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TESTIMONY OF MATT HOGAN, DEPUTY DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, BEFORE THE HOUSE RESOURCES SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS HEARING ON EXOTIC BIRD SPECIES AND THE MIGRATORY BIRD TREATY ACT (MBTA) December 16, 2003

Mr. Chairman and Members of the Subcommittee, I thank you for the opportunity to provide the Department of the Interior's (Department) views regarding exotic bird species and the Migratory Bird Treaty Act (MBTA). I am Matt Hogan, Deputy Director of the U.S. Fish and Wildlife Service (Service). I am joined today by Paul Schmidt, Assistant Director of the Service's Migratory Bird and State Programs, as well as Chandler Robbins of the U.S. Geological Survey's Patuxent Wildlife Research Center.

The MBTA is the domestic law implementing the United States' commitment to four international conventions for the protection of shared migratory bird resources. The primary purpose of the law is to manage and conserve more than 800 species of migratory birds in the United States. The Service is the lead federal agency for managing and conserving migratory birds in the United States.

Exotic Bird Species and the Migratory Bird Treaty Act

The United States has bilateral migratory bird conventions with Canada, Mexico, Japan and Russia. The international arrangements are important given the migratory nature of these species and reflect some of the more visionary legal instruments developed to benefit both the environment and the public. Each of the four bilateral migratory bird conventions to which the U.S. is a party specifically lists the birds that are meant to be protected by the MBTA. The birds covered by the conventions are variously listed by species groups (Canada 1916), families (Canada 1916 and 1998 protocol amendment, Mexico 1936 and 1973 amendment), and individual species (Japan 1972 and Russia 1976).

Species are added to the MBTA list of protected species on the basis of (1) new evidence that the species occurs in the U.S. or (2) taxonomic "splitting" in which one species is split into two or more species (but in reality, these "new" species were previously protected as subspecies). Species may be removed from the list for the following reasons: (1) the species is known to be extinct, (2) previous listing was erroneous (e.g., species does not occur in the U.S., or does not belong to a family or species group covered by any of the conventions), or (3) the species is no longer recognized as a valid biological unit because of taxonomic revisions.

The Service has long regarded exotic bird species as falling outside the protection of the MBTA because exotic bird species can have a detrimental impact on native species protected by the MBTA. The Service believes that protecting exotic bird species under the MBTA would be counterproductive to the primary purpose of the Act and divert resources needed for the conservation and management of native species. In a general sense, "exotic" is a term that refers to a species that has escaped from captive facilities or been introduced (intentionally or unintentionally) by humans into an area in which it is not native; it is generally synonymous with the terms alien, foreign, introduced, non-indigenous, and non-native. When exotic species negatively impact the native fauna or flora or have negative effects on human health, culture or economic well-being, the species is also considered invasive. "Native" is a term used to describe a species that occurs in a given ecological or geographic area strictly as a result of natural biological and ecological processes (i.e., no direct human involvement).

The Service's practice of excluding exotic species from the MBTA reflects a number of important biological and ecological factors. Evidence of the consistent application of this policy becomes readily apparent in examining the 12 lists of MBTA-protected birds published since 1950. First, considering that the MBTA and the four bilateral conventions that it implements are, in essence, bird conservation statutes, it does not make sense for the federal government to expend limited resources conserving introduced species at the possible expense of native species. Second, there is a growing body of evidence which indicates that introduced birds are often harmful to native plants and animals. Increased awareness about the potential threats posed by exotic birds emerged in the 1970's in concert with increased trafficking in exotic species. The potential harm of such introductions became especially obvious in island settings, such as Puerto Rico and the Hawaiian Islands.

Increased awareness of the economic and ecological damages caused by invasive species has led the U.S. Government to develop a clear body of mitigative policy on this issue. For example, the Lacey Act restricts the importation, acquisition, and possession of wildlife deemed "injurious" and the Service has established regulations on injurious wildlife. The National Invasive Species Act, passed by Congress in 1996, authorized the Aquatic Nuisance Species Task Force, which the Service co-chairs. In 1999, President Clinton signed

Executive Order 13112, establishing the National Invasive Species Council to coordinate federal invasive species activities and calling for the issuance of a National Invasive Species Management Plan. These laws and the Executive Order are consistent with the Service's exclusion of exotic bird species from the protections of the MBTA.

The Service has had detailed discussions with our treaty partners regarding the exclusion of exotic species from the protection of the MBTA. We are currently working with Canada to clarify the interpretation of the Treaty. The Canadian government has indicated that they support our longstanding interpretation that the Treaty was intended to cover native bird species. A formal documentation of this position is being considered.

The Service has engaged in a number of efforts to control and manage exotic bird species for over a century. This effort was started by the U.S. Biological Survey (forerunner of the Service) in the late 1890's, and was continued by the Service's Animal Damage Control program through the late 1980's (when that program was transferred to the U.S. Department of Agriculture). One means of addressing this issue is through import restrictions. For example, the Service prohibits the import of three exotic bird species (Rosy Starling, *Pastor roseus*; Red-billed Quelea, *Quelea quelea*; and Red-whiskered Bulbul, *Pycnonotus jocosus*) into the U.S. because they are considered "injurious wildlife". For almost a century, the Service has known of the potential for negative impacts from both the house sparrow and the European starling on native species. As a result, the Service has long condoned the removal of adults, eggs and nests of European starlings and house sparrows from artificial houses and nest boxes erected to benefit species such as bluebirds and purple martins. Most recently, the Service was working with the State of Maryland and 10 other states to manage mute swan (*Cygnus olor*) populations.

Mute Swans

There is widespread concern among wildlife scientists about the impacts of non-native mute swans on natural resources of the U.S., including (a) aquatic habitats and vegetation and (b) native species of fish and wildlife.

With regards to aquatic habitats and vegetation, an estimated 61 million pounds (or 30 thousand tons) of submerged aquatic vegetation are removed annually from wetland habitats in the U.S., being directly consumed by an estimated 21,400 mute swans (Fish and Wildlife Service). Another 153 million pounds (or 77 thousand tons) of submerged aquatic plants may be uprooted by foraging swans but not consumed, thereby causing habitat degradation and loss (Fish and Wildlife Service). This represents a net loss of some 214 million pounds (or 107 thousand tons) of vegetation that is no longer available to native species of fish and wildlife as protective cover from predators, nursery habitats for rearing young, and sources of food. It also represents an irretrievable loss of an important source of dissolved oxygen, an essential element for the survival of many species of aquatic organisms of economic and recreational value.

In the Chesapeake Bay of Maryland, the current population of 3,600 birds consumes an estimated 10.5 million pounds (or 5.3 thousand tons) of submerged aquatic vegetation annually; representing about 10.5 percent of the total biomass of submerged aquatic vegetation in the Bay (Fish and Wildlife Service). If the mute swan population continues to double every eight years, as predicted in the absence of control efforts (Atlantic Flyway Council 2003, Maryland DNR 2003), they would be consuming 21 percent or more of the available aquatic vegetation annually by the year 2010.

Mute swans are perhaps most detrimental to native species of fish and wildlife in an indirect manner, by altering and destroying aquatic vegetation (Gilham 1956, Willey 1969, Chasko 1986, Ciaranca et al 1997). For example, the varied structure exhibited by beds of submerged aquatic vegetation (SAV) provides estuarine-spawning fish (e.g., shad, herring, striped bass and rockfish) and other marine organisms (e.g., oysters and blue crabs) and their offspring with protection from predators. Any alteration or destruction of these habitats, including that which can be inflicted by foraging mute swans, can diminish their value for these commercially important species. (Krull 1970, Hurley 1991, Hindman and Harvey 2003) The density of juvenile blue crabs, for example, has been shown to be 30 times greater in SAV beds than in non-vegetated areas of the Chesapeake Bay (Maryland DNR 2003).

Mute swans can also have a direct effect on native species. Mute swans not only attack and displace native waterfowl from breeding, staging, and wintering areas (Willey, Reese 1975, Ciaranca 1990, Ciaranca et al. 1997), they have also been known to kill intruding birds of other species and their young (Stone and Masters 1970, Reese 1980, Kania and Smith 1986). One of the more dramatic instances in which mute swans have displaced native species was documented in Dorchester County, Maryland, where an annual molt-gathering of up to 600 mute swans caused repeated reproductive failures in, and ultimately the abandonment of, the largest colony of least terns in the State (accounting for 49 percent of the Statewide population) and one of only two known colonies of black skimmers in the Maryland portion of the Bay (Therres and Brinker 2003). Both of these species are listed as threatened by the State of Maryland.

The Hill Decision

Prior to 2001, the Service considered the mute swan an exotic species and therefore not subject to the protections of the MBTA. Management of mute swans—including resolution of any problems that they might cause—was considered to be a de facto responsibility of the states, with no involvement required of the federal government. In July 1999 the Service was sued for not affording the Mute swan protection under the MBTA. In December 2001, the U.S. District Court for the District of Columbia ruled that, as a “swan” and a member of the family “Anatidae” (both of which are expressly listed in the Canadian and Mexican conventions), the Mute swan qualified for protection under the Migratory Bird Treaty Act (the Hill decision). In the ruling, the court noted the absence of any clear and unambiguous evidence that Congress intended for the MBTA to apply only to native species.

Following the Hill decision, the Service initially concluded that the issuance of depredation permits for the take of Mute swans was “categorically excluded from NEPA and that further environmental review was not necessary. Thus, the Service issued depredation permits in 2002 and 2003 as “categorical exclusions” to NEPA. In Spring 2003, the Service issued a permit to the Maryland Department of Natural Resources authorizing the take of up to 1,500 Mute swans. The Fund for Animals filed a lawsuit and sought an injunction. In response, the State of Maryland voluntarily relinquished their permit and the Service initiated an Environmental Assessment (EA) for the Management of Mute Swans in the Atlantic Flyway. Following a 30-day public comment period and final EA, the Service issued a new permit to the State of Maryland authorizing the take of approximately 900 Mute swans. However, the Judge ruled in favor of the Fund for Animals in granting an injunction and his ruling suggested that the Service would be unlikely to win the case on the merits. Thus the Service settled with the Fund for Animals and agreed not to issue any additional Mute swan depredation permits until a new environmental review was conducted.

The Department of the Interior does not expect that the Court’s concerns could be addressed through an Environmental Impact Statement (EIS). As a result, the Service does not intend to initiate a new environmental review in FY 2004. The result is that state wildlife agencies, National Wildlife Refuges, and other agencies and organizations wishing to implement programs to control the growth of Mute swan populations to alleviate their impacts on native plant communities, fish and wildlife resources, and local economic interests will be prevented from doing so.

The Service’s decision garnered broad support from 13 state wildlife agencies and a variety of organizations (more than 40 in total) dedicated to bird conservation, bird science, wildlife conservation, and wildlife management. However, several organizations including Friends of Wildlife, Fund for Animals, Save Maryland’s Swans, and Save Our Swans USA were vocal and highly visible in expressing their opposition to the killing of mute swans for any reason.

Conclusion

In summary, affording the protection of the MBTA to introduced birds that are not native to the United States is ecologically unsound, contrary to the stated purpose of the MBTA, and contrary to efforts by the federal government to control invasive species.

Mr. Chairman, this concludes my prepared statement. Thank you again for the opportunity to testify at today’s hearing. I would be pleased to respond to any questions you or the Subcommittee Members may have.