim of this moratorium would be to replace the present bird trade with one that is effectively regulated and is based only on captive bred birds and on birds harvested from wild populations that are shown to be managed sustainably. Though captive breeding of birds solely for the trade offers no incentive to conserve wild populations of species or their habitat, it will significantly reduce the trade pressure on wild populations. A moratorium is necessary in order to institute appropriate international and domestic controls on the bird trade and to collect basic biological data for most bird species traded. Such a time-limited moratorium on the wild bird trade has also been recently endorsed by the American Ornithologists Union.

It is encouraging to see the United States and Europe, the predominant markets for wild birds, focussing on legislative options to end the current practices of the wild bird trade. History has proven that as long as there are readily accessible markets, large volumes of wild caught birds have continued to be exported, often illegally, out of the few remaining countries that allow regulated trade as neighboring nations have imposed bans on exports. In 1991 the European Parliament passed a non-binding resolution to ban the importation of wild caught birds for the pet trade into the European Community. It is now over the European Commission to enact appropriate legislation.

In the United States, New York in 1984 and New Jersey in 1991 passed laws prohibiting the sale of wild caught birds for pets. However, it will take a national law to effectively impose a moratorium and institute regulations that can feasibly enforce a future bird trade. Such legislation would complement foreign laws in most countries which prohibit the export of their native birds just as the US prohibits the commercial sale of its native birds via the Migratory Bird Treaty Act of 1913. Appropriate US legislation should institute a moratorium on importing live birds as soon as possible. The law should allow the importation of captive bred birds and birds from economically and ecologically sustainable harvesting projects if they become possible. However, imports should only be allowed from such operations if there are controls and effective enforcement that minimize illegal trade. A marking mechanism will be necessary to make controls effective, though there is currently no fully reliable means of marking all birds. The legislation should also focus on minimizing the risks of disease introduction from imported birds and of the establishment of feral populations of exotic species in the US.

Is It Possible to Produce Birds on a Sustainable Basis?

The premise of sustainable use, that conservation can be more effective when people value wildlife, is applicable to wild bird populations. However, to date there are no documented examples of any sustainable harvesting project or ranching operation for a wild bird population. Recent research is investigating an approach to designing a sustainable bird harvesting project in a managed population and collecting a percentage of the increase. WCI research has shown that some psittacine species appear to be limited by the number of nesting sites and that the second nestling usually dies in several macaw species. Building artificial nest boxes, and collecting and hand-rearing moribund young might be a feasible management strategy. Nonetheless, any sustainable harvesting strategy will only be feasible if there is strong regulatory enforcement ensuring that only legally produced birds enter the trade. Presently, no country has such controls which are essential for sustainable harvesting projects to be economically competitive with illegal harvesting.

The following points should be considered in exploring the potential for sustainable use projects that would produce birds for the trade:

1. Appropriate sustainable harvesting designs need to take into account the difficulty of censuring and managing wild bird populations. Traditional sustained-yield management is probably impractical for many bird species because of the need for rigorous population data rarely known for the species currently in the trade. Possible designs that involve augmenting and harvesting a managed wild population will

require sensitive monitoring of the population trends, at the very least, in order to detect the effects of such methods.

2. Countries in which sustainable harvesting projects occur must have effective controls and enforcement. Projects will most likely need to be licensed and each site will have a specific quota assigned to it. The overall failure of national quotas as they are currently derived is well recognized. Regulation could involve establishing an independent commission, independent monitoring by a local non-governmental organization, and establishing cooperatives or other means to avoid middlemen.

3. The international trade will need to be much more carefully regulated and monitored to ensure that only legally produced birds are traded. This will involve a system to mark birds at the source in order to identify their origin.

4. Projects must benefit the people of the rural communities that produce birds for the trade. This will involve possible changes in land tenure practices with land ownership as a probable requirement for successful sustainable harvest projects. Most likely a bird project would be one of several sustainable harvesting efforts in a managed area.

Tourism Opportunities for Parrot Conservation:

Tourism is another method of giving wildlife economic value which can foster conservation and habitat protection. WCI research in southeastern Peru is studying two small ecotourism operations that are based on large congregations of macaws at clay licks. The daily gatherings of large macaws at these licks offer two key ingredients for successful ecotourism: charismatic wildlife and reliable viewing. Estimates from these operations indicate that a free-flying large macaw might generate \$22,000 to \$165,000 in tourist income in its lifetime; values that exceed current US retail prices for these macaws as pets. Again, land tenure is a prominent issue and factor in whether local communities directly benefit from ecotourism operations.

Conclusions

Many bird species have been negatively affected by the bird trade and existing regulatory mechanisms are insufficient to arrest the continued decline in the populations of many species. The wild bird trade as it currently exists must end now if we are to protect populations of endangered species and have the option to develop ecotourism and possible sustainable harvesting projects. NYZS and WCI believe that a temporary moratorium imposed as soon as possible could provide the opportunity to achieve this goal.

DETAILS ON THE EFFECTS OF THE WILD BIRD TRADE:

SELECTIONS FROM WCI AND NYZS PUBLISHED FIELD RESEARCH

Macaws Threatened by the Wild Bird Trade:

"In 19 hours of travel on the Madre de Dios River from the Peruvian-Bolivian border to Riberalta, we saw a total of only six large macaws, five Blue-and-yellow, and one Scarlet. During the same season in Manu or the upper Tambopata just across the border in SE Peru, one would see 500-1,500 macaws during twenty hours of river travel. In several short interviews in Riberalta, local shopowners and businessmen told me that there had been a very active macaw trade in the 70's and early 80's, and that now there were almost no macaws left in northwestern Bolivia."—Dr. Charles Munn (WCI Research Zoologist), "Six month report for period 1 July-31 December 1991," p. 10.

"It seemed that even in some of the richest, best-protected, and most extensive habitat left in the Amazon, blue-and-yellow, scarlet, and red-and-green macaws do not breed every year. And even when they do breed, they are not always successful. I would estimate that 100 pairs of large macaws might hedge as few as 15-25 young per year. Such a low reproductive rate indicates that macaws cannot be harvested from the wild without depleting their populations."—Dr. Charles Munn, "The Real Macaws," *Animal Kingdom*, September/October 1988, pp. 31-32.

"Observations of hundreds of individually recognizable macaws at clay licks and studies of the fate of 38 macaw nests in Manu Biosphere Reserve, Peru, indicated that macaw density and productivity were low. Only 10 percent to 20 percent of the birds bred in a given year, pairs usually fledged only one young, and one-third of the nests failed."—Dr. Charles Munn, "Macaw Biology and Ecotourism, or 'When a Bird in the Bush is Worth Two in the Hand,'" *New World Parrots in Crisis: Solutions from Conservation Biology*, eds. Dr. Steven Bessinger and Dr. Noel Snyder, 1992 p. 47.

The Hyacinth Macaw: Severely Threatened by Trade

"Brazilian observers report that not all hyacinth macaw nests hedge young, and those that do rarely hedge more than one bird. Thus, 100 mated pairs of breeding-age hyacinth macaws may only produce from 7 to 25 young per year—a very low reproductive rate. Although data are required to confirm these estimates, it appears that the species does not have a high enough reproductive rate to withstand any, substantial, long-term harvesting for the live animal trade or for hunting for meat and feathers."

"The trade in hyacinth macaws has not only rapidly destroyed wild populations in certain regions, but the bird catchers who live and work in the forests and savannahs of Brazil, Bolivia, and Paraguay, earn only \$40 to \$60 per bird, whereas middlemen and international dealers subsequently sell and resell the same birds for \$300, \$900, \$1,300, and ultimately \$7,000 to \$10,000 per bird."

"Beginning [in the early 1970's] and continuing until 1988, it appears that a major increase in the international trade in live macaws may have taken a greater toll on the species than either habitat destruction or hunting. . . . Scientists have proven that bird catchers systematically and single-handedly harvested entire populations of hyacinth macaws to sell to national and international bird dealers."

"Capture or hunting of Hyacinth macaws has been illegal for many years in Brazil, Bolivia, and Paraguay, but generally the effectiveness of the governing laws has been minimal. . . . It is evident that CITES regulations alone cannot be effective in stopping or regulating the trade in the species. . . . If the trade slows or stops, then the species is virtually assured of survival in the Pantanal region for many decades." Dr. Charles Munn, Jorgen Thomsen, and Carlos Yamashita (WCI Research Associate with Dr. Munn), "The Hyacinth Macaw," *The Audubon Wildlife Report 1989/1990* pp. 409-410, 412, 415-416.

The Spix's Macaw: Virtually Extinct in the Wild

"The evidence gathered revealed the (former) presence of wild Spix's macaws only in remnant patches of *T. caraiba* woodlands. . . . Our survey of *T. caraiba* woodland found that this habitat is not regenerating. [I]n recent times the Spix's macaw . . . was confined to the areas where *T. caraiba* forms gallery woodlands; the limited extent of this habitat-type explains (the Spix's Macaw's) original scarcity and susceptibility to trapping for the black market in live buds. Indeed, since only a single individual is thought to remain, we conclude that trapping for the live trade has led to the virtual extinction of *Cyanopsitta* in nature."—A.T. Juniper and C. Yamashita, "The Habitat and Status of Spix's macaw *Cyanopsitta spixii*," *Bird Conservation International 1991*, pp. 4-5, 8.

The Wild Bird Trade in Venezuela: Illegal Trade via Neighboring Countries

"(A) major cause of the decline of psittacid [parrot] populations in Venezuela has been the national and international pet trade. . . . The current level of trade in the Psittacidae in Venezuela is alarming, particularly in light of the complete national-level legal restrictions on commerce in these species. Despite their legal protection, many populations are under increasing pressure."

"The majority of Venezuelan Psittacidae in the international pet market leave the country from the delta of the Orinoco River. We estimate that between 65,000 and 75,000 psittacids are exported yearly from the delta alone. Considering the alleged destination of these birds, it is highly likely that a major portion of the legal export quotas for Psittacidae established by Guyana—over 36,000 in the previous year—are filled by illegally exported Venezuelan birds. The destination of surplus birds is probably the illegal international market via both Guyana and Trinidad. In the delta, the previously common Blue-and-yellow Macaw *Ara ararauna* has been trapped so heavily that it is now considered extremely rare. . . . The estimated illegal exports of birds from the Orinoco Delta is an example of the need for international cooperation. We feel that the delta is the most critical point for protection measures of psittacidae. . . ."—Dr. Stuart Strahl (WCI Assistant Director for Latin American Programs) and Philip Dessene, "Trade and the Conservation Status of the Family Psittacidae in Venezuela," *Bird Conservation International, 1991*, pp. 154, 157-159, 164.

The Parrot Trade in Mexico: A Major Smuggling Route for Parrots into the US

"In 1982, legal exportation of Mexican wildlife was banned. . . . [Nonetheless], Mexico has been one of the big 'laundry and springboard' countries in the illegal trade of psittacines. The Division of Law Enforcement of the U.S. Fish and Wildlife Service pointed out that in 1987 Mexico was the major source of smuggled wildlife entering the United States. . . . [It is] estimated that each year approximately

150,000 birds, mostly psittacines, are smuggled across the border from Mexico into the United States."

"Most of the value of a parrot is added by major exporter and import commercial dealers. The same bird sold by an exporter in Mexico for between \$400 and \$3,000 brings only 50,000 to 200,000 pesos (\$19) or less to the bird trapper. . . . The trapper thus receives 2.5 percent of the final value for the bird. These figures indicate that the trade in wildlife does not benefit the country as a whole, nor does it profit the trapper in the field. Profits accrue mostly to a few influential Mexican citizens and pet dealers in the United States."—Eduardo Inigo-Elias (former WCI Research Fellow) and Mario Ramos, "The Psittacine Trade in Mexico," *Neotropical Wildlife Use and Conservation*, eds. Dr. John Robinson WCI Director) and Dr. Kent Redford, 1991, pp. 386-387, 390.

The Blue-fronted Amazon: Large Exports and Declining Populations

"Commercial exploitation of *Amazona aestiva* [the blue-fronted amazon] is one of the major factors threatening its survival. As this pressure stems from outside its range, we believe that all trade, both in Argentina and exports to other countries, should be prohibited at least until current population trends are reversed. It should also be noted that this can only resolve the problem where action is taken to arrest the process of habitat destruction also threatening this species." [Argentina imposed a moratorium on exports after the March 1992 CITES meeting until population surveys are completed.]—Dr. Enrique Bucher (WCI Research Fellow) and Monica Martella, "Preliminary Report on the Current Status of *Amazona aestiva* in the Western Chaco, Argentina," *Parrolletter*, The Newsletter and Journal of the ICBP/SSC Parrot Specialist Group, Vol. 1, No. 1, 1988, p. 10.

The Bahama Parrot: A Small Population With Limited Remaining Habitat

"The Bahama Parrot is protected by the Wild Bird Protection Act of the Bahamas and by international legislation such as CITES (Convention on international Trade in Endangered Species of Wild Fauna and flora) and the U.S. Endangered Species Act. While most residents of Abaca [an island of the Bahamas] are aware of these laws and respect them, illegal poaching of parrots could rapidly decimate the populations. In 1987, poachers raided four of our study nests and six Bahama Parrot chicks were taken. We recovered three of these. The illegal capture of parrots for trade has been a major factor in the decline of other Caribbean amazons, such as the Puerto Rican Parrot, the St. Vincent Parrot and the Imperial Parrot."—Dr. Rosemarie Gnam (former WCI Research Fellow), "Conservation of the Bahama Parrot," *American Birds*, Spring 1990, pp. 34-35.

High Mortality Rates in the Wild Bird Trade:

"[He] was particularly concerned about the commonest method of collecting parrots, cutting down hollow trees where birds are nesting. Birds that survive the fall are taken to be hand-fed by local people, who neither know what to feed them nor have the proper foods. Mortality of chicks is very high, and even older birds often cannot survive the transition or diseases they are exposed to when dumped into cages with hundreds of other birds."

"Quarantine. Fifteen years ago it was not unusual for 50 percent of imported birds to die before they could be sold. . . . It was common knowledge among importers, collectors and conservationists that between one and 100 birds dies for each one that was captured successfully in the wild and eventually sold in a pet shop. Imports were approaching one million birds a year by 1971. This meant that millions of birds died to supply the pet market in the U.S. that year."— Dr. Don Bruning, NYZS Chairman of Ornithology, "Parrots for Sale," *Living Bird Quarterly*, Summer 1985, pp. 5-6.

"The major technique used in Mexico to capture psittacines consists of removing chicks from nests. This method is prohibited by Mexican law."

"Wild birds have a high mortality rate during different parts of the trading process. The mortality rate during nestling capture is a least 10 percent, depending on the species captured and the techniques used. The greatest mortality rate, approximately 30 percent, occurs during the confinement of birds by trappers waiting to ship to Mexico City. The high rate occurs mainly from poor nutrition, stress, and overcrowding. These mortality rates vary enormously with the species. The mortality rate of psittacines in the illegal trade is estimated as 40 percent to 50 percent greater than in the legal [domestic trade]."—Eduardo Inigo-Elias (former WCI Research Fellow) and Mario Ramos, "The Psittacine Trade in Mexico," *op. cit.*, pp. 384, 388-389.

Reduce Demand for Wild Caught Birds for Pets: One Solution

"A key to the protection of exotic birds is curbing the demand for them. The huge profits ensure that trade will continue until the American people insist that it be stopped and that our government enforce its wildlife laws. Potential pet owners in this country could save the lives of hundreds of thousands of birds if they bought captive-bred birds such as cockatiels, lovebirds and parakeets, instead of exotic birds. . ."—Dr. Don Bruning, "Parrots for Sale." *op. cit.*, p. 11.

Tourism Opportunities for Parrot Conservation:

"Estimates of revenues of Peruvian jungle lodges and data from tourist interviews show that each macaw potentially can generate between \$750 and \$4,700 annually in tourist receipts. Using a range of estimates for macaw longevity and ecotourism potentials, I calculate that each free -flying large macaw might generate \$22,500 to \$165,000 of tourist receipts in its lifetime. Indirect exploitation of parrots as tourist attractions is better understood, easier to manage, and less fraught with risks than direct exploitation of slow-reproducing adults and fragile nestlings for the pet trade."—Dr. Charles Munn, "Macaw Biology and Ecotourism, or 'When a Bird in the Bush is Worth Two in the Hand'" *op. cit.*, p. 47.

Are Sustainable Harvesting Projects for Parrots Possible?: Difficulties to Face

"[I]t may be difficult to train inexperienced rainforest Indians, colonists, and local biologists to be precise and disciplined in taking and interpreting the data on the growth rates of macaw nestlings in natural and artificial nests. Also, local rainforest persons planning to manage or ranch wild macaws either to increase or reintroduce wild populations or to sell extra birds to breeders will need to be trained in important aspects of macaw diets, hygiene, and disease diagnosis and treatment."

"But of all the problems associated with developing a model program in macaw ranching, the threat of cheating is the most difficult to eliminate. The most obvious form of cheating would be for a local rainforest landholder with a known number of legally registered natural and artificial macaw nests on his or her property to steal nestling or fledgling macaws from adjacent rainforest property owned by the government or by absentee landowners and then pass them off as his or her own."—Dr. Charles Munn, Daniel Blanco S., Eduard Nycander vM. and Duavid Ricalde R., "Prospects for Sustainable Use of Large Macaws in Southeastern Peru," *Proceedings of the First Mesoamerican Workshop on the Conservation and Management of Macaws*, 1991, p. 46.

SOCIETY FOR ANIMAL PROTECTIVE LEGISLATION
P. O. Box 3719
Georgetown Station
Washington, D.C. 20007

(202) 337-2334

July 31, 1992

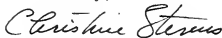
Dear Senator Baucus,

To help you visualize the suffering and death of the 1,296,528 exotic birds imported into the United States for the commercial pet trade from 1980 through 1991, we submit these photographs. They are a very small part of the documentation in our possession on the legal trade. We would be glad to make available to you or your staff audiovisual records of the trade in the four main exporting countries, and statistical analysis of Fish and Wildlife Service and U.S. Department of Agriculture records from 1977 onwards.

We urge you to report H.R. 5013 favorably with no weakening amendments. A provision should be added to ensure that the bill will not pre-empt more stringent state laws such as those in effect in New York and New Jersey.

With deep appreciation of your concern.

Sincerely,



Christine Stevens
Secretary

CS:jp



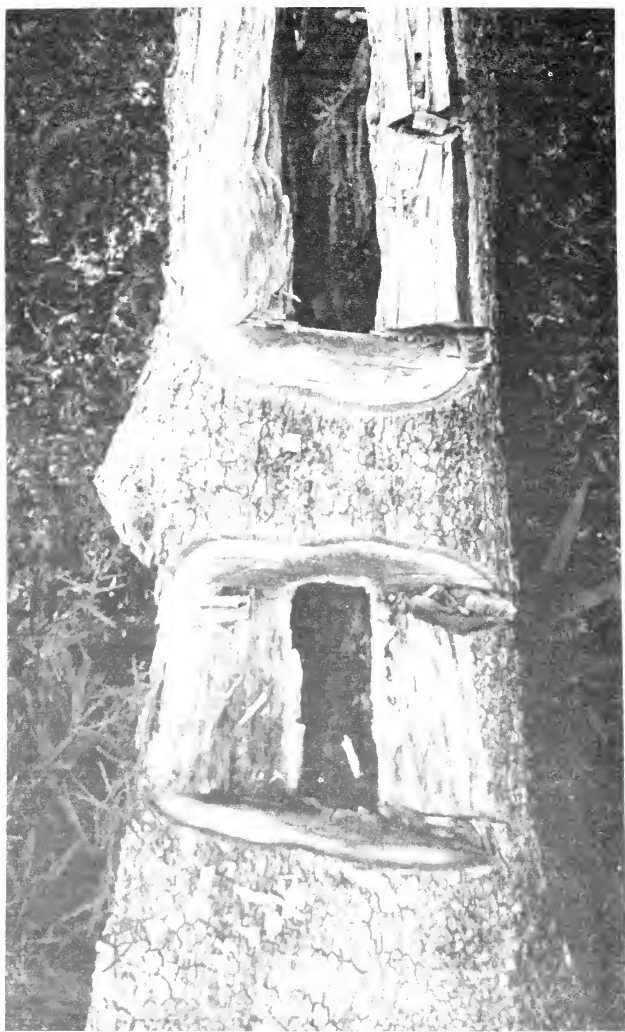
Pet trade birds dead on arrival.



**Amazon parrot dying in exporter's premises
in Argentina.**



Chicks too young to feed themselves have maize and water forced down their throats. Many choke to death.



Trees more than one hundred years old are felled to get at the parrot chicks, destroying the nesting sites for any potential future breeding.



A dying Blue-fronted Amazon chick. Typical rough assembly-line forced feeding caused his demise.



Choked to death due to rough forced feeding, this parrot chick joins others in dealer's trash can.



Senegal's biggest bird dealer, Amadou Diallo (note his Mercedes).

102D CONGRESS
1ST SESSION

S. 1218

To enhance the conservation of exotic wild birds.

IN THE SENATE OF THE UNITED STATES

JUNE 4 (legislative day, JUNE 3), 1991

Mr. BAUCUS (for himself and Mr. CHAFEE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To enhance the conservation of exotic wild birds.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 The Act of November 16, 1981 (Public Law 97-79),
4 the Lacey Act Amendments of 1981, is amended by add-
5 ing the following new section:

6 **“SECTION 10. EXOTIC WILD BIRD CONSERVATION.**

7 “(a) DEFINITIONS.—For the purposes of this
8 section—

9 (1) The term “bird” means any member of the
10 class Aves that is not indigenous to the 50 States
11 or the District of Columbia, alive or dead, including

1 any egg or offspring thereof, excluding parts and
2 products, domestic poultry, dead sport-hunted game
3 birds, and fossils.

4 (2) The terms "captive bred" and "bred in cap-
5 tivity" refer to birds, including eggs, hatched or oth-
6 erwise produced in captivity from parents that
7 mated, were artificially inseminated, or otherwise
8 transferred gametes in captivity or a controlled
9 enviroment.

10 (3) The term "CITES" means the Convention
11 on International Trade in Endangered Species of
12 Wild Fauna and Flora, signed on March 3, 1973,
13 and the appendices thereto.

14 (4) The term "foreign commerce" includes any
15 transaction—

16 (A) between persons within one foreign
17 country;

18 (B) between persons in two or more for-
19 eign countries; or

20 (C) between a person within the United
21 States and a person in a foreign country.

22 (5) The term "import" means to land on, bring
23 into, or introduce into, or attempt to land on, bring
24 into, or introduce into, any place subject to the ju-
25 risdiction of the United States.

1 (6) The term "person" includes any individual,
2 corporation, partnership, trust, association, or any
3 other public or private entity; or any officer, employ-
4 ee, agent department, or instrumentality of the Fed-
5 eral Government, of any State, municipality, or po-
6 litical subdivision of a State, or of any foreign gov-
7 ernment; any State, municipality, or political subdi-
8 vision of a State; or any other entity subject to the
9 jurisdiction of the United States.

10 (7) The term "Secretary" means, except as oth-
11 erwise herein provided, the Secretary of the Interior
12 or his authorized representative.

13 (8) The term "species" includes—

14 (A) any species or subspecies of bird;

15 (B) any hybrid of such species or subspe-
16 cies; and

17 (C) any distinct population segment of
18 such species or subspecies.

19 (9) The term "transfer" means any acquisition
20 or disposition, by any means or in any manner, in-
21 cluding purchase, sale, barter, conveyance, loan,
22 pledge, or gift.

23 (10) The term "United States" means the fifty
24 States, the District of Columbia, Guam, the Com-
25 monwealth of Northern Mariana Islands, the Com-

1 monwealth of Puerto Rico, and the territories and
2 possessions of the United States.

3 “(b) EXOTIC BIRD CONSERVATION ASSISTANCE.

4 “(1) PROVISION OF ASSISTANCE.—

5 “(A) IN GENERAL.—The Secretary, acting
6 through the Director of the U.S. Fish and
7 Wildlife Service, may provide financial assist-
8 ance under this subsection for approved
9 projects for research, conservation, manage-
10 ment, or protection of exotic birds.

11 “(B) PROJECT PROPOSAL.—Any foreign
12 government agency responsible for the conser-
13 vation and protection of birds, the CITES Sec-
14 retariat, and any organization or individual
15 with experience in bird conservation may sub-
16 mit to the Secretary a project proposal under
17 this subsection.

18 “(C) PROJECT REVIEW AND APPROVAL.—
19 The Secretary shall review each project propos-
20 al to determine if it meets the criteria set forth
21 in subparagraph (D) and otherwise merits as-
22 sistance under this subsection.

23 “(D) CRITERIA FOR APPROVAL.—The Sec-
24 retary may approve a project under this subsec-

1 tion if the project involves one or more of the
2 following:

3 “(i) development of effective, non-le-
4 thal management techniques for species
5 subject to eradication or population sup-
6 pression programs, including appropriate
7 alternative agricultural management tech-
8 niques;

9 “(ii) development of successful ranch-
10 ing and captive breeding programs that
11 meet the standards set forth in subsections
12 (h)(12)(C) and (h)(12)(D);

13 “(iii) research programs conducted
14 pursuant to subsection (g);

15 “(iv) development and implementation
16 of the National Avicultural Program pur-
17 suant to subsection (e); or

18 “(v) Any other program of avian re-
19 search, conservation, management, or pro-
20 tection, including in particular studies con-
21 ducted pursuant to resolutions of the Con-
22 ference of the Parties to CITIES.

23 “(2) EXOTIC BIRD CONSERVATION FUND.—

24 “(A) ESTABLISHMENT.—There is estab-
25 lished in the general fund of the Treasury a

1 separate account to be known as the “Exotic
2 Bird Conservation Fund”, which shall consist of
3 amounts deposited into the Fund by the Secre-
4 tary of the Treasury under subparagraph (B).

5 “(B) DEPOSITS INTO FUND.—The Secre-
6 tary of the Treasury shall deposit into the
7 Fund—

8 “(i) subject to appropriations, all
9 amounts received by the United States in
10 the form of penalties under this section
11 that are not used for the purposes set
12 forth therein;

13 “(ii) amounts received by the Secre-
14 tary in the form of donations under sub-
15 paragraph (D); and

16 “(iii) other amounts appropriated to
17 the Fund.

18 “(C) USE OF FUND.—

19 “(i) Subject to clause (ii), amounts in
20 the Fund may be used by the Secretary,
21 without further appropriation, to provide
22 assistance under this subsection.

23 “(ii) Not more than three percent of
24 the amounts appropriated to the Fund for

1 a fiscal year may be used by the Secretary
2 to administer the Fund for that fiscal year.

3 “(D) ACCEPTANCE AND USE OF DONA-
4 TIONS.—The Secretary may accept and use do-
5 nations of funds to provide assistance under
6 this subsection. Amounts received by the Secre-
7 tary in the form of such donations shall be
8 transferred by the Secretary to the Secretary of
9 the Treasury for deposit into the Fund.

10 “(c) PETITIONS.—(1) Any interested person may pe-
11 tition the Secretary at any time to make any finding or
12 determination, or take any other action authorized by this
13 section. The petition shall include such substantial infor-
14 mation as may be necessary to demonstrate the need for
15 the action requested by the petition.

16 “(2) To the maximum extent practicable, within nine-
17 ty days after receiving the petition of an interested person
18 to make a finding or determination, or take any other ac-
19 tion authorized by this section, the Secretary shall make
20 a ruling as to whether the petition presents substantial
21 scientific or commercial information indicating that the
22 petitioned action may be warranted. The Secretary shall
23 promptly publish such ruling in the Federal Register and,
24 if the petition is found to present such information, he
25 shall undertake to make a finding or determination, or

1 take any other action authorized by the relevant provisions
2 of this section.

3 “(d) PROHIBITED ACTS.—(1) It is unlawful for any
4 person subject to the jurisdiction of the United States to—

5 “(A) violate any regulation promulgated by the
6 Secretary pursuant to authority provided by this sec-
7 tion;

8 “(B) transfer any bird subject to the provisions
9 of this section except in accordance with subsection
10 (e); or

11 “(C) except in accordance with subsection (h),
12 import any bird into the United States.

13 “(2) It is unlawful for any person subject to the juris-
14 diction of the United States to attempt to commit, solicit
15 another to commit, or cause to be committed, by offense
16 defined in this section.

17 “(e) TRANSFERS AND MARKING OF CERTAIN
18 BIRDS.—

19 “(1) GENERAL REQUIREMENTS OF REGISTRA-
20 TION.—Except with respect to birds imported pursu-
21 ant to the subsections (h)(12)(C), (h)(12)(D), or
22 (h)(12)(E), no person may transfer any bird import-
23 ed on or after the fifth anniversary of the date of
24 enactment of this section without first having been

1 registered with the Secretary in accordance with the
2 provisions of paragraph (2), except that—

3 “(A) importers licensed by the Secretary
4 pursuant to subsection (h) may transfer import-
5 ed birds to registrants;

6 “(B) this paragraph does not apply to any
7 bird that is examined by a veterinarian accred-
8 ited by the Secretary of Agriculture who certi-
9 fies in writing that the bird is permanently un-
10 suitable for use in captive breeding; and

11 “(C) nothing in this paragraph may be
12 deemed to prohibit any person from transfer-
13 ring birds to.—

14 “(i) the Secretary;

15 “(ii) a veterinarian for veterinary
16 care or necropsy; or

17 “(iii) a foreign zoological institu-
18 tion or foreign aviculturist on loan for
19 purposes of exhibition or breeding.

20 “(2) Registration of persons who wish to ac-
21 quire and transfer imported birds; standards for avi-
22 culture.—

23 “(A) ESTABLISHMENT OF SYSTEM OF REG-
24 ISTRATION.—Not later than one year after the
25 date of enactment of this section, the Secretary

1 shall promulgate regulations governing the reg-
2 istration of persons who wish to acquire or oth-
3 erwise transfer birds imported on or after the
4 fifth anniversary of the date of enactment of
5 this Act, other than ranched, captive-bred, or
6 pet birds imported in accordance with subsec-
7 tions (h)(12)(C), (h)(12)(D), or (h)(12)(E).

8 “(B) ESTABLISHMENT OF REQUIREMENTS
9 FOR REGISTRATION.—Not later than one year
10 after the date of enactment of this section, the
11 Secretary, in cooperation with the Secretary of
12 Agriculture and in consultation with all affected
13 or interested persons, shall by regulation estab-
14 lish requirements for registration. Such require-
15 ments shall—

16 “(i) prescribe minimum acceptable
17 standards for registration, including health
18 care, caging, and husbandry;

19 “(ii) provide that applicants for regis-
20 tration must possess at least two years’ ex-
21 perience in aviculture;

22 “(iii) provide that no person may be
23 registered who has, in the past 3 years,
24 been convicted, or entered a plea of guilty
25 or nolo contendere, for a misdemeanor vio-

1 lation of this section, the Endangered Spe-
2 cies Act (16 U.S.C. 1532 et seq.), the
3 Lacey Act (16 U.S.C. 3372 et seq.), or the
4 Migratory Bird Treaty Act (16 U.S.C. 703
5 et seq.), or any regulation, permit, or cer-
6 tificate issued thereunder, if such violation
7 involved the unlawful importation or trans-
8 fer of animals; and

9 “(iv) provide that no person may be
10 registered who has been convicted, or en-
11 tered a plea of guilty or nolo contendere,
12 for a felony violation of Title 18, United
13 States Code, Sections 542 or 545, the
14 Lacey Act, or the Migratory Bird Treaty
15 Act, if such violation involved the unlawful
16 importation or transfer of animals.

17 The Secretary may, however, upon petition of
18 any person affected by the provisions of clauses
19 (iii) or (iv) and upon a showing of good cause,
20 waive this provision and allow such person to be
21 registered.

22 “(C) INITIAL APPLICATION.—Any person
23 who wishes to be registered shall submit an ap-
24 plication for registration to the Secretary that
25 is in such a form and contains such assurances

12

1 and information as the Secretary determines to
2 be necessary, including the following:

3 “(i) the address of the facility where
4 the birds will be possessed, with a general
5 description of the area and facilities to be
6 used for breeding purposes;

7 “(ii) certification that the applicant
8 satisfies all the requirements prescribed by
9 the Secretary in accordance with subpara-
10 graph (B);

11 “(iii) certification that the applicant
12 has established a recordkeeping system
13 sufficient to meet the requirements of
14 paragraph (4); and

15 “(iv) with respect to the applicant’s
16 facilities and equipment used to quaran-
17 tine, hold, or transport birds, either—

18 “(I) a written report of an in-
19 spection conducted, at the applicant’s
20 sole expense, by a Department of Ag-
21 riculture-accredited veterinarian,
22 signed by the veterinarian performing
23 the inspection, certifying that the ap-
24 plicant’s facilities meet or exceed the

1 minimum standards prescribed in ac-
2 cordance with subparagraph (B); or

3 “(II) if an accredited veterinarian
4 is not available to conduct an inspec-
5 tion, a series of photographic prints
6 showing the applicant’s facilities in
7 sufficient detail to allow the Secretary
8 to determine whether or not the facili-
9 ties meet or exceed such standards.

10 “(D) PROVISIONAL REGISTRATION UPON
11 SUBMISSION OF APPLICATION.—Applicants shall
12 be deemed provisionally registered upon submis-
13 sion of a completed application to the Secretary
14 which is in such a form and contains such in-
15 formation and assurances as may be required
16 pursuant to subparagraph (C), except that no
17 applicant who has previously been denied regis-
18 tration, has been suspended pursuant to section
19 11(e), or who submits photographs in lieu of
20 the report of a veterinary inspection under
21 clause (C)(iv) shall be eligible for provisional
22 registration. If an applicant is subsequently de-
23 nied registration by the Secretary in accordance
24 with the provisions of subparagraph (E), the
25 applicant shall within thirty days after final ad-

1 ministrative action, transfer any birds acquired
2 pursuant to this section during the period of
3 provisional registration to a registered person
4 or to another authorized person for disposition.

5 “(E) INITIAL REGISTRATION.—Any person
6 who files a completed application for registra-
7 tion with the Secretary shall be registered with-
8 in ninety days of the receipt of the application
9 if the Secretary determines that the applicant is
10 in compliance with the minimum requirements
11 for registration established pursuant to sub-
12 paragraph (B). In making such determination,
13 the Secretary shall consider the information
14 submitted in the application and may require,
15 as a condition of registration, an inspection of
16 an applicant’s facilities by a Department of Ag-
17 riculture-accredited veterinarian, at the appli-
18 cant’s sole expense, if a report of such an in-
19 spection is not submitted by the applicant and
20 if the Secretary deems such inspection neces-
21 sary to verify compliance with the minimum re-
22 quirements for registration.

23 “(F) TERM OF REGISTRATION.—Registra-
24 tions shall be valid for a period of two years
25 from the date of issuance.

1 “(G) RENEWAL OF REGISTRATION.—The
2 Secretary shall require registrants to submit an
3 application for renewal not less than ninety
4 days prior to the expiration of their registra-
5 tion. In determining whether or not an appli-
6 cant’s registration should be renewed, the Sec-
7 retary is authorized to require a veterinary in-
8 spection and to consider all relevant facts and
9 information available, including—

10 “(i) compliance with the requirements
11 of this section or of any other Federal law
12 governing the importation or transfer of
13 birds, or of any regulation, permit, or cer-
14 tificate issued thereunder;

15 “(ii) failure to submit timely, accu-
16 rate, or valid reports as required by this
17 section; and

18 “(iii) failure to pay any fees, costs, or
19 penalties assessed pursuant to this section,
20 whether or not reduced to judgment, ex-
21 cept that this clause shall not apply to any
22 civil penalty presently subject to adminis-
23 trative or judicial appeal.

24 “(3) PERMANENT MARKING.—(A) No person
25 may transfer any bird imported on or after the fifth

1 anniversary of the date of enactment of this section
2 unless that bird has been marked as required by this
3 subsection.

4 “(B) Not later than one year after the date of
5 enactment of this section, the Secretary shall pro-
6 mulgate regulations that—

7 “(i) prescribe approved permanent mark-
8 ing techniques and procedures; and

9 “(ii) provide that not later than three
10 years after the date of enactment of this sec-
11 tion, all imported birds shall be marked upon
12 import, except birds imported pursuant to sub-
13 sections (h)(12)(C), (h)(12)(D), and
14 (h)(12)(E).

15 The Secretary may, after notice and the opportunity
16 for comment, impose such additional requirements
17 as may be necessary to carry out the purposes of
18 this section.

19 “(C) SPECIES EXEMPT FROM MARKING RE-
20 QUIREMENTS.—Not later than one year after the
21 date of enactment of this section, the Secretary shall
22 compile and publish in the Federal Register a list of
23 those species of birds that need not be marked. The
24 Secretary shall make or amend such list on the basis
25 of the best available scientific and commercial infor-

1 mation, after notice and the opportunity for com-
2 ment, and after consulting with all interested or af-
3 fected parties. In making or amending such list, the
4 Secretary shall consider the purposes of this section
5 and the following factors:

6 “(i) the status of the species in the wild;

7 “(ii) relevant physical characteristics of the
8 species;

9 “(iii) whether domestic and foreign cap-
10 tive-breeding programs are adequate to supply
11 the demand for that species;

12 “(iv) the market value of the species, to-
13 gether with the threat to the species from ille-
14 gal trade; and

15 “(v) any other factor the Secretary consid-
16 ers to be relevant and appropriate.

17 “(D) AMENDMENTS TO LIST OF SPECIES EX-
18 EMPT FROM MARKING.—Whenever the Secretary de-
19 termines that it may be appropriate to amend the
20 list published in accordance with subparagraph (C),
21 the Secretary shall promptly publish the proposed
22 amendment in the Federal Register and shall pro-
23 vide an opportunity of at least sixty days for inter-
24 ested persons to comment. Within one hundred
25 twenty days after publication of the proposed

1 amendment, the Secretary shall publish a final rule.
2 Nothing in this subparagraph or subparagraph (C)
3 shall be construed to authorize the Secretary to ex-
4 empt any species listed on Appendix I of CITES or
5 any species listed as endangered or threatened under
6 the Endangered Species Act from the marking re-
7 quirements of this paragraph.

8 “(4) REPORTING AND RECORDKEEPING RE-
9 QUIREMENTS FOR REGISTRANTS; ESTABLISHMENT
10 OF JOINT INFORMATION SYSTEM.—

11 “(A) GENERAL REQUIREMENTS.—Any reg-
12 istered person shall keep records that fully and
13 accurately disclose such relevant information as
14 the Secretary may require and shall submit an-
15 nual reports to the Secretary in a form to be
16 developed by the Secretary. Such reports shall
17 contain detailed information regarding all
18 transfers of birds by the reporting party during
19 the previous year, and any other information
20 the Secretary considers to be relevant and nec-
21 essary, except that this requirement applies
22 only to birds that are required to be marked
23 pursuant to paragraph (3) of this subsection.
24 All birds listed in the report shall be identified
25 by their marking numbers.

1 “(B) CONFIDENTIALITY.—All information
2 collected pursuant to this section regarding li-
3 censees or registrants shall be kept confidential
4 and shall not be released pursuant to a request
5 made under the Freedom of Information Act, 5
6 U.S.C. 552 et seq., or any other Federal or
7 State law. The Secretary may, however, release
8 statistical data compiled from the information
9 collected pursuant to this Act, if the informa-
10 tion does not identify individuals or the location
11 or nature of their facilities, except that the Sec-
12 retary shall maintain a list of the names and
13 mailing addresses of persons currently regis-
14 tered pursuant to paragraph (2) and may make
15 such list available to the public. The Secretary
16 shall exclude the location of a registrant’s facili-
17 ties and information regarding birds held by a
18 registrant from such list unless authorized by
19 the registrant involved.

20 “(C) LIMITATION.—The Secretary may not
21 require any persons to report or maintain
22 records of—

23 “(i) financial data or pricing data;

24 “(ii) personnel data, except as neces-
25 sarily required by paragraph (2);

1 “(iii) research data; or

2 “(iv) birds not subject to the provi-
3 sions of this section.

4 “(D) BIRD INFORMATION SYSTEM.—Not
5 later than one year after the date of enactment
6 of this section, the Secretary shall establish a
7 computerized information system for the pur-
8 pose of recording and analyzing information on
9 birds imported pursuant to this section and
10 other Federal laws. Complete records of the fol-
11 lowing shall be maintained on the database,
12 subject to the provisions of subparagraph (B) of
13 this paragraph:

14 “(i) all birds imported into or export-
15 ed from the United States for any purpose;

16 “(ii) all permits and licenses issued
17 pursuant to the provisions of this section
18 and any regulations promulgated hereun-
19 der;

20 “(iii) all reports required to be sub-
21 mitted under the provisions of this section;

22 “(iv) all transactions required to be
23 reported under paragraph (4)(A);

1 “(v) all identification codes assigned
2 to individual birds pursuant to the mark-
3 ing requirements of paragraph (3);

4 “(vi) all available data on the mortali-
5 ty and survival of species in trade;

6 “(vii) to the extent practicable, all
7 available information on individual species
8 in the wild, including range, current popu-
9 lation estimates, relevant import or export
10 quotas or other trade restrictions (both do-
11 mestic and foreign), and CITES-approved
12 captive breeding facilities; and

13 “(viii) any other information the Sec-
14 retary considers relevant and appropriate.

15 “(5) ESTABLISHMENT OF A VOUNTARY NATION-
16 AL AVICULTURAL PROGRAM.—Not later than two
17 years after the date of enactment of this section, the
18 Secretary shall establish and publish in the Federal
19 Register a voluntary National Avicultural Program
20 to provide incentives for improved management and
21 care of birds held for captive breeding. The purpose
22 of the National Avicultural Program shall be to en-
23 courage higher standards of aviculture and it shall
24 therefore contain provisions that go beyond the mini-

1 mum standards developed pursuant to paragraph
2 (2)(B).

3 “(f) QUARANTINE AND TRANSPORT OF BIRDS.—

4 “(1) HEALTH AND WELFARE OF BIRDS IN
5 QUARANTINE.—Not later than one year after the
6 date of enactment of this section, the Secretary, in
7 consultation with the Secretary of Agriculture and
8 avian veterinarians and other interested or affected
9 persons, shall promulgate regulations under the au-
10 thority of this section to address the special health
11 and welfare needs of exotic birds in quarantine. In
12 promulgating regulations to carry out the provisions
13 of this section, the Secretary shall—

14 “(A) establish a program to improve com-
15 pliance with quarantine regulations;

16 “(B) establish minimum standards of care
17 for birds in quarantine, including quantified
18 ventilation standards for quarantine holding
19 areas;

20 “(C) provide diagnostic capabilities that
21 will enable port and consulting veterinarians to
22 take an active role in improving the health care
23 of birds in quarantine; and

24 “(D) establish improved disease control
25 practices for birds in quarantine.

1 “(2) AVIAN TRANSPORT.—The Secretary shall
2 cooperate to the fullest extent possible in the imple-
3 mentation and enforcement of the avian transport
4 guidelines issued by the International Air Transport
5 Association and the avian transport regulations pro-
6 mulgated under the authority of this Act, the En-
7 dangered Species Act (16 U.S.C. 1538 *et seq.*), the
8 Lacey Act (16 U.S.C. 3372 *et seq.*), CITES, if any.
9 Not later than one year after the date of enactment
10 of this section, the Secretary, in cooperation with the
11 Secretary of Agriculture and in consultation with
12 avian veterinarians and other interested or affected
13 persons, shall promulgate regulations governing the
14 import and export of birds under the authority of
15 this section that—

16 “(A) implement avian container standards
17 for birds in transport that incorporate density
18 guidelines appropriate for taxa common in
19 transport, taking into consideration the guide-
20 lines of the International Air Transport Asso-
21 ciation and existing Federal regulations;

22 “(B) prohibit where practicable the trans-
23 port of more than one shipment of birds in a
24 single cargo hold unless such shipments are
25 being quarantined in the same facility;

1 “(C) require that a prepackaged emergen-
2 cy food supply accompany all avian shipments
3 that are not scheduled on a non-stop flight, for
4 use in the event of unexpected layovers or
5 delays in transport; and

6 “(D) require the preparation of a transport
7 checklist in accordance with CITES Resolution
8 Conference 7.13 to accompany all avian imports
9 and exports.

10 “(g) MORTALITY AND VACCINATION.—

11 “(1) MORTALITY.—The Secretary is authorized
12 to—

13 “(A) develop research programs to—

14 “(i) identify the levels of and those
15 factors contributing to the injury, morbidi-
16 ty, and mortality of birds intended for im-
17 port into the United States;

18 “(ii) survey the incidence and severity
19 of disease prior to import; and

20 “(iii) identify husbandry factors con-
21 tributing to injury and mortality of birds
22 intended for import; and

23 “(B) work with exporting nations to devel-
24 op and implement procedures that will reduce
25 pre-import injury, disease, and mortality.

1 “(2) VACCINATION.—The Secretary shall en-
2 encourage the development of safe and efficacious vac-
3 cines for major avian diseases. Upon determination
4 of such development, the Secretary is authorized to
5 require preimport vaccination for appropriate spe-
6 cies.

7 “(h) PERMITS AND LICENSES.—

8 “(1) PERMITS.—

9 “(A) GENERAL PERMIT REQUIREMENTS.—
10 No person may import birds into or export
11 birds from the United States except as permit-
12 ted by the Secretary.

13 “(B) JOINT PERMIT SYSTEM ESTAB-
14 LISHED.—The Secretary shall, not later than
15 one year after the date of enactment of this sec-
16 tion, establish a joint permit system to facilitate
17 and expedite the permit application and approv-
18 al process for imports and exports of birds.

19 “(C) ISSUANCE OF PERMITS.—Any person
20 who wishes to import or export birds shall sub-
21 mit an application for a permit to the Secretary
22 that is in such a form and contains such infor-
23 mation as the Secretary determines to be neces-
24 sary. The Secretary shall by regulation estab-
25 lish procedures that assure the expeditious

1 processing of applications for permits under
2 this subsection.

3 “(2) LICENSE REQUIREMENT.—No person may
4 import or export birds after the first anniversary of
5 the date of enactment of this section without first
6 having obtained a license from the Secretary, except
7 that this requirement does not apply to—

8 “(A) persons registered with the Secretary
9 in accordance with subsection (e) who may im-
10 port birds for their own use, if such persons use
11 the facilities of a licensed importer or facilities
12 operated by the Secretary of Agriculture; or

13 “(B) persons who import personally-owned
14 pet birds in accordance with this section.

15 “(3) REQUIREMENT OF APPLICATION.—

16 “(A) IN GENERAL.—Any person who wish-
17 es to be licensed as an importer or exporter of
18 birds shall—

19 “(i) submit an application for a li-
20 cense to the Secretary that is in such form
21 and contains such information as the Sec-
22 retary determines to be necessary, includ-
23 ing the address of the facility or facilities
24 where the birds will be quarantined or
25 held, with a description of the area and fa-

1 facilities to be used for quarantine or holding
2 purposes, a summary of the applicant's ex-
3 perience in importing and exporting birds,
4 and, if available, the species imported and
5 exported during the previous calendar year
6 and their survival and mortality rates dur-
7 ing import and quarantine; and

8 “(ii) provide evidence of compliance
9 with the facilities standards promulgated
10 by the Secretary pursuant to paragraph
11 (4)(A), including a written report of the
12 veterinary inspection required by para-
13 graph (4)(B), certifying compliance and
14 signed by the veterinarian performing the
15 inspection.

16 “(B) LIMITATIONS.—The Secretary may
17 issue a license to an applicant only if the Secre-
18 tary determines, on the basis of information
19 submitted with the application and the results
20 of the inspection required in paragraph (4)(B),
21 that the applicant is in compliance with the fa-
22 cilities standards established pursuant to para-
23 graph (4)(A), except that—

24 “(i) the Secretary may not issue a li-
25 cense to any person who has, in the past

1 three years, been convicted or entered a
2 plea of guilty or nolo contendere for a mis-
3 demeanor violation of this section, the En-
4 dangered Species Act (16 U.S.C. 1532 et
5 seq.), the Lacey Act (16 U.S.C. 3372 et
6 seq.), or the Migratory Bird Treaty Act
7 (16 U.S.C. 703 et seq.), or any regulation,
8 permit, or certificate issued thereunder, if
9 such violation involved the unlawful impor-
10 tation or transfer of animals; and

11 “(ii) the Secretary may not issue a li-
12 cense to any person who has been convict-
13 ed, or entered a plea of guilty or nolo
14 contendere, for a felony violation of title
15 18, United States Code, section 542 or
16 545, the Lacey Act, or the Migratory Bird
17 Treaty Act, if such violation involved the
18 unlawful importation or transfer of ani-
19 mals.

20 The Secretary may, however, upon petition of
21 any person affected by the limitations in this
22 subparagraph and upon a showing of good
23 cause, waive the limitations and allow such per-
24 son to be licensed.

25 “(4) FACILITIES STANDARDS.—

1 “(A) ESTABLISHMENT OF STANDARDS.—

2 Not later than one year after the date of enact-
3 ment of this section, the Secretary, in coopera-
4 tion with the Secretary of Agriculture and all
5 interested or affected parties, shall by regula-
6 tion establish facilities standards for importers
7 and for exporters. Such standards shall pre-
8 scribe minimum acceptable personnel, facilities,
9 and equipment for quarantine, holding, health
10 care, and transportation.

11 “(B) VETERINARY INSPECTIONS.—Any
12 person who wishes to be licensed to import or
13 export birds pursuant to this section shall, ar-
14 range for and allow the Secretary of Agriculture
15 or a U.S. Department of Agriculture-accredited
16 veterinarian to inspect any facilities or equip-
17 ment used for quarantine, holding, health care,
18 or transportation of birds for the purpose of
19 verifying compliance with the standards pre-
20 scribed under subparagraph (A).

21 “(5) INITIAL LICENSING.—Any person who ap-
22 plies to the Secretary for a license pursuant to para-
23 graph (3) shall be licensed if the Secretary deter-
24 mines, on the basis of information submitted with
25 the application and the results of the inspection re-

1 quired in paragraph (4)(B), that the applicant is in
2 compliance with the minimum requirements for reg-
3 istration established pursuant to paragraph (4)(A).

4 “(6) TERM OF LICENSE.—Licenses issued
5 under this subsection shall be valid for a period of
6 two years from the date of issuance.

7 “(7) RENEWAL OF LICENSE.—The Secretary
8 shall require licensees to submit an application for
9 renewal within ninety days of the expiration of their
10 licenses. In determining whether or not an appli-
11 cant’s license should be renewed, the Secretary is
12 authorized to require an inspection pursuant to
13 paragraph (4)(B) and to consider all relevant facts
14 and information available, including—

15 “(A) compliance with the requirements of
16 this section or of any other Federal or State
17 law governing the importation or transfer of
18 birds, or of any regulation, permit, or certificate
19 issued thereunder;

20 “(B) failure to submit timely, accurate, or
21 valid reports as required by this Act; and

22 “(C) failure to pay any fees, costs, or pen-
23 alties assessed pursuant to this section, whether
24 or not reduced to judgment, except that this
25 clause shall not apply to any civil penalty pres-

1 ently subject to administrative or judicial ap-
2 peal.

3 “(8) RECORDKEEPING AND REPORTING RE-
4 QUIREMENTS.—Any person licensed by the Secretary
5 under this subsection shall keep and retain for a pe-
6 riod of not less than five years, records that fully
7 and accurately disclose such information as the Sec-
8 retary may require for each bird imported or export-
9 ed, including the species, country of origin, country
10 of export, marking number, and subsequent disposi-
11 tion. Such persons shall submit annual reports to
12 the Secretary in a form to be developed by the Sec-
13 retary. Such reports shall contain detailed informa-
14 tion regarding all imports and exports of birds by
15 the reporting party during the previous year, and
16 any other information the Secretary determines to
17 be relevant and necessary.

18 “(9) PROHIBITION.—Not later than five years
19 after the date of enactment of this section, the Sec-
20 retary shall by regulation prohibit the import of
21 birds into the United States, except as set forth in
22 paragraph (12).

23 “(10) ESTABLISHMENT OF PHASE-OUT.—Ex-
24 cept with respect to birds imported pursuant to
25 paragraph (12):

1 “(A) SPECIFIC ANNUAL LIMITS.—At any
2 time within five years of the date of enactment
3 of this section, the Secretary may by regulation
4 prescribe specific annual limits with respect to
5 imports of any species of birds, on a gradually
6 declining scale in order to reduce and ultimately
7 end the import of such species by the fifth anni-
8 versary of the date of enactment of this section.
9 In establishing specific import quotas for each
10 species, the Secretary shall give due consider-
11 ation to the best available scientific and com-
12 mercial information and base all decisions on
13 the following criteria:

14 “(i) the status of the species in the
15 wild;

16 “(ii) previous levels of imports of the
17 species;

18 “(iii) the demand for imported birds
19 of the species in the domestic pet market;

20 “(iv) the availability of captive bred
21 specimens in the United States to supply
22 the pet market;

23 “(v) the levels of mortality associated
24 with trade in the species;

1 “(vi) any remedial measures recom-
2 mended by the Conference of the Parties
3 to CITES; and

4 “(vii) any other factor the Secretary
5 considers to be relevant and appropriate.

6 “(B) STATUTORY LIMITS.—Unless by the
7 date 180 days after the date of enactment of
8 this section the Secretary has prescribed specif-
9 ic annual limits on imports of birds pursuant to
10 subparagraph (A), the Secretary shall on that
11 date prescribe limits pursuant to the following
12 procedure:

13 “(i) determine the average annual im-
14 ports of each species for the most recent
15 five calendar years prior to the date of en-
16 actment of this section, hereinafter called
17 the “base period”;

18 “(ii) for the year beginning on the
19 date of enactment of this section, limit im-
20 ports of each species to 70 percent of the
21 average annual imports during the base
22 period; and

23 “(iii) for each successive year thereaf-
24 ter, until the fifth anniversary of the date
25 of enactment of this section or until super-

1 seded by specific import quotas prescribed
2 in accordance with subparagraph (A), re-
3 duce the annual limits on imports of birds
4 by 15 percent of the average annual im-
5 ports of each species during the base peri-
6 od.

7 The Secretary shall publish in the Federal Reg-
8 ister the annual limits on imports of birds pre-
9 scribed in accordance with this subparagraph.

10 “(C) LIMITS BEYOND THE BASE PERI-
11 OD.—The import quota for any species not im-
12 ported during the base period shall be zero, ex-
13 cept that upon petition of any interested person
14 in accordance with this subsection (c) of this
15 section, the Secretary may, after notice and the
16 opportunity for comment, establish import quo-
17 tas in accordance with the procedure in sub-
18 paragraph (A) for such species.

19 “(D) EMERGENCY SUSPENSIONS.—In the
20 case of an emergency posing a significant risk
21 to the well-being of any species, the Secretary
22 may suspend issuance of permits for imports of
23 that species immediately, pending the establish-
24 ment of a specific import quota in accordance
25 with this subparagraph (A). At the time of pub-

1 lication of the notice of suspension of imports
2 in the Federal Register, the Secretary shall
3 publish therein detailed reasons why such sus-
4 pension is necessary, and in no circumstances
5 may the Secretary suspend the issuance of per-
6 mits under the authority of this subparagraph
7 for a period in excess of one hundred and twen-
8 ty days.

9 “(11) ALLOCATIONS.—In issuing permits to im-
10 port birds for the pet trade subject to the quotas es-
11 tablished pursuant to paragraph (10), the Secretary,
12 in consultation with the Secretary of Agriculture,
13 shall give preference to applicants that—

14 “(A) own quarantine facilities approved by
15 the Secretary of Agriculture or have such facili-
16 ties or government-owned quarantine facilities
17 readily available for their use;

18 “(B) provide documentary evidence of hav-
19 ing previously imported birds of the same or
20 closely-related species;

21 “(C) have implemented the standards for
22 quarantine facilities and care prescribed by the
23 Secretary under the authority of subsection (f);
24 and

1 “(D) have adopted procedures to minimize
2 avian mortality during the import process.

3 “(12) EXCEPTIONS.—

4 “(A) Notwithstanding paragraph (9), the
5 Secretary shall issue permits to import birds for
6 any of the purposes listed in subparagraph (B),
7 except that the Secretary may deny permits to
8 import birds where the Secretary has, with re-
9 spect to the species to be imported—

10 “(i) made a finding that the species is
11 subject to excessive mortality during the
12 import process; or

13 “(ii) made a finding under the Endan-
14 gered Species Act, 16 U.S.C.
15 1533(b)(3)(B), that the addition of the
16 species to the lists of endangered or threat-
17 ened species maintained pursuant to the
18 Act is warranted, except that if the Secre-
19 tary determines, pursuant to 16 U.S.C.
20 1533(b)(3)(A), that such a finding may be
21 warranted, and further determines that
22 continued trade poses a significant risk to
23 the well-being of the species, the Secretary
24 may, after notice and the opportunity for
25 comment, suspend the issuance of permits

1 to import birds for a period not to exceed
2 one year or until publication of a finding
3 under 16 U.S.C. 1533(b)(3)(B), whichever
4 is earlier.

5 “(B) The purposes referred to in subpara-
6 graph (A) for which the Secretary shall issue
7 permits to import birds are the following:

8 “(i) birds imported for approved use
9 in scientific research or zoological exhibi-
10 tion;

11 “(ii) birds imported for captive breed-
12 ing by or for transfer to persons registered
13 pursuant to subsection (e);

14 “(iii) birds imported for approved use
15 in a program of captive breeding designed
16 to promote the conservation of the species
17 by enhancing the propagation and survival
18 of the affected species;

19 “(iv) subject to subparagraph (C),
20 birds imported from a country that is a
21 Party to CITES in which the birds were
22 produced in a ranching operation approved
23 and regularly monitored by the Secretary;

24 “(v) subject to subparagraph (D),
25 birds imported from a country that is a

1 Party to CITES in which the birds were
2 bred in captivity at a facility approved by
3 the Secretary; and

4 “(vi) subject to subparagraph (E),
5 birds imported as pets personally owned by
6 a citizen or resident of the United States.

7 “(C) No ranching operation may be ap-
8 proved by the Secretary unless the Secretary
9 has determined, after notice and the opportuni-
10 ty for comment and on the basis of the best
11 available information including an on-site in-
12 spection and studies of the breeding biology of
13 the species and ecology of the population in-
14 volved, that the operation will meet the follow-
15 ing standards:

16 “(i) the operation is beneficial to the
17 affected populations of such species and
18 their habitats;

19 “(ii) the operation is part of a man-
20 agement program designed to sustain the
21 population at not less than pre-harvest
22 densities and, where biologically desirable,
23 increase the local population and its repro-
24 ductive output;

1 “(iii) the operation will benefit the
2 local community involved and has a dem-
3 onstrated potential to be economically suc-
4 cessful;

5 “(iv) the operation is carried out at
6 all stages in a humane manner; an oper-
7 ation that involves the taking of birds as
8 nestlings may be approved only if it does
9 not result in inhumane treatment or signif-
10 icant morbidity or mortality of the birds
11 involved;

12 “(v) the operation maintains and
13 makes available to the Secretary records
14 that fully and accurately disclose detailed
15 information regarding the size of the af-
16 fected population, the number of birds in-
17 volved in the operation, the number of
18 birds removed from the wild, reared, and
19 exported by the operation, and the rates of
20 mortality experienced by the birds in the
21 operation;

22 “(vi) each bird produced by the oper-
23 ation for export to the United States has
24 been marked in accordance with an identi-

1 fication system approved by the Secretary;
2 and

3 “(vii) the appropriate governmental
4 authority of the exporting country has cer-
5 tified in writing that the operation will
6 meet each of the standards in clauses (i)
7 through (vi) and has issued any permits or
8 certificates required by CITES and the
9 laws of the exporting country. Such deter-
10 mination shall be effective for a period not
11 to exceed one year, except that after three
12 years of continuous approved operation
13 such determination may be effective for a
14 period not to exceed two years.

15 The Secretary shall, from time to time, publish
16 a list of such facilities in the Federal Register.
17 Whenever the Secretary determines that a
18 ranching operation approved under this sub-
19 paragraph no longer meets the standards in
20 clauses (i) through (vii), the Secretary shall
21 suspend the issuance of permits to import birds
22 from that operation. For the purposes of this
23 subparagraph, the term “ranching” means the
24 rearing in a controlled environment of native
25 birds taken as eggs or nestlings from a moni-

1 tored wild population of birds managed pursu-
2 ant to a specific conservation management pro-
3 gram.

4 “(D) FOREIGN CAPTIVE-BRED BIRDS.—No
5 captive-breeding facility may be approved by the
6 Secretary unless the Secretary has determined,
7 after notice and the opportunity for comment,
8 and on the basis of the best available informa-
9 tion, including an on-site inspection, if neces-
10 sary, that the facility meets the following stand-
11 ards:

12 “(i) the facility has demonstrated the
13 capability or potential of producing captive
14 bred birds of the species in the numbers to
15 be imported;

16 “(ii) the facility is operated in a man-
17 ner not detrimental to the survival of the
18 species in the wild;

19 “(iii) the facility is operated in a hu-
20 mane manner;

21 “(iv) each bird produced by the facili-
22 ty for export to the United States is
23 marked in accordance with an identifica-
24 tion system prescribed by the Secretary;
25 and

1 “(v) the appropriate governmental au-
2 thority has certified in writing that the fa-
3 cility has the capability of breeding birds
4 of the species to be exported in captivity
5 and has issued any permits or certificates
6 required by CITES or the laws of the ex-
7 porting country.

8 Such determination shall be effective for a peri-
9 od not to exceed 3 years, and the Secretary
10 shall, from time to time, publish a list of such
11 facilities in the Federal Register

12 “(E) PET BIRDS.—No birds may be im-
13 ported as pets unless the birds to be
14 imported—

15 “(i) are pet birds personally owned by
16 a citizen or resident of the United States;

17 “(ii) were not acquired by that person
18 outside the United States after the date of
19 enactment of this section, or if so acquired,
20 have been held by that person for not less
21 than one year; and

22 “(iii) are imported as accompanying
23 personal baggage or part of shipment of
24 household goods of that person moving
25 their residence to the United States, ex-

1 cept that no more than two birds acquired
2 outside the United States after the date of
3 enactment of this section may be imported
4 as pet birds by any person in any calendar
5 year. However, the Secretary may, in un-
6 usual or exceptional circumstances, permit
7 imports of pet birds not otherwise author-
8 ized under this subparagraph.

9 In taking any action or promulgating regula-
10 tions under this paragraph, and in developing
11 procedures to establish approved uses under
12 this paragraph, the Secretary shall consult with
13 all interested or affected parties.

14 “(i) CIVIL PENALTIES.—

15 “(1) UNLAWFUL IMPORTS.—Any person who
16 knowingly engages in conduct prohibited by subsec-
17 tion d(1)(C) may be assessed a civil penalty by the
18 Secretary for each violation of not more than
19 \$10,000 or three times the market value of the birds
20 involved, whichever is greater.

21 “(2) UNLAWFUL TRANSFERS.—Any person who
22 knowingly engages in conduct prohibited by subsec-
23 tion d(1)(B) may be assessed a civil penalty by the
24 Secretary for each violation of not more than \$5,000

1 or twice the market value of the birds, whichever is
2 greater.

3 “(3) OTHER VIOLATIONS.—Any person who
4 knowingly engages in conduct prohibited by any
5 other provision of this section, or any provision of
6 any regulation, permit, license, registration, or cer-
7 tificate issued under this section may be assessed a
8 civil penalty by the Secretary for each violation of
9 not more than \$500 or the market value of the
10 birds, whichever is greater.

11 “(4) NOTICE AND OPPORTUNITY FOR HEAR-
12 ING.—No penalty may be assessed under this sub-
13 section unless such person is given notice and oppor-
14 tunity for a hearing with respect to such violation.
15 Each violation shall be a separate offense. Any such
16 civil penalty may be remitted or mitigated by the
17 Secretary. Upon failure to pay a penalty assessed
18 under this subsection, the Secretary may request the
19 Attorney General to institute a civil action in a dis-
20 trict court of the United States for any district in
21 which such person is found, resides, or transacts
22 business to collect the penalty and such court shall
23 have jurisdiction to hear and decide any such action.
24 The court shall hear such action on the record made
25 before the Secretary and shall sustain the action if

1 it is supported by substantial evidence on the record
2 considered as a whole.

3 “(5) PROCEDURE FOR HEARINGS.—Hearings
4 held during proceedings for the assessment of civil
5 penalties by paragraphs (1), (2), or (3) of this sub-
6 section shall be conducted in accordance with section
7 554 of Title 5, United States Code. The Secretary
8 may issue subpoenas for the attendance and testimo-
9 ny of witnesses and the production of relevant pa-
10 pers, books, and documents, and administer oaths.
11 Witnesses summoned shall be paid the same fees
12 and mileage that are paid to witnesses in the courts
13 of the United States. In case of contumacy or refus-
14 al to obey a subpoena served upon any person pursu-
15 ant to this paragraph, the district court of the Unit-
16 ed States for any district in which such person is
17 found or resides or transacts business, upon applica-
18 tion by the United States and after notice to such
19 person, shall have jurisdiction to issue an order re-
20 quiring such person to appear and give testimony
21 before the Secretary or to appear and produce docu-
22 ments before the Secretary, or both, and any failure
23 to obey such order of the court may be punished by
24 such court as a contempt thereof.

25 “(j) CRIMINAL PENALTIES.—

1 (1) UNLAWFUL IMPORTS.—Any person who vio-
2 lates subsection d(1)(C) by knowingly engaging in
3 conduct that involves the unlawful import of birds
4 shall upon conviction be imprisoned for not more
5 than one year or fined in accordance with Title 18,
6 or both. Each violation shall be a separate offense
7 and the offense shall be deemed to have been com-
8 mitted not only in the district where the violation
9 first occurred, but also in any district in which the
10 defendant may have imported, transferred, or been
11 in possession of the said birds.

12 “(2) UNLAWFUL TRANSFERS.—Any person who
13 knowingly engages in conduct involving the transfer
14 of birds in a manner prohibited by subsection
15 d(1)(B) shall be imprisoned not more than six
16 months or fined in accordance with Title 18, or
17 both. Each violation shall be a separate offense and
18 the offense shall be deemed to have been committed
19 not only in the district where the violation first oc-
20 curred, but also in any district in which the defend-
21 ant may have imported, transferred, or been in pos-
22 session of the said bird.

23 “(3) OTHER VIOLATIONS.—Any person who
24 knowingly engages in conduct prohibited by any
25 other provision of this section, or any provision of

1 any regulation, permit, license, registration, or cer-
2 tificate issued under this section shall be imprisoned
3 not more than thirty days or fined in accordance
4 with title 18, or both. Each violation shall be a sepa-
5 rate offense and the offense shall be deemed to have
6 been committed not only in the district where the
7 violation first occurred, but also in any district in
8 which the defendant may have imported, transferred,
9 or been in possession of the said birds.

10 “(k) DISTRICT COURT JURISDICTION.—The several
11 district courts of the United States shall have jurisdiction
12 over any actions arising under this section. For the pur-
13 pose of this section, American Samoa shall be included
14 within the judicial district of the District Court of the
15 United States for the District of Hawaii.

16 “(l) ENFORCEMENT.—(1) The provisions of this sec-
17 tion and any regulations, permits, or certificates issued
18 pursuant thereto shall be enforced by the Secretary, by
19 the Secretary of Agriculture, the Secretary of the Treas-
20 ury, or the Secretary of the Department in which the
21 Coast Guard is operating, or all such Secretaries. Each
22 such Secretary may utilize by agreement, with or without
23 reimbursement, the personnel, services, and facilities of
24 any other Federal agency or any State agency for pur-
25 poses of enforcing this section.

1 “(2) The judges of the district courts of the United
2 States and the United States magistrates may within their
3 respective jurisdictions, upon proper oath or affirmation
4 showing probable cause, issue such warrants or other proc-
5 ess as may be required for enforcement of this section and
6 any regulation issued thereunder.

7 “(3) COMPLIANCE INSPECTIONS.—

8 “(A) LICENSEES.—Any person licensed pursu-
9 ant to subsection (h) of this section shall allow the
10 Secretary to enter such person’s premises at any
11 reasonable hour to inspect any birds subject to the
12 provisions of this section, to inspect any facilities or
13 equipment used to quarantine, hold, or transport
14 birds, or to inspect, audit, or copy any permits,
15 books, or records required to be kept by this section.

16 “(B) REGISTRANTS.—The Secretary, having
17 reason to believe that a violation of this section is
18 or may be occurring on the premises of a person
19 registered pursuant to subsection (e), may enter
20 such person’s premises at any reasonable hour to in-
21 spect any birds subject to the provisions of this sec-
22 tion, to inspect any facilities or equipment used to
23 quarantine, hold, or transport birds, or to inspect,
24 audit, or copy any permits, books, or records re-
25 quired to be kept by this section.

1 “(C) PRECAUTIONS REQUIRED DURING INSPEC-
2 TIONS.—In carrying out inspections of live birds
3 under this paragraph, the Secretary shall take steps
4 to minimize the intrusive effects and disease hazards
5 of such inspections on the birds involved, and shall
6 observe any reasonable biosecurity measures in ef-
7 fect at that facility.

8 “(4) ENFORCEMENT AUTHORITY; ARRESTS,
9 SEARCHES, AND SEIZURES.—Any person authorized by
10 the Secretary, the Secretary of the Treasury, or the Secre-
11 tary of the Department in which the Coast Guard is oper-
12 ating, to enforce this section may detain for inspection and
13 inspect any package, crate, or other container, including
14 its contents, and all accompanying documents, upon im-
15 portation or exportation. Such persons may make arrests
16 without a warrant for any violation of this section if they
17 have reasonable grounds to believe that the person to be
18 arrested is committing the violation in their presence or
19 view and may execute and serve any arrest warrant,
20 search warrant, or civil or criminal process issued by any
21 officer or court of competent jurisdiction for enforcement
22 of this section. Such person so authorized may search and
23 seize, with or without a warrant, as authorized by law.
24 Any property or item so seized shall be held by any person
25 authorized by the Secretary, the Secretary of the Treas-

1 ury, or the Secretary of the Department in which the
2 Coast Guard is operating pending disposition of civil or
3 criminal proceedings, or the institution of an action in rem
4 for forfeiture of such property or item pursuant to para-
5 graph (6) of this subsection; except that the Secretary
6 may in lieu of holding such property or item, permit the
7 owner or consignee to post a bond or other surety satisfac-
8 tory to the Secretary, but upon forfeiture of any such
9 property or item to the United States, or the abandonment
10 or waiver of any claim to any such property, it shall be
11 disposed of (other than by sale to the general public) by
12 the Secretary in such manner, consistent with paragraph
13 (5) of this subsection and the purposes of this section, as
14 the Secretary shall by regulation prescribe.

15 “(5) SEIZURE AND DISPOSITION OF BIRDS.—

16 “(A) SEIZURES.—The Secretary may seize any
17 birds imported or transferred in violation of this sec-
18 tion, except that the Secretary may take physical
19 possession of such birds only if, in the judgment of
20 the Secretary, such possession is necessary to—

21 “(i) prevent the destruction of evidence;

22 “(ii) provide for proper health care of such
23 birds; or

24 “(iii) assure the proper disposition of such
25 birds in accordance with subparagraph (B).

1 “(B) DISPOSITION OF SEIZED BIRDS.—Birds
2 seized pursuant to this section shall be re-exported
3 to their country of origin in a timely manner, if fea-
4 sible and in the best interests of either the species
5 or the individual birds concerned. If re-export is not
6 feasible or appropriate, seized birds shall be disposed
7 of according to memoranda of understanding regard-
8 ing the disposition of seized live wildlife between the
9 Secretary and public or private organizations or
10 other persons, except that in no event may such
11 birds be transferred for disposition to the person
12 from whom the birds were originally seized. The Sec-
13 retary shall sell seized birds at auction only if au-
14 thorized by law and no alternative method of dispo-
15 sition consistent with this section is feasible.

16 “(6) FORFEITURES OF BIRDS AND EQUIPMENT.—

17 “(A) All birds imported or transferred contrary
18 to the provisions of this section, any regulation made
19 pursuant thereto, or any permit or certificate issued
20 hereunder shall be subject to forfeiture to the United
21 States.

22 “(B) All equipment, including vessels, vehicles,
23 aircraft, and other means of transportation used to
24 aid in the import or transfer of any bird in violation
25 of this section, any regulation made pursuant there-

1 to, or any permit or certificate issued thereunder
2 shall be subject to forfeiture to the United States
3 upon conviction of a criminal violation pursuant to
4 subsection (j)(1) or subsection (j)(2) of this section.

5 “(7) All provisions of law relating to the seizure, for-
6 feiture, and condemnation of a vessel for violation of the
7 customs laws, the disposition of such vessel or the pro-
8 ceeds from the sale thereof, and the remission or mitiga-
9 tion of such forfeiture, shall apply to the seizures and for-
10 feitures incurred, or alleged to have been incurred, under
11 the provisions of this section, insofar as such provisions
12 of law are applicable and not inconsistent with the provi-
13 sions of this section; except that all powers, rights, and
14 duties conferred or imposed by the customs laws upon any
15 officer or employee of the Treasury Department shall, for
16 the purposes of this section, be exercised or performed by
17 the Secretary or by such persons as the Secretary may
18 designate.

19 “(8) The Attorney General of the United States may
20 seek to enjoin any person who is alleged to be in violation
21 of any provision of this section or regulation issued under
22 authority thereof.

23 “(m) SUSPENSION OF LICENSE OR REGISTRATION.—

1 “(1) PROCEDURE FOR SUSPENSION.—When a
2 court or the Secretary determines, after the opportu-
3 nity for a hearing, that a person—

4 “(A) has committed a knowing violation of
5 this section, the Endangered Species Act (16
6 U.S.C. 1538 et seq.), the Lacey Act (16 U.S.C.
7 3372 et seq.), or any regulation, permit, or cer-
8 tificate issued thereunder, and such violation in-
9 volved the unlawful importation or transfer of
10 birds; or

11 “(B) is no longer in compliance with the
12 minimum standards for licensees established
13 pursuant to subsection (h), or the minimum
14 standards for registrants established pursuant
15 to subsection (e), as applicable;

16 the Secretary may suspend the license or registra-
17 tion of such person for any period to be determined
18 by the Secretary. A person whose license or registra-
19 tion is suspended or who is barred from transferring
20 birds pursuant to the authority of this subsection
21 may petition the Secretary for reconsideration of a
22 suspension or bar in a manner to be determined by
23 the Secretary, and shall be entitled to a hearing on
24 the length of the suspension or bar if the Secretary
25 determines that the suspension or bar shall last for

1 more than three years. The Secretary shall not be
2 liable for the payments of any compensation, reim-
3 bursement, or damages in connection with the sus-
4 pension of any licenses or registrations pursuant to
5 this section.

6 “(2) TRANSFER OF BIRDS BY SUSPENDED PER-
7 SONS.—Any person whose license or registration is
8 suspended under paragraph (1) may, at such per-
9 son’s discretion and after notifying the Secretary,
10 transfer any bird imported pursuant to clauses (i),
11 (ii), and (iii) of subsection (h)(12)(B) to a registered
12 or licensed person. Suspended persons may not im-
13 port birds or acquire any bird imported pursuant to
14 clauses (i), (ii), and (iii) of subsection (h)(12)(B)
15 during the period of suspension.

16 “(n) REWARDS AND CERTAIN INCIDENTAL EX-
17 PENSES.—The Secretary or the Secretary of the Treasury
18 may pay, from sums received as penalties, fines, or forfeit-
19 ures of property for any violation of this section or any
20 regulation issued hereunder (1) a reward to any person
21 who furnishes information which leads to an arrest and
22 a criminal conviction, civil penalty assessment, or forfeit-
23 ure of property for any violation of this section or any
24 regulation issued hereunder, and (2) the reasonable and
25 necessary costs incurred by any person in providing tem-

1 temporary care for any bird pending the disposition of any
2 civil or criminal proceeding alleging a violation of this sec-
3 tion or regulation issued hereunder with respect to that
4 bird. The amount of the reward, if any, is to be designated
5 by the Secretary or the Secretary of the Treasury, as ap-
6 propriate. Any officer or employee of the United States
7 or any State or local government who furnishes informa-
8 tion or renders service in the performance of their official
9 duties is ineligible for payment under this subsection.
10 Whenever the balance of sums received under this Act as
11 penalties for fines, or from forfeitures of property, exceed
12 \$500,000, the Secretary of the Treasury shall deposit an
13 amount equal to such excess balance in the cooperative
14 endangered species conservation fund established under
15 section 6(i) of the Endangered Species Act.

16 “(o) REGULATIONS.—The Secretary, the Secretary of
17 the Treasury, and the Secretary of the Department in
18 which the Coast Guard is operating, are authorized to pro-
19 mulgate such regulations as may be appropriate to enforce
20 this section, and charge reasonable fees for expenses to
21 the Government connected with permits, licenses, registra-
22 tions, or certificates authorized by this section including
23 processing applications and reasonable inspections, and
24 with the transfer, board, handling, or storage of birds and
25 evidentiary items seized and forfeited under this section.

1 All such fees collected pursuant to this subsection shall
2 be deposited in the Treasury to the credit of the appro-
3 priation which is current and chargeable for the cost of
4 furnishing the services. Appropriated funds may be ex-
5 pended pending reimbursement from parties in interest.

6 “(p) CITIZEN SUITS.—(1) Except as provided in
7 paragraph (2), any person may commence a civil action
8 on his own behalf against the Secretary where there is
9 alleged a violation of any provision of this section or any
10 regulation promulgated thereunder, or a failure of the Sec-
11 retary to perform any act or duty under this section which
12 is not discretionary with the Secretary. The United States
13 district courts shall have jurisdiction, without regard to
14 the amount in controversy or the citizenship of the parties,
15 to order the Secretary to perform such act or duty.

16 “(2) NOTICE.—No action may be commenced under
17 paragraph (1) before the sixtieth calendar day after the
18 date on which the plaintiff has given notice of such action
19 to the Secretary; except that such action may be brought
20 immediately after such notification in the case of an action
21 under this section respecting an emergency posing a sig-
22 nificant risk to the well-being of any species of bird. Notice
23 under this subsection shall be given in such manner as
24 the Secretary shall prescribe by regulation.

1 “(3) COSTS.—The court, in issuing any final order
2 in any suit brought pursuant to paragraph (1), may award
3 costs of litigation (including reasonable attorney and ex-
4 pert witness fees) to any party, whenever the court deter-
5 mines such award is appropriate.

6 “(4) OTHER RIGHTS.—Nothing in this subsection
7 shall restrict or expand any right which any person (or
8 class of persons) may have under any statute or common
9 law to seek enforcement of any requirement or to seek any
10 other relief (including relief against the Secretary).

11 “(5) INTERVENTION.—In any action under this sub-
12 section, any person may intervene as a matter of right
13 when such person has a direct interest which is or may
14 be adversely affected by the action and the disposition of
15 the action may, as a practical matter, impair or impede
16 the person’s ability to protect that interest unless the
17 United States shows that the person’s interest is ade-
18 quately represented by existing parties in the action.

19 “(q) RELATION TO OTHER LAWS.—No provision of
20 this section exempts any person subject to its provisions
21 from complying with the Endangered Species Act of 1973
22 (16 U.S.C. 1531 et seq.), the Lacey Act Amendments of
23 1981 (16 U.S.C. 3371 et seq.), the Migratory Bird Treaty
24 Act (16 U.S.C. 703 et seq.), or the laws of any state. The
25 authority of the Secretary under this section is in addition

1 to and shall not affect the authority of the Secretary under
2 the Endangered Species Act of 1973, the Lacey Act
3 Amendments of 1981, or the Migratory Bird Treaty Act.

4 “(r) APPROPRIATIONS.—There are authorized to be
5 appropriated to the Secretary and to the Exotic Bird Con-
6 servation Fund, a total of not to exceed \$5,000,000 for
7 each of the fiscal years 1992, 1993, and 1994 to carry
8 out this Act, to remain available until expended.”.

102D CONGRESS
1ST SESSION

S. 1219

To enhance the conservation of exotic wild birds.

IN THE SENATE OF THE UNITED STATES

JUNE 4 (legislative day, JUNE 3) 1991,

Mr. BAUCUS (for himself and Mr. CHAFEE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To enhance the conservation of exotic wild birds.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That the Act of November 16, 1981 (Public Law 97-79),
 4 the Lacey Act Amendments of 1981, is amended by add-
 5 ing the following new section:

6 **“SEC. 10. WILD BIRD PROTECTION.**

7 **“(a) DEFINITIONS.—**For the purpose of this section,
 8 the term—

9 **“(1) the term ‘exotic bird’—**

10 **“(A) means any live or dead member of**
 11 **the class Aves that is not indigenous to the**

1 United States, including any egg or offspring
2 thereof; and

3 “(B) does not include any part or product
4 of a bird, poultry, museum specimens, dead
5 sport-hunted birds, and fossils;

6 “(2) the term ‘bred in captivity’ means hatched
7 or otherwise produced in captivity of parents that
8 mated, were artificially inseminated, or otherwise
9 transferred gametes, in captivity;

10 “(3) the term ‘CITES’ means the Convention
11 on International Trade in Endangered Species of
12 Wild Fauna and Flora, and the appendices thereto;

13 “(4) the term ‘import’ means to land on, bring
14 into, or introduce into, or attempt to land on, bring
15 into, or introduce into, any place subject to the ju-
16 risdiction of the United States;

17 “(5) the term ‘person’ means an individual, cor-
18 poration, or any other private entity; or any officer,
19 employee, agent, or department of the Federal Gov-
20 ernment, of any State or political subdivision of a
21 State, or of any foreign government;

22 “(6) the term ‘Secretary’ means the Secretary
23 of the Interior, or his or her authorized representa-
24 tive;

1 “(7) the term ‘species’ means any species, and
2 any subspecies or hybrid of a species;

3 “(8) the term ‘transfer’ means to—

4 “(A) acquire an exotic bird by any means
5 or in any manner, including by purchase, sale,
6 barter, conveyance, loan pledge, or gift, from a
7 person who imported that exotic bird, and

8 “(B) convey that exotic bird by any means
9 or in any manner (including by a manner de-
10 scribed in subparagraph (A)) to any other per-
11 son;

12 “(9) the term ‘United States’ means the fifty
13 States, the District of Columbia, Guam, the Com-
14 monwealth of the Northern Mariana Islands, the
15 Commonwealth of Puerto Rico, and the territories
16 and possessions of the United States; and

17 “(10) the term ‘wild’ means captured or taken
18 in any manner from a natural habitat.

19 “(b) MARKING AND RECORDKEEPING REQUIRE-
20 MENTS.—

21 “(1) MARKING REQUIREMENTS.—Not later
22 than one year after the date of the enactment of this
23 section, the Secretary shall by regulation require the
24 marking of exotic birds. Such regulations shall—

4

1 “(A) prescribe approved techniques for
2 marking exotic birds with a unique and perma-
3 nent mark that is recognizable to the consumer;

4 “(B) require the marking of exotic birds
5 bred in captivity, including any exotic birds im-
6 ported pursuant to subsection (d)(2)(E), as
7 soon as practical after hatching; and

8 “(C) specify procedures by which exotic
9 birds held in captivity on the effective date of
10 the regulations may be submitted for marking.

11 “(2) EXOTIC BIRDS IN CAPTIVITY ON EFFEC-
12 TIVE DATE OF REGULATIONS.—Exotic birds held in
13 captivity within the United States at the time regu-
14 lations issued under this subsection take effect—

15 “(A) may be sold only if they are marked
16 in accordance with this subsection; and

17 “(B) may be marked only if the owner can
18 provide proof, in a manner satisfactory to the
19 Secretary, that they have been legally acquired.

20 “(3) RECORDS.—Any person who sells any ex-
21 otic bird, shall retain records of that sale for such
22 period as may be specified by the Secretary, and
23 shall provide copies of such records to the Secretary
24 upon request. The records shall identify the source,
25 purchaser, and any unique permanent mark of the

1 exotic birds, and such other information as may be
2 prescribed by the Secretary.

3 “(4) SPECIES EXEMPT FROM MARKING RE-
4 QUIREMENTS.—

5 “(A) IN GENERAL.—The requirements of
6 this section shall not apply to common canaries,
7 cockatiels, or budgerigars, or any other species
8 exempted by the Secretary after a finding
9 that—

10 “(i) captive breeding programs are
11 sufficient to meet fully the commercial de-
12 mand for the species;

13 “(ii) wild populations of the species
14 are neither rare nor declining significantly;

15 “(iii) the threat to the species from il-
16 legal imports is negligible; and

17 “(iv) marking is not required in order
18 to protect other species which are similar
19 in appearance.

20 “(B) REVOCATION OF FINDING.—The Sec-
21 retary may revoke a finding under subpara-
22 graph (A) at any time upon receipt by the Sec-
23 retary of information showing that it is no
24 longer valid.

1 “(C) CONSULTATION AND PUBLICATION.—

2 Not later than one year after the date of the
3 enactment of this section, and annually
4 thereafter, the Secretary shall consult with inter-
5 ested parties and publish in the Federal Regis-
6 ter a list of species exempted under this subsec-
7 tion.

8 “(c) WILD EXOTIC BIRD TRANSFERS.—(1) The Sec-
9 retary may issue licenses which authorize the transfer of
10 wild exotic birds.

11 “(2) REGULATIONS.—Not later than one year after
12 the date of the enactment of this section, the Secretary
13 shall issue regulations governing the licensing of persons
14 under this subsection. Such regulations shall prescribe
15 minimum acceptable requirements for humane care, cag-
16 ing, husbandry, personnel qualifications and experience,
17 and other appropriate matters.

18 “(d) WILD EXOTIC BIRD LICENSES.—(1) The Secre-
19 tary may issue licenses to authorize the import of the exot-
20 ic birds described in paragraph (2).

21 “(2) A license under this section may authorize the
22 import of an exotic bird—

23 “(A) that is a member of a species described in
24 subsection (b)(4);

25 “(B) that is a pet—

1 “(i) that is owned and possessed by a per-
2 son who is a citizen or resident of the United
3 States and was acquired before the date of the
4 enactment of this section or bred in captivity;
5 or

6 “(ii) for which the Secretary finds that ex-
7 ceptional circumstances exist for importation; if
8 the person importing the bird under the license
9 has not imported more than one other exotic
10 bird under the authority of this paragraph; or

11 “(C) for purposes of bona fide scientific re-
12 search or approved zoological exhibition, if the Sec-
13 retary finds that the importer has demonstrated that
14 such importation will benefit conservation of the spe-
15 cies imported;

16 “(D) for the purpose of bona fide captive breed-
17 ing of a species of which suitable specimens are not
18 reasonably available in the United States, if the Sec-
19 retary finds that the importer has demonstrated that
20 the importation of such exotic bird—

21 “(i) is in compliance with CITIES and the
22 laws of the exporting country;

23 “(ii) has no detrimental effect on wild pop-
24 ulations of the species to be imported;

1 “(iii) does not cause substantial mortality
2 in transport, quarantine, or captivity; or

3 “(E) that the Secretary finds after on-site in-
4 spection, where appropriate, and after notice and op-
5 portunity for public comment—

6 “(i) is taken from a facility that—

7 “(I) is located in a country that is a
8 party to CITES;

9 “(II) is a bona fide captive-breeding
10 facility with a demonstrated capability of
11 producing the exotic birds to be exported;
12 and

13 “(III) is operated in a humane man-
14 ner; and

15 “(ii) which is marked in accordance with
16 regulations issued under subsection (b)(1); if
17 the Secretary makes the findings described in
18 clauses, (i), (ii), and (iii) of subparagraph (D)
19 of paragraph (4) of this subsection with respect
20 to the importer.

21 “(3) REQUIREMENTS FOR FACILITIES.—

22 “(A) RECORDS.—Facilities used for the impor-
23 tation of exotic birds pursuant to paragraph (2)(E)
24 of this subsection shall maintain sufficient records

1 and provide copies to the Secretary upon request, in
2 order to ensure compliance with this subsection.

3 “(B) EFFECTIVENESS OF FINDINGS.—A finding
4 made by the Secretary under paragraph (2)(E) of
5 this subsection—

6 “(i) shall be effective for 2 years; and

7 “(ii) may be revoked by the Secretary at
8 any time upon receipt of information showing
9 that it is no longer valid.

10 “(C) PUBLICATION OF APPROVED FACILI-
11 TIES.—The Secretary shall annually publish in the
12 Federal Register a list of facilities that the Secretary
13 has found meet the requirements set forth in para-
14 graph (2)(E) of this subsection.

15 “(4) REPORTING AND RECORDKEEPING.—Any per-
16 son holding a license under this subsection shall keep
17 records and submit annual reports to the Secretary in a
18 form to be prescribed by the Secretary. Such reports shall
19 contain—

20 “(A) detailed information regarding transfers
21 by the reporting part during the receding year of ex-
22 otic birds, other than those described in subsection
23 (b)(4); and

24 “(B) any other information which the Secretary
25 determines to be relevant and necessary.

1 “(5) REGULATIONS.—Not later than one year after
2 the date of the enactment of this section, the Secretary
3 shall issue regulations governing the licensing of persons
4 under this subsection. Such regulations shall prescribe
5 minimum acceptable requirements for humane care, cag-
6 ing, husbandry, personnel qualifications and experience,
7 and other appropriate matters.

8 “(e) PROHIBITED ACTS.—(1) It is unlawful for any
9 person who is subject to the jurisdiction of the United
10 States to—

11 “(A) import any exotic bird, except in accord-
12 ance with a license issued under this section;

13 “(B) transfer any wild exotic bird in interstate
14 or foreign commerce, except in accordance with a li-
15 cense issued under this section;

16 “(C) possesses, deliver, receive, carry, trans-
17 port, or ship any exotic bird that is imported or
18 transferred in violation of this section;

19 “(D) sell, offer for sale, exchange, or purchase
20 for other than the purchaser’s personal use, any ex-
21 otic bird in interstate or foreign commerce, unless it
22 has been marked in accordance with subsection (b);
23 or

24 “(E) violate any regulation promulgated under
25 this section.

1 “(2) ATTEMPT, SOLICITATION, CAUSE.—It is unlaw-
2 ful for any person who is subject to the jurisdiction of
3 the United States to commit, to attempt to commit, or
4 to solicit another to commit, a violation of paragraph (2)
5 of this subsection.

6 “(f) PETITIONS.—Any person may petition the Secre-
7 tary at any time to make any finding or determination,
8 or take any other action, authorized by this section. The
9 petition shall include such information as may be neces-
10 sary to demonstrate the need for the action requested by
11 the petition. Within ninety days after receipt of such a
12 petition, the Secretary shall make a ruling on the petition
13 and shall publish the ruling in the Federal Register.

14 “(g) CITIZEN SUITS.—(1) Any person may commence
15 on his or her own behalf a civil action in United States
16 District Court seeking injunctive or other relief against
17 any person, including the Secretary, who is alleged to be
18 in violation of this section or regulations issued under this
19 section, or to compel the Secretary to perform any duty
20 required by this section.

21 “(2) JURISDICTION.—The district courts shall have
22 jurisdiction, without regard to the amount in controversy
23 or the citizenship of the parties, to enforce this section
24 or regulations issued under this section, or to order the

1 Secretary of perform a duty sought to be completed pursu-
2 ant to paragraph (1).

3 “(3) AWARD OF COST.—The court, in issuing any
4 final order in any suit brought pursuant to this subsection,
5 may award costs of litigation (including reasonable attor-
6 ney and expert witness fees) to any party, whenever the
7 court determines such award is appropriate.

8 “(4) RELATIONSHIP TO OTHER LAWS.—This subsec-
9 tion shall not restrict any right that any person may have
10 under any statute or common law.

11 “(h) PENALTIES AND ENFORCEMENT.—

12 “(1) CIVIL PENALTIES.—Any person who vio-
13 lates any provision of this section, or any provision
14 of any regulation or license issued under this sec-
15 tion, may be assessed a civil penalty by the Secre-
16 tary of not more than \$10,000 for each violation. No
17 penalty may be assessed under this paragraph unless
18 such person is given notice and opportunity for a
19 hearing with respect to such violation. Each violation
20 shall be a separate offense. Upon failure to pay a
21 penalty assessed under this paragraph, the Secretary
22 may request the Attorney General to institute a civil
23 action in a district court of the United States for
24 any district in which such person is found, resides,
25 or transacts business to collect the penalty and such

1 court shall have jurisdiction to hear and decide any
2 such action.

3 “(2) CRIMINAL PENALTIES.—Any person who
4 knowingly violates any provision of this section, or of
5 any regulation or license issued under this section,
6 shall upon conviction be imprisoned for not more
7 than five years or fined in accordance with title 18,
8 United States Code, or both. Each violation shall be
9 a separate offense and the offense is deemed to have
10 been committed in the district where the violation
11 first occurred and in any district in which the de-
12 fendant may have imported, transferred, or been in
13 possession of the birds, if any, to which the violation
14 relates.

15 “(3) DISTRICT COURT JURISDICTION.—The sev-
16 eral district courts of the United States, shall have
17 jurisdiction over any actions arising under this sec-
18 tion. For the purpose of this section, American
19 Samoa shall be included within the judicial district
20 of the District Court of the United States for the
21 District of Hawaii.

22 “(4) ENFORCEMENT.—The Secretary, the Sec-
23 retary of the Treasury, the Secretary of the depart-
24 ment in which the Coast Guard is operating, or the
25 attorney General may perform any act to enforce

1 this section and regulations issued under this section
2 that he or she may perform under section 11(e) of
3 the Endangered Species Act of 1973 (16 U.S.C.
4 1540(e)) to enforce that Act, and the district courts
5 of the United States may issue warrants or other
6 process in accordance with paragraph (2) of that
7 section for purposes of that enforcement.

8 “(5) REWARDS AND EXPENSES.—The Secretary
9 or the Secretary of the Treasury shall pay rewards
10 and costs for purposes of this section in the same
11 manner as rewards and costs are required by section
12 11(d) of the Endangered Species Act of 1973 (16
13 U.S.C. 1540(d)) to be paid with respect to that Act.

14 “(6) INSPECTIONS.—Any person licensed pur-
15 suant to subsections (c) or (d) shall allow the Secre-
16 tary, the Secretary of Agriculture, or their author-
17 ized agents, to enter his or her premises at any rea-
18 sonable hour to—

19 “(A) inspect any exotic birds regulated
20 under this section;

21 “(B) inspect any facilities or equipment
22 used to hold or transport exotic birds;

23 “(C) inspect, audit, or copy any licenses or
24 records required to be kept by this section.

1 “(7) SEIZURE AND DISPOSITION OF EXOTIC
2 BIRDS.—The Secretary shall promptly seize any ex-
3 otic birds imported or transferred in violation of this
4 section. Exotic birds seized during the import proc-
5 ess shall be reexported to their country of origin in
6 a timely manner, if feasible and in the best interests
7 of either the species or the individual birds con-
8 cerned. The Secretary may sell seized exotic birds at
9 auction only as authorized by law and if no alterna-
10 tive method of disposition consistent with this sec-
11 tion is feasible.

12 “(8) SUSPENSION OF LICENSES.—If a court or
13 the Secretary determines, after the opportunity for
14 a hearing, that a person—

15 “(A) has committed a knowing violation of
16 this Act, the Endangered Species Act of 1973
17 (16 U.S.C. 1538 et seq.), or of any regulation
18 or license issued thereunder, which involves the
19 import or transfer of exotic birds; or

20 “(B) is no longer in compliance with the
21 requirements for licensing established pursuant
22 to subsection (c) or (d) of this section;

23 the Secretary may suspend the license of such per-
24 son or bar transfers of exotic birds by or to such
25 person, or both, for any period to be determined by

1 the Secretary. The Secretary shall not be liable for
2 payment of any compensation, reimbursement, or
3 damages in connection with the suspension of any li-
4 censes pursuant to this subsection.

5 “(9) REGULATIONS AND FEES.—The Secretary,
6 the Secretary of Agriculture, the Secretary of the
7 Treasury, and the Secretary of the department in
8 which the Coast Guard is operating may each issue
9 such regulations as may be appropriate to enforce
10 this section, and charge reasonable fees for expenses
11 incurred in implementing this section.

12 “(i) RELATION TO OTHER LAWS.—No provision of
13 this section exempts any person from complying with the
14 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.),
15 the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et
16 seq.), the Migratory Bird Treaty Act (16 U.S.C. 703 et
17 seq.), the Animal Welfare Act (7 U.S.C. 2131 et seq.),
18 CITES, or other laws of any State. The authority of the
19 Secretary under this section is in addition to and shall
20 not affect the authority of the Secretary under those Acts.
21 This section does not preempt any State law which is more
22 stringent than the provisions of this section and the regu-
23 lations adopted under this section.”.

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