**STATEMENT OF THE AMERICAN BIRD CONSERVANCY
BEFORE THE COMMITTEE ON RESOURCES, SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS
ON
THE MIGRATORY BIRD TREATY ACT AND INTRODUCED, NON-NATIVE AVIAN SPECIES
December 16, 2003
Annapolis, Maryland**

I am Gerald W. Winegrad, Vice President for Policy of the American Bird Conservancy. ABC is a national non-profit organization dedicated to the conservation of wild, native birds in the Americas. ABC has more than 300 partner organizations in the Americas primarily through its leadership roles in the North American Bird Conservation Initiative, Partners in Flight, ABC's Policy Council, and ABC's international network. The Policy Council, with which I work, has more than 80 member organizations that work collaboratively for bird conservation and these member organizations include the country's most prestigious ornithological and conservation groups. ABC has ornithologists and other staff headquartered in Washington, DC and The Plains, Virginia. We also have offices and staff in New Hampshire, Maine, Maryland, Indiana, Missouri, Colorado, Montana, and Oregon.

American Bird Conservancy is concerned over the application of the Migratory Bird Treaty Act of 1918 (MBTA)* (see below), codified as 16 United States Code, Section 703 et seq., to introduced non-native, avian species. Bird species in the United States protected by the MBTA are listed in regulations in 50 CFR 10.13. Our concern over providing the full protection of the MBTA to introduced non-native species surfaced with the court decision of Hill v. Norton, 275 F.3d 98 (D.C. Circuit 2001). The court in Hill ruled that the introduced non-native Mute Swan (Cygnus olor) was covered by the MBTA and therefore should be treated as a protected species under the MBTA. Previously, this exotic species was not afforded Federal protection and management was left to the states and to federal agencies. All such introduced non-native avian species had not been included as birds covered by the MBTA and were thus not afforded Federal protection. Federal, state, and local wildlife managers had previously been free to appropriately control introduced non-native birds as professional management standards required.

Next to habitat loss and alteration, introduced non-native species (also termed invasives or exotics) have been identified as one of the greatest threats to birds in the U.S. Up to 46% of the plants and animals Federally listed as endangered species have been negatively impacted by invasive species.

According to the U.S. Fish and Wildlife Service, at least 86 species of introduced, non-native birds belong to families covered by the MBTA, and thus could be considered protected by the MBTA if the logic of the Hill decision were fully extended. Unless the Congress acts to restore the pre-Hill case exclusion of introduced non-native birds, our native birds, other wildlife, ecosystems, and human health and property may be impacted by providing MBTA protection to 86 species of non native birds.

American Bird Conservancy supports amending the MBTA to exempt all introduced non-native species. This amendment would simply restore the pre-Hill status for these introduced species.
We would suggest that any such amendment be very carefully drafted to avoid any misapplication of the amendment and to make clear the amendment was limited to simply preventing the MBTA's application to introduced non-native species.

Without such an amendment, the U.S. Fish and Wildlife Service, already significantly underfunded for its migratory bird work, could be tasked with developing management strategies for at least 86 species of introduced non-native birds. Completing such management plans with attendant NEPA requirements and potential law suits whenever a management plan included lethal controls would be extremely costly and would shift limited resources from native migratory and nonmigratory species to introduced species. Further, delays in properly managing introduced non-native avian species will cause negative impacts to native avian

species and damage to other resources.

Of the 852 native avian species found in the U.S., 778 are migratory nongame birds and roughly 350 are migratory songbirds species. About 250 of these songbirds are neotropical migrants that migrate between summer breeding areas in the United States and Canada and wintering areas in Latin American and the Caribbean. Many of these migratory song birds are in serious decline. There has been documentation of an overall 50% decline in the volume of annual flights over the Gulf of Mexico in the last twenty years of neotropical migratory songbirds.

Of the 852 native birds found in the U.S., 90 are listed as endangered or threatened under the Endangered Species Act. Another 131 species are listed by the U.S. Fish and Wildlife Service as being Birds of Management Concern, meaning that they may become candidates for listing under the ESA without additional conservation action or that special attention is warranted to prevent declines. This latter list is mandated by Congress under 1988 amendments to the Fish and Wildlife Conservation Act and was updated this year. Thus, over one-quarter of all U.S. native bird species are either endangered or threatened with extinction or may become candidates for ESA listing without additional management measures. Priority must be given to the protection and recovery of these species, as well as to Partners in Flight priority species in bird conservation regions. Introduced non-native species not only negatively impact some of these listed species but could also divert needed resources from the management of our native species.

The 86 species of introduced non-native birds include: 16 species of waterfowl e.g., Bar-headed Goose, Black Swan, Mute Swan, Graylag Goose, and Swan Goose (all common in collections of exotic waterfowl); 19 species of pigeons and doves e.g., Bar-shouldered Dove, Eurasian Collared-Dove, Rock Pigeon, and Zebra Dove; and 35 species of songbirds e.g., White-rumped Shama, Common Canary, Blue-gray Tanager, Varied Tit, and Red-crested Cardinal. All of these species are competitors or potential competitors of native birds.

Of these 86 species, about 17 have become established, some with serious ecological consequences, others with unknown consequences. For example, the Rock Pigeon (formerly known as Rock Dove) accounts for an estimated $1.2 billion in damages annually in the U.S., fully one-half of the $2.1 billion in damages attributed to all exotic bird species combined. This species was brought to the United States by European settlers in the 17th century for food.

Eurasian Collared-Doves were brought to the Bahamas in cages and escaped, eventually flying into south Florida. Now, these birds are firmly established and are breeding in Florida, Georgia, South Carolina, and Louisiana. These exotic birds have shown an ability in Europe to rapidly expand range and increase populations and are expanding rapidly to the north and west in the U.S.

Muscovy Ducks are not now listed under the MBTA and are another introduced non-native species widely established in Florida and around the U.S. Introduced in the mid-1960's from Venezuela, these ducks are found around the U.S. as farm pond and park animals. They interbreed with Mallards.

Black Swans were first noted in Florida in 1961 and are now well-established in at least six counties. These birds are successfully breeding and consume large amounts of vegetation and may create conflicts with native avian species.

One of the more recent introductions that could be covered by the MBTA under Hill is the Purple Swamphen, in the same family as rails. This exotic species was first noticed in Broward County, Florida in December 1996. The birds are spreading in south Florida and there is a sizeable breeding population. The population in the wild probably exceeds 200 birds. Researchers believe that the source of the birds was Miami MetroZoo, which lost eight Swamphens following Hurricane Andrew in August 1992.

Purple Swamphens use Florida's abundant wetlands, have high reproductive potential, and are expanding their range. Researchers note that "....there is no similar avian precedent available in Florida or North America to compare to Purple Swamphens." Discovery, Origin, and Current Distribution of the Purple Swamphen (porphyrio porphyrio) in Florida, William Pranty et al. (2000). Pranty et al. state that "In their native range, swamphens are often observed away from wetlands and can damage grain and vegetable crops (Ripley 1977, del Hoyo et al. 1996), so the impact of swamphens in Florida may extend beyond wetland species. Although they are primarily vegetarians, swamphens are known to prey upon mollusks, fish, lizards, frogs, snakes, bird eggs and nestlings, and other small birds (Ripley 1977, Cramp and Simmons 1980). Purple Swamphens occasionally move long distances (up to 1000 km; Grussu 1999), thus

they potentially could colonize a large part of the state."

Biologists believe that as Purple Swamphens increase their range and numbers, there is the potential that they could become another invasive species threat to Florida's native wildlife and the imperiled Everglades system.

Other introduced non-native species with established U.S. populations that are not currently listed under the MBTA, but could be required to be listed in 50 CFR 10.13 under the logic of the Hill decision include:
Ringed Turtle-Dove (Florida, Texas, and Puerto Rico);
Spotted Dove (California and Hawaiian Islands);
Japanese Bush-Warbler (Hawaiian Islands);
Saffron Finch (Hawaiian Islands and Puerto Rico);
Yellow-billed Cardinal (Hawaiian Islands);
Yellow-fronted Canary (Hawaiian Islands and Puerto Rico)

Two of our most numerous bird species are introduced, non-native species: European Starlings and House Sparrows. Both fall outside the parameters of the MBTA as they don't belong to covered families of birds. They are therefore not subject to protection under the MBTA. European Starlings were brought over from Europe in the 1890's by private individuals in New York who released them into Central Park as part of a plan to introduce all species of birds mentioned in Shakespeare. This bird has been documented to take over nesting holes for cavity nesting birds such as Eastern Bluebirds, and native woodpeckers. House Sparrows also use nesting cavities that would otherwise be available to such species as Eastern Bluebirds. House Sparrows were introduced in 1850 when eight pairs were released in Brooklyn to control canker worms, and there were numerous releases into the 1880's for aesthetic reasons and for insect control e.g. drop worm.

There are more than 125 other species of exotic, introduced, non-native avian species whose families are not covered by the MBTA and would be beyond the reach of the Hill decision. Author Bill Pranty documents the occurrence of 196 exotic avian species in Florida, 73 species that could be covered by Hill and 123 that would not. An amazing 125 exotic avian species have been reported in one county, Miami-Dade. Of the 123 exotic species in Florida excluded from the MBTA, 74 species are parrots (Psittacidae are not covered under the MBTA). At least 27 exotic avian species are known to or thought to breed in Florida that could be covered under the MBTA under the Hill case rationale. See the attached: The Exotic Avifauna of Florida, William Pranty (July 2001).

Introduced non-native species known to breed in Florida and not previously mentioned include the Spot-breasted Oriole, first noted in 1949, and Great and Common Black-Hawks, first noted in the 1970's. These and other Florida exotic breeders also could be covered under the Hill rationale.

The 86 species of introduced non-native birds that could be protected by the MBTA under Hill does not include MBTA-protected species that have been introduced and have become established in localities outside their native ranges in North America e.g., resident Canada Goose, Gadwall in Florida, and Northern Cardinal in California and Hawaii. Nor does the list of 86 species include a myriad of exotic species, particularly waterfowl and raptors, that are bred in captivity in the U.S. Should these latter species escape or be released, they could establish breeding colonies in the U.S. and gain MBTA protection.

CASE EXAMPLE: MUTE SWANS.

The Mute Swan (Cygnus olor) was first brought to the U.S. from Europe in the 1800's as an ornamental bird. Five Mute Swans, previously brought as ornamentals to a pond in Talbot County, Maryland, were released in 1962. These birds spawned a current population of about 4,000 Mute Swans in Chesapeake Bay country. There are more than 14,000 in the Eastern Flyway and nationwide, the Mute Swan population has grown to 21,400. The Bay Mute Swan population increased at an annual rate of about 23% between 1986-1999 and 10% between 1993-1999. If these growth rates continued, the population could reach 11,300 (at 10%) to 38,500 (at 23%) by 2010.

The introduced non-native Mute Swan, the subject of the Hill case, is an example of an invasive avian species that has demonstrably negative impacts on other species and resources, including native birds listed under the Congressionally mandated Birds of Management Concern list. These species include Black Skimmers, Least Terns, and Common Terns.

Federal, state, and local wildlife managers were free, until the Hill case, to control the exotic Mute Swan without Federal protections and permitting. Hill changed that. In both 2002 and 2003, the U.S. FWS issued 66 MBTA permits for the lethal take of Mute Swans. When the Maryland Department of Natural Resources (as a result of the Hill case) was forced to apply for and was granted an MBTA permit in March 2003 to control Mute Swans by lethal take, a law suit was filed under NEPA and other laws by The Fund for Animals and others. DNR then withdrew the permit while the FWS completed a NEPA Environmental Assessment.

Upon completion of the Environmental Assessment in July 2003, DNR applied for and was granted another MBTA lethal take permit in August to control Mute Swans. Again, The Fund for Animals and others sued. On September 9, 2003, Judge Emmet G. Sullivan of the U.S. District Court for the District of Columbia, issued a temporary injunction blocking DNR from any lethal control of Mute Swans. The Judge so thoroughly criticized the Environmental Assessment and FWS NEPA compliance, that the Justice Department attorneys settled the case, agreeing not to issue further MBTA permits for Mute Swan take. Thus, Maryland and all other states and the Federal government have ceased any control of Mute Swans. This will have serious consequences for native birds and other resources such as submerged aquatic vegetation (SAV) as mute swan populations rapidly expand.

Displacement of Native Birds.

The aggressive Mute Swan has attacked and killed other birds and has extirpated breeding colonies of waterbirds. In Maryland, as noted in the Maryland Mute Swan Task Force Report, “One of the more serious conflicts between mute swans and native Maryland wildlife occurred in the early 1990's, when a molting flock of about 600-1,000 nonbreeding mute swans excluded black skimmers (Rynchops niger), a state threatened species; least terns (Sterna antillarum), classified as a species in need of conservation; and common terns (Sterna hirundo) from using the oyster shell bars and beaches in the Tar Bay area of Dorchester County for nesting sites.” Tar Bay was the only remaining natural nesting site for Least Terns and Black Skimmers in Chesapeake Bay. Black Skimmers, Least Terns, and Common Terns are all native birds listed as of National Concern under the Congressionally mandated Birds of Management Concern.

According to Maryland DNR biologists writing in Status and Management of Mute Swans in Maryland, Larry Hindman and William F. Harvey, IV of Maryland DNR (2003):

* Observations in Maryland and findings reported in scientific literature support the fact that territorial mute swans can be very aggressive towards other waterfowl, displacing native species from their breeding and foraging habitats (Willey 1968, Stone and Masters 1970, Kania and Smith 1986, Ciaranca 1990). Mute swans occupy and defend relatively large territories of wetland habitat during nesting, brood rearing and foraging. Not only do they displace native waterfowl from breeding and staging habitats, they have been reported to attack, injure or kill other wetland birds (Willey 1968, Stone and Masters 1970, Kania and Smith 1986, Ciaranca 1990). In Maryland, mute swans have been observed killing mallard ducklings, Canada goose goslings, and mute swan cygnets.

* The most serious instance of conflict between native wildlife and mute swans occurred in the early 1990’s, when a large flock of mute swans (600-1,000 swans) caused the abandonment of nesting sites for state-threatened colonial nesting birds at Tar Bay in Dorchester County. These colonial nesting birds nested on oyster shell bars and beaches that were used by swans as loafing sites. Tar Bay was the only area in the Maryland portion of the Bay where black skimmers and least terns nested on natural sites (Therres and Brinker 2003).

* There is growing concern among wildlife managers that the increase in mute swans may be playing a role in the failure of tundra swans to increase, as they have done in other areas of the Atlantic Flyway.

* The large mute swan population in Maryland consumes SAV that might otherwise be available to native waterfowl. This competition for space and food imposed by mute swans reduces the carrying capacity of breeding, staging, and wintering habitats for native species of migratory waterfowl in Chesapeake Bay where mute swans are established.

As noted in the Maryland Mute Swan Task Force Report, “Mute swans are believed to pose a significant threat to the well-being of the Chesapeake Bay tundra swan population (W.J.L. Sladen, Swan Research Program at Airlie, VA, pers. commun.)”. In a Rhode Island study, one pair of mute swans vigorously defended a five-acre pond, preventing use by other waterfowl (NY DEC 1993). In central New York, three

pairs of captive mute swans killed at least 50 ducks and geese (mostly young birds) on a small zoo pond over a 20-month period (NY DEC 1993). Such behavior may be a factor in inhibiting the recovery of such native species as Black Ducks. In addition, Mute Swans consume SAV preferred by many native waterfowl species.
Destruction of Bay Grasses.

Mute Swans consume huge amounts of Submerged Aquatic Vegetation (SAV). Mute Swan average weight is about 25 pounds for the adult male; the female, 21 pounds. Some Mute Swans may weigh more than 30 pounds. The male Mute Swan consumes 34.6% of their body weight per day and females consume 43.4%. See Fenwick, G.H., 1983, Feeding behavior of waterfowl in relation to changing food resources in Chesapeake Bay. Ph.D. dissertation, Johns Hopkins University, Baltimore, Md. Based on this study, the Maryland Task Force Report notes that "Assuming that an adult/subadult mute swan consumes an average of 3.789 kg wet weight of SAV per day (Willey and Halla 1972), a population of 4,000 swans has the potential to consume more than 12 million pounds of SAV annually (L. Hindman, MD DNR). Consumption of immature seeds, removal of biomass before plant maturation, and uprooting of whole plants may have a very negative effect on SAV with minimal consumption (M. Naylor, MD DNR, pers. commun)."

Scientists at the Patuxent Wildlife Research Center have concluded a study documenting that the introduced Mute Swans' diet is composed nearly entirely of vegetation during all seasons of the year. Mute Swans relied heavily on SAV with Widgeon Grass (Ruppia maritima) constituting
56 % and Eel Grass (Zostera marina) 43 % of their food. (see Perry et al. 2000). These scientists noted localized depletions (eat-outs) of SAV during the growing period. The FWS Environmental Assessment notes that the current population of Chesapeake Bay Mute Swans consumes almost 10 percent of the total biomass of submerged aquatic vegetation in the Bay. These grasses are critical to many other avian species, to recovery of fisheries (blue crabs), and to the general water quality of the Bay and other water bodies.

Hindman and Harvey (2003) found that: "Adverse ecological effects are being caused by the large mute swan population in the Bay and these impacts will increase if the population continues to grow.....A simple mathematical extrapolation of SAV consumption by mute swans suggests that 4,000 mute swans may consume up to 12 million pounds of SAV annually, representing about 12% of the SAV biomass in the Bay (Perry et al. 2003). This level of impact is greatest on the mid-Eastern Shore where high numbers of mute swans concentrate and acreage of SAV is small. This level of grazing, especially during spring and fall SAV growth and reproductive periods and in SAV restoration plantings is an impediment to achieving the objectives of the Chesapeake 2000 Agreement, specifically the restoration of 114,000 acres of SAV by 2010."

Also from the Hindman and Harvey 2003 publication:
* Unlike the native tundra swans (Cygnus columbianus) that only spend winter months in the Bay, the nonnative mute swan inhabits the Bay year-round. Mute swans utilize large amounts of emergent vegetation (e.g., Juncus romerianus, Phragmites communis, Spartina alternaflora, Typha latifolia) in Maryland for nest building. They also feed exclusively in shallow wetlands where they consume large amounts of SAV (Berglund et al. 1963, Owen and Kear 1972, Birkhead and Perrins 1986).

* Because adult mute swans tend to paddle and rake the substrate to dislodge SAV and invertebrates for them and their cygnets, additional SAV is destroyed and uprooted that is not eaten (Owen and Kear 1972, Birkhead and Perrins 1986). At high densities, mute swan can overgraze an area, causing a substantial decline in SAV at the local level (Cobb and Harlan 1980, Mountford 2003).

* The removal of large quantities of SAV and the physical impact of the grazing upon SAV by mute swans reduces the capacity of the remaining SAV beds in the Bay to support wintering waterfowl and other fish and wildlife populations.

* Mute swans forage on SAV shoots before they can mature. This grazing during the spring and summer growing season has been shown to reduce plant survival and reproduction, reducing SAV abundance in subsequent years (Allin and Husband 2000, Bortolus 1998, Sondergaard et al.1996). Over time, areas with high densities of mute swans exhibit a decrease in plant diversity and abundance, sometimes becoming devoid of SAV (Naylor 2003).

* SAV is critical to the health and well being of a myriad of Bay organisms. Not only does SAV protect water quality and prevent erosion, it also provides food and shelter for fish, shellfish, invertebrates, and waterfowl

(Hurley 1991). For example, research has shown that the density of juvenile blue crabs is 30 times greater in SAV beds than in unvegetated areas of the Bay (Naylor 2003).

Strong Scientific and Conservation Support for Removal of Mute Swans.
Because of these serious concerns over Mute Swans that have been scientifically documented, twenty-five groups dedicated to bird conservation and science joined together to support the U.S. FWS EA's proposed action that was stopped by the September 9, 2003 Court action. These groups went even further--supporting removal of all introduced non-native Mute Swans from the wild in the U.S. The groups' letter is attached with the supporting basis for advocating the removal of all Mute Swans from the wild. These groups include a number of Maryland groups such as the Maryland Ornithological Society, Audubon Naturalist Society of the Central-Atlantic States, and the Delmarva Ornithological Society, as well as other such prestigious ornithological entities as the Cornell Laboratory of Ornithology, Cooper Ornithological Society, The Waterbird Society, and Archbold Biological Station. Other groups signing-on include the International Association of Fish and Wildlife Agencies, National Audubon, Wildlife Management Institute, Environmental Defense (EDF), Ducks Unlimited, Izaak Walton League of America, and American Bird Conservancy.

Also attached is ABC's more detailed letter of comment to the Maryland DNR Mute Swan Task Force.

The Mute Swan is an introduced non-native species, no different from other invasives in their potential for damage to native species and ecosystem functions, except they are big and aesthetically pleasing to humans. The Mute Swan has demonstrably negative impacts on other species, including native birds. The Congress under Rep. Gilchrest's leadership wisely appropriates considerable sums to eradicate all nutria on Maryland's Eastern Shore by shooting and trapping them. Because the nutria is a big rat-like marsh rodent not very aesthetically pleasing to humans, not much opposition surfaced to this eradication. Maryland fights vigorously to control snakehead fish, phragmites, and other invasives. All these species are destructive to native plants or animals and need to be removed from the wild. The Federal government and Maryland have even prevented the introduction of a foreign oyster to the Bay for years. And yet now, wildlife mangers are prevented from controlling another introduced non-native species that causes documented damage to other avian species and to bay grasses, the Mute Swan.

The proper management of Mute Swans has been thwarted by the Courts and management of many of the 86 other species may be thwarted in the future without Congressional action. We ask this Subcommittee, the House Resources Committee, and the Congress to amend the MBTA to exempt all introduced non-native species of birds from coverage. Judge Sullivan stated in his September 9, 2003 opinion, "The Court will essentially speak for the mute swans...". We ask the Congress to speak for Black Skimmers, Least Terns, Common Terns, Black Ducks, Tundra Swans, and the many other species of native wildlife and Bay grasses, that have been or may be adversely affected by a growing Mute Swan population and by other introduced non-native birds.

We at ABC are individually and organizationally committed to the conservation of native wild birds in the Americas and we are dedicated bird enthusiasts. We urge Congressional action to protect these native birds by amending the MBTA to exclude all introduced non-native species.

*The Migratory Bird Conventions (from page 1).
The United States recognized the critical importance of internationally coordinated management of migratory birds by ratifying bilateral conventions for their conservation with Canada (Convention for the Protection of Migratory Birds with Great Britain on behalf of Canada 1916) and Mexico (Convention for the Protection of Migratory Birds and Game Mammals-Mexico 1936), and for the conservation of migratory birds and their habitats with Japan (Protection of Birds and Their Environment- Japan 1972) and Russia (Conservation of Migratory Birds and Their Environment-Union of Soviet Socialist Republics 1978), collectively known as the migratory bird conventions.

The Migratory Bird Treaty Act of 1918 (MBTA), codified as 16 United States Code, Section 703 et seq., implements these conventions in the U.S. and has served as the basic U.S. law governing the protection of avian species. The first convention with Canada and the original MBTA were enacted by Congress because of the wanton slaughter of birds for food, feathers, and recreational pursuits that had led to extinctions and great declines in may species.

Bird species in the United States protected by the Migratory Bird Treaty Act of 1918 are listed in 50 CFR 10.13. The migratory bird conventions impose substantive obligations on the United States, Canada,

Mexico, Japan, and Russia for the conservation of migratory birds and their habitats, and articulate important conservation principles, such as:

- To conserve and manage migratory birds internationally;
- To sustain healthy migratory bird populations for consumptive and non-consumptive uses;
- To provide for, maintain, and protect habitat necessary for the conservation of migratory birds; and
- To restore depleted populations of migratory birds;

Under the provisions of the U.S. Migratory Bird Treaty Act, it is unlawful “by any means or manner to pursue, hunt, take, capture [or] kill” any migratory birds except as permitted by regulations issued by the U.S. Fish and Wildlife Service. The term “take” is not defined in the MBTA, but the U.S. Fish and Wildlife Service has defined it by regulation to mean to “ pursue, hunt, shoot, wound, kill, trap, capture or collect” any migratory bird or any part, nest or egg of any migratory bird covered by the conventions, or to attempt those activities. The United States Department of the Interior's Fish and Wildlife Service is the primary federal agency responsible for the conservation and management of migratory bird resources. MBTA permits must be issued for the take of listed migratory species, unless a general depredation order exists. .