

PHOTOGRAPH OF WHEELWRIGHT IN THE FIELD, COURTESY OF N.T.W.



Is there a government vendetta shaping up against academic ornithologists? Are scientists pleading for special privileges?

These charges have been hurtling back and forth for over a year now as anxiety over scientific freedom spreads throughout the ornithological community. In the middle of the furor is Nathaniel Thoreau Wheelwright, an associate professor of biology at Bowdoin College in Brunswick, Maine, who was threatened by the United States Fish & Wildlife Service with jail, criminal and civic fines up to \$75,000(!), and the prospect of losing both his scientific permits and specimens he innocently brought into the country from Canada.

"We are deeply troubled by what has been interpreted as a strong effort by the Service to use

was simply doing his duty.

"I enforce the regulations and statutes of the Fish & Wildlife Service," he said from his Portland, Maine, office. "We require people to comply with them, and if the person who doesn't comply happens to be a scientist, that's of no concern to us."

The uproar began when Wheelwright, who also serves as Director of the Bowdoin Scientific Station on Kent Island in the Grand Manan Archipelago, crossed the border from New Brunswick into Lubec, Maine, on July 26, 1991. He brought with him the mortal remains of seven birds—three Tree Swallows, three Savannah Sparrows, and a Leach's Storm-Petrel—all relatively common species.

"I didn't shoot any of the birds," he says. "They were found dead on the island, and I thought I had

The Ordeal of **NAT WHEELWRIGHT**

His year-long battle with the United States Fish & Wildlife Service may be over, but other scientists may be facing the same threat to their research.

Are there long-range implications for the ornithological community?

By Frank Graham, Jr.

Wheelwright as an example to send a 'message' to those who rely on permits to conduct research on migratory birds," the presidents of North America's four leading ornithological societies wrote to Fish & Wildlife Service Director John Turner last March. "We have heard of a number of instances in the past few years that suggest that portions of the Service, or some individuals in the Service, are either unaware of the needs of avian scientists or actively antagonistic to those needs and the permitting process which allows them to be met."

Wheelwright's own comments reflect his bitterness. "These enforcement agents seem to be under pressure to come up with a quota of violations, like cops handing out parking tickets," he said recently. "It displays a real ineptness and mediocrity within the Service, with bureaucrats driven by a policy of keeping control for themselves."

Special Agent Richard Stott, who lodged the original complaint against Wheelwright, insists he

a permit to bring in bird skins for research and teaching. But the Fish & Wildlife Service had made a mistake when issuing the permit and specified importing only blood samples. So I obtained consent over the phone from Marguerite Donnelly, an applications examiner for the Service, to declare the specimens after I returned."

Waived across by U.S. Customs, Wheelwright duly declared his skins to the Fish & Wildlife Service when he arrived in Brunswick. It would be an understatement to say he was surprised when notified by Stott in September that the government was confiscating his birds and lodging a criminal case against him for being "in violation of the Migratory Bird Treaty Act, Endangered Species Act, and Lacey Act." (The ESA "requires that a declaration be made at the time of the importation and that only certain ports of entry can be used for the importation of migratory birds," Lubec, Maine, apparently not being one of the approved ports.)

Nor, Wheelwright learned, does verbal consent count, although he learned later that Donnelly had indeed reported their phone conversation to superiors. Word of his predicament spread through the ornithological community. The response indicated not only support for a beleaguered colleague, but also a feeling that "this could happen to me—and, in fact, it already has."

One biologist reported that he had given up banding birds after continued harassment. Another had burned a nineteenth-century mounted specimen of an endangered species because he lacked adequate documentation for possessing it. A third, Reid Harris of James Madison University, notes that the recent spate of prosecutions is hardly unprecedented.

"When I was an undergraduate in 1978, my adviser thought he had all the necessary permits and asked me to bring in some specimens from Canada. But the Fish & Wildlife Service found something wrong and I was hit with a \$50 fine. Fortunately, my adviser reimbursed me."

At first, Stott informed Wheelwright that if he paid a \$100 fine he could have his specimens back. When the ornithologist declined on principle, the government upped the ante: stand trial and face a \$500 fine and six months behind bars. By this time, surprise had turned to nightmare. One of the colleagues who rushed to his defense was Richard C. Banks, a Fish & Wildlife Service biologist whom Wheelwright calls "a real hero." Banks contacted Eugene Hester, Assistant Regional Director of the Fish & Wildlife Service in Boston, suggesting that Stott was "overzealously" pursuing a trivial violation and that the government ought to back off.

"For the Fish & Wildlife Service to carry this to the United States District Court seems extreme," Banks wrote. "It is certainly not an action that will endear the Fish & Wildlife Service to any segment of the scientific community.... Many scientists feel restricted and hampered by confusing permit regulations that they feel are not in the spirit of the Migratory Bird Treaty Act and the treaty that was conceived and negotiated by ornithological scientists. As a member of both the United States Fish & Wildlife Service and the scientific community, I

despair of this situation...."

And Thomas Eisner of Cornell University told John Turner that he was "appalled" by the case.

"Does it make sense for the U.S. Fish & Wildlife Service to have invested some of its scarce wildlife protection resources in such a mischievous 'police action,'" Eisner asked. "Is that really the intent of the law? By all means, crack down on smugglers of exotic birds and other animals destined for the commercial market. But research biologists? Are they not your allies in the common cause—the study and conservation of North American wildlife? I find it absurd, as a biologist (and former member of the Board of Directors of the National Audubon Society) that bureaucratic malfeasance should at times put us at such odds."

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Banks and Eisner received only vague replies to the effect that the case was still in litigation, so it could not be discussed. Meanwhile, Wheelwright's case had caught the attention of Maine's congressional delegation, three of whom—U.S. Senators George Mitchell and William Cohen and Representative Tom Andrews—are Bowdoin College alumni, and they expressed their concern to the Fish & Wildlife Service. Then in January, for whatever reason,

the Assistant U.S. Attorney in Maine abruptly dropped the criminal charges.

Behind the scenes, however, the wheels of justice were still grinding, with civil action and possible fines and confiscation on tap. "You can abandon the seven specimens now and no civil proceedings will be initiated," Stott wrote Wheelwright in early March. "I have enclosed an Abandonment Form for you to sign and return to me within 10 days."

Wheelwright refused to condone the disposal of scientific specimens and returned the form unsigned. Despite his protests, the specimens were still in limbo. Moreover, the Service's Regional Director, Ronald Lambertson, told him that his 1992 applications for scientific collecting, special salvage, and migratory bird import/export permits (all of which he needed for teaching) "will continue to be held in a pending status until all matters involving the alleged violations are settled."

What baffles many ornithologists is the inconsistency with which the laws are enforced. Some Fish

& Wildlife Service regional offices, like that in Minneapolis, are considered hard-nosed, others more accommodating. John O'Neill has brought in countless skins, many of previously unrecorded species, to Louisiana State University from South America and says the Atlanta office has always "bent over backward" to help. But Wheelwright contends that many other biologists still face harassment. His persistent attempts to find what he considered a reasonable listener within the Fish & Wildlife Service hierarchy left him frustrated.

"I've lost all confidence that logic and economy prevail in the Enforcement Division," he said at one point. "People have told me that bureaucrats are like cockroaches, scuttling into the dark when you stir them up, but I find they resemble limpets—keeping a low profile as they cling to the substrate."

Through it all, Special Agent Stott remained unmoved.

"He had the permit in hand, he could have read it," Stott said. "He should have asked more questions at the border."

In their letter to John Turner last March, the presidents of the four major ornithological societies (Burt L. Monroe, Jr., of the American Ornithologists' Union, Edward H. Burt, Jr., of the Association of Field Ornithologists, Martin L. Morton of the Cooper Ornithological Society, and Dick Banks of the Wilson Ornithological Society) noted that they represent virtually all of the professional ornithologists in the United States and Canada and that the results of research conducted by their 5,000 members are used extensively by the Fish & Wildlife Service. Reminding Turner that the Service will soon be reviewing and revising certain of its regulations that deal with migratory birds, they asked that their suggestions be considered in the review.

American Birds experienced some of Wheelwright's frustration in trying to find out why he was deprived of his study and teaching specimens. Asked why the criminal case was dropped but civil proceedings begun, Deputy Regional Director Nancy Kaufman in the Boston office referred to "prosecutorial discretion" in the first instance, but implied that the Fish & Wildlife Service had nothing to do with pursuing the case further.

"The decision to proceed was made in the office of the solicitor," she said. "The solicitor's office is in the same building with us here in Boston, but it's not a Fish & Wildlife Service office. It comes directly under the Secretary of the Interior."

Referred to Gene Hester, who is with the Fish & Wildlife Service, *American Birds* asked what generally happens to biological material forfeited, in Service terminology, "because of civil culpability."

"We have a series of priorities," Hester replied. "If it's alive, we evaluate it to see if it can be returned to the wild. If it isn't alive, we would try to donate it to a public institution to be used for scientific or educational purposes." Rather ironic, considering.

The Fish & Wildlife Service fired its last major salvo on April 28, 1992, when a government lawyer sent Wheelwright a notice that the civil penalties could include fines of \$25,000 against him for each of three violations of the Lacey Act and raising the possibility of reinstating criminal charges as well. Out of patience, the Maine Congressional delegation increased its pressure on the Fish & Wildlife Service, which finally dropped all charges against Wheelwright the next day. His scientific research permits, which the Office of Law Enforcement had blocked since

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the previous November, were issued to him at the same time. The Fish & Wildlife Service also returned his research specimens "on long-term loan."

But "horror stories" come in to Wheelwright from other ornithologists around the country, suggesting that uneasiness and even anger linger on. In June, during the annual American Ornithologists' Union meeting at Ames, Iowa, a committee was appointed to work with the Fish & Wildlife Service and ease tensions in the "issuance of permits to conduct research involving migratory birds."

"I want to point out that my own beef is not with the biologists of the Fish & Wildlife Service, who are doing excellent and important research," Wheelwright says. "Rather, my deep concern is with its heavy-handed and biologically uninformed Division of Law Enforcement and with an administration that is remote and insensitive to the needs of professional researchers. My nightmare of going to jail didn't come to pass, but the problem itself is still out there for other biologists." 🐾