

## EDITORIAL AND COMMENTARY

### THE TREATMENT OF BIOLOGISTS BY THE U.S. FISH AND WILDLIFE SERVICE<sup>1</sup>

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The comments below by Dr. Russell P. Balda discuss difficulties biologists may experience regarding use of scientific collecting permits issued by the United States Fish and Wildlife Service (USFWS). This letter was submitted as a portion of an agreement between U.S. government attorneys and Dr. Balda. I publish Dr. Balda's comments with hesitation, because—as has been the case for other avian biologists in the recent past—it appears that federal officials are using their prosecution of Balda as a means to “send a message” to the scientific community. In one sense, I agree with these officials; ornithologists *should* be cognizant of the distorted priorities of the Law Enforcement Division of the USFWS.

I will not describe Dr. Balda's alleged infractions, except that they involved collection of a few individuals of a common bird species. It is clear, however, that the federal action against him is by no means an isolated event. Consider, for example, the case of Dr. Nathaniel Wheelwright (Graham 1992). Wheelwright salvaged seven birds found dead in Canada and brought them to the United States. All were of common species: Tree Swallows, Savannah Sparrows, and a Leach's Storm-Petrel. Although Wheelwright had applied for a permit to import specimens, the Fish and Wildlife Service mistakenly wrote it to allow importation of only blood samples. Wheelwright, however, obtained oral consent from the USFWS to import the birds and declared them to that agency upon his return to the United States. Remarkably, he was later charged with violating the Migratory Bird Treaty Act, the Endangered Species Act, and the Lacey Act. During nine months of federal investigations, fines and jail terms were threatened and his collecting permit—vital for both his teaching and research—was withheld. Pressure from the Maine congressional delegation eventually forced the U.S. attorney to drop criminal charges. The Fish and Wildlife Service, however, proceeded with civil actions and notified Wheelwright that he faced fines up to \$75,000 for his salvage of the seven dead birds. Again, congressional pressure was required to end this harassment.

Such actions by the USFWS can be devastating. An ornithologist so targeted confronts an agency that has seemingly unlimited funds for attorneys and investigators. The biologist's time and attention will be held captive for months and his/her entire financial worth

may well be lost to legal fees. In addition, the scientist who loses the legal battle may face huge fines and imprisonment. Consider the penalties with which Wheelwright was threatened, or the fact that at least one ornithologist has lost his job, or that a herpetologist spent 15 months in federal prison for illegally collecting a limited number of animals for a university museum.

Ornithologists have a long history of constructive action for bird conservation and, of course, the results of our research are used by agencies such as the Fish and Wildlife Service in designing their own management and conservation efforts. Our argument is not with the intended function of laws such as the Endangered Species Act or the Migratory Bird Treaty Act. Indeed, these statutes were generated with the enthusiastic support of avian biologists. Nor do we expect to be immune from enforcement of such laws, as some federal officials have suggested.

However, legal authorities have substantial flexibility in their actions and there is a large range of possible enforcement practices between giving such immunity and the draconian treatment ornithologists currently receive. Limited resources dictate that police agencies must select what offenses they will focus upon and prosecutors have discretion regarding what cases to pursue, what charges to file, and what penalties to seek. In addition, a fundamental assumption of our judicial system is that penalties sought should correspond to the seriousness of the offense. Because resources for wildlife protection are critically limited, such decisions regarding enforcement options and priorities are of paramount importance.

Why, then, are biologists apparently a special focus for harsh treatment by the Law Enforcement Division of the USFWS? Did the actions of the particular scientists involved, such as Wheelwright and Balda, pose significant threats to bird populations? Clearly, they did not. The “offenses” by these biologists involved a few specimens of common species. In Wheelwright's case, the birds were already dead when he found them.

If these biologists' actions were of minor consequence, is scientific collecting in general a significant threat to bird populations and one that warrants stern prosecution of these individuals to “send a message” to the scientific community? Again, this is clearly not so. Compared to scientific collecting, 6,000 times more birds are killed by hunters in the U.S., 4,000 times more are killed by collisions with windows, 2,900 times more are killed by automobiles, and 100 times more are killed by pest-control operations (American Ornithologists' Union 1975, Banks 1979, cited in Gill 1990). According to the U.S. Fish and Wildlife Service's own analyses, scientists collect only about 1–2 birds per million in the avian population of the continental United States; total human-caused mortality of birds is about 14,000 times greater than this (Banks 1979). Such values do not, of course, subsume the mortality due to the extensive habitat destruction occurring today. With obvious exceptions such as might involve endangered species, scientific collecting there-

<sup>1</sup> These comments were written without the knowledge of Dr. R. P. Balda.

fore is a negligible source of mortality to bird populations.

Given this, why are scientific collectors being treated so harshly? The suggestion I hear most frequently is that scientists simply are very convenient targets. We are not politically powerful, but we are visible, readily located, and we carefully record and even publish our activities. For those federal officials more concerned with producing a list of convictions for trivial violations than with genuinely protecting bird populations, the temptation apparently is too great.

This is a truly unfortunate situation. The personal and professional lives of scientists are being needlessly damaged. Avian biologists are rapidly being alienated from the Fish and Wildlife Service, which they have traditionally aided to a large degree in its conservation efforts. This is also despite the fact that these enforcement activities are the responsibility of one particular division of the USFWS and not, for example, that of our colleagues employed as research biologists by that agency.

Biologists certainly do not, and should not, expect to be immune from reasonable enforcement of sensible collecting regulations. It is dismaying, however, that the limited resources of the Fish and Wildlife Service are being diverted from what should be the primary targets of federal law enforcement, such as the illegal importation and commercial trade in exotic birds. (The U.S. is the world's largest importer of wild birds. Such commercial trade, for example, presents a major threat

of extinction for 22 species of parrots [American Ornithologists' Union, Bird Trade Subcommittee 1991]). It clearly is vital for wildlife protection, for scientific research, and for humane justice that federal officials reorient and re-emphasize the priorities of the Law Enforcement Division of the Fish and Wildlife Service toward such real threats to bird populations and away from essentially innocuous infractions by scientists.

#### LITERATURE CITED

- AMERICAN ORNITHOLOGISTS' UNION. 1975. Report of the ad hoc Committee on Scientific and Educational Use of Wild Birds. *Auk* 92 (3, Suppl.):1A-27A.
- AMERICAN ORNITHOLOGISTS' UNION, BIRD TRADE SUBCOMMITTEE. 1991. International trade in live exotic birds creates a vast movement that must be halted. *Auk* 108:982-984.
- BANKS, R. C. 1979. Human related mortality of birds in the United States. U.S. Fish Wildl. Serv. Spec. Sci. Rep. Wildl. No. 215.
- GILL, F. B. 1990. Ornithology. W. H. Freeman and Co., New York.
- GRAHAM, FRANK, JR. 1992. The ordeal of Nat Wheelwright. *American Birds* 46:374-377.
- KLEM, D. A. 1979. Biology of collisions between birds and windows. Ph.D. diss., Southern Illinois University, Carbondale, IL.

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## LETTER TO THE EDITOR

Dear Colleagues,

On November 14, 1991, the U.S. Fish and Wildlife Service asked for public comments concerning various federal regulations including those covering general permits issued by the agency (Fed. Reg. 66, No. 220). Numerous comments were received and the review process is still ongoing. As the review continues, it is apparent that a number of academic and professional groups are continuing to seek modifications in the current permit procedures and regulations (*Science* 258: 396-397, 1992). This, however, does not mean that we can in any sense relax our attention to the details of our permits at this time. Often, we are prone to take extreme care in keeping our records accurate and up-to-date for the particular scientific questions we are interested in, but give our permit-required records only minimal attention. Some of this behavior may be attributed to our assuming that since we shared similar goals with federal agencies concerned with conservation and preservation of birds and habitats that we would not be considered under the same umbrella of accountability as feather merchants and illegal im-

porters of rare species of birds for profit. This is not the case. In view of that fact, placing blame on one party or another will not resolve our present problems, but abiding by all the conditions and requirements of our federal permits will certainly place us in a much stronger position to negotiate changes in these regulations. As the list of potential violators grows, we certainly are not going to be viewed as expert and credible spokespersons in these negotiations for change.

The penalties for illegal collecting activities and inaccurate bookkeeping are potentially severe, to say the least. I am not a lawyer so I am not prepared to be specific, but professional careers can be destroyed, savings accounts can be wiped out, and even jail terms imposed, by what we may have considered as trivial events in the past. It is not worth taking the chance to collect or hold individuals or species not covered by our permits. Nor can we afford to jeopardize the education and careers of students and employees under our direction by promoting such activities. Just as Watergate and Irangate eventually came to light, we can also have our own "Birdgate" if we are not careful and forthright in the use of our permits.