AMERICAN ★ FALCONRY
CONSERVANCY

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The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was established to monitor and ensure sustainable trade in wildlife and plants and to prevent international trade from threatening their survival. For those species in high demand for international trade, CITES has encouraged domestic breeding from the beginning, to reduce pressure on the wild collection of animal and plant species. The administration of CITES has turned out to be quite costly however, and especially so to American taxpayers. At a time when many departments and agencies of the U.S. government appear out of touch with the citizens struggling to make ends meet, the U. S. Fish and Wildlife Service (the Service) seems generous with our tax dollars. We paid the costs for 31 U.S. government officials to attend the last Conference of the Parties in Qatar for three weeks, during which permit processing for citizens was put on hold. Additionally, U.S. taxpayers funded another $320,000 to purchase new portable computers for every staff member at the Secretariat. We also have an unpaid balance owed to the CITES Trust Fund of $1,030,700. The focus of the Service today is to treat domestic bred wildlife as wild taken, as if trade in such domesticated wildlife threatens wild populations, which of course is absurd. Trade in domestic bred animals takes the pressure off the wild populations, so it should be encouraged in every way possible by reducing any and all regulatory burdens and costs. However, the delays and costs to those dealing in the trade in domestic bred wildlife have reached a point no longer cost effective and have driven many out of the business. One must then ask the question, is that the intent of the Service given its callous disregard of this fact? It can be said with certainty that as implemented by the Service, CITES does not serve the American public well. It has in fact destroyed businesses that had previously contributed to conservation of many of the world's species. Had Congress been aware that the Service's implementation of CITES would have destroyed jobs, prevented wildlife breeders from exporting their personal property in domestic bred wildlife and had a negative impact on conservation, it is doubtful Members of Congress would have voted to become a Party of CITES. It appears we have reached the point where raptor breeders and other breeders of wildlife should come together and lobby Congress for drastic changes in how the Service regulates this trade.

Below are our comments to RIN 1018-AW82, Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora(CITES); Following the Fifteenth Meeting of the Conference of the Parties to CITES.

1. Comments on Summary: In reviewing specific proposed regulation changes we, the American Falconry Conservancy (AFC), applied the words stated in the summary provided: **"The revised regulations would help us more effectively promote conservation of species, help us continue to fulfill our responsibilities under the Treaty, and help those affected by CITES to understand how to conduct lawful international trade."** If a proposed change does not in some way, contribute to conservation and/or satisfy a requirement of CITES Provisions, we so noted.

2. Comments on Supplementary Information: Background: It must be acknowledged that while CITES indicates member Parties (countries) may be stricter in national policy and regulations than the requirements of CITES Provisions, in the U.S. these more strict measures are provided in regulations separate and apart from those of Part 23. Part 23 is written only to implement CITES. For example, while 23.18 and 23.36 of Part 23 provide for the legal export of wild taken raptors in accordance with (IAW) CITES Provisions, 21.21 of Part 21 (Migratory Bird Treaty Act) is more restrictive and only allows the export of captive bred raptors. In Federal register Volume 72, Number 163 the Service states in the final rule: "The United States has adopted stricter national measures, such as the Endangered Species Act, Marine Mammal Protection Act and the Lacey Act." But the authorization for Part 23 was a mandate from Congress to implement the Treaty as indicated in 23.1 which states: **"The regulations in this part implement the Convention on International Trade in Endangered Species of Wild Fauna and flora, also known as CITES ..."** Therefore, we understand any restrictions applied in Part 23 beyond those required by CITES Provisions are not authorized by the mandate for inclusion in Part 23, itself.
3. Comments on Proposed Change to 50 CFR Part 13: We need greater uniformity in the way the various Parties' agencies responsible for managing CITES Provisions process permit applications. Most Parties to CITES have adopted simplified procedures to issue permits and certificates as recommended in Resolution Conference (Res. Conf.) 12.3, XII. The Service has adopted complex procedures and delays often forcing permit applicants to hire attorneys for the effort. In application procedures (13.11), it should be noted that renewal of a CITES registered facility is not a requirement of CITES Provisions and therefore not warranted as an additional burden for those operations since there is no compelling public welfare issue at stake. 13.11 (c) states "The Service will process all applications as quickly as possible." This is not specific enough and allows for arbitrariness in the processing of applications, which is an unacceptable condition for citizens to be exposed to since the lives of birds and economic hardship of breeders are at stake. It should state the Service has 15 working days from receipt of applications, to process and issue permits, which provides breeders the ability to modify their plans should it be required of them. Otherwise, they are left hanging in limbo for extended periods of time waiting to learn the fate of their birds. This is extremely important for raptors being exported for falconry purposes, since falconers want immature birds early in the hunting season at a time they are easier to work with and train. While other countries' regulations specify a maximum processing time, for example 15 working days in the UK and two days in the UAE, this U.S. regulation does not. We need to understand that a country of import issues import permits with a six month timeline, as CITES directs, so when the U.S. Management Authority (MA) takes eight to 12 months, and sometimes longer, to process a permit application, the existing import permit has long since expired. Another problem with the excessive processing times taken by the Service is for time sensitive exports, it renders American raptor breeders uncompetitive in the world market since no other country makes permit applications so difficult to export domestic bred raptors. Foreign buyers will simply not tolerate the barriers Service officials have erected. CITES Res. Conf. 12.3, XII states: **"Regarding the use of simplified procedures to issue permits and certificates ... recommends that parties use simplified procedures to issue permits and certificates to facilitate and expedite trade that will have negligible impact, or none, on the conservation of the species concerned."** (Emphasis added.) As for the 30 day notice on the Federal Register, this can and should be waived by the Secretary, for domestically produced raptors since there is absolutely NO impact on wild raptors. Additionally, failure of the Service to timely process a valid permit application consistent with its own recognized obligation constitutes agency action unlawfully withheld (5 U.S.C.

706 (1)) which may expose the Service to litigation for damages. It states: **"The reviewing court shall- (1) compel agency action unlawfully withheld or unreasonably delayed."** Most American citizens would be content with a processing time of 15 working days.

4. Comments on Proposed Changes to 50 CFR Part 17: The mention of shifting some of the special rules in Part 17 on treatment of U.S. endangered or threatened species should remain in Part 17, as Parts 17 and 23 have different mandates and Part 23 should only implement CITES Provisions, nothing more. They can stand alone on their own merits and authority. However, on the discussion of definitions in 17.3, the terms "endangered" and "threatened" should be redefined as originally intended, to include affected wild population distributions. This enabled the Service to define a particular species as protected in one wild population, threatened in another and endangered in yet another, if necessary. This is in fact the practice of the Service today, in spite of the change in definition which now includes domestic specimens as part of the listed population.
5. Comment on Proposed Changes to 50 CFR Part 23, Deciding if the regulations apply to your proposed activity (23.2): Adding restrictions in 23.2 for intrastate or interstate commerce is going beyond the intent of CITES Provisions and the mandate of Part 23 and serves no useful purpose since there is no public welfare interest at stake. It appears to be an attempt to expand the powers of the Service, which is arbitrary and capricious in this case. The Treaty has the purpose of managing international trade, not intrastate or interstate commerce, and any additional restrictions within the borders of this country should be excluded from Part 23.
6. Comments on Definitions (23.5): As stated in the definitions of 23.5, **"bred for noncommercial purposes means any specimen of an Appendix-I wildlife species bred in captivity for noncommercial purposes, where each donation, exchange, or loan of the specimen is noncommercial and is conducted between facilities that are involved in a cooperative conservation program."** This definition was deemed overly restrictive, unnecessary and served no useful purpose at Conference of the Parties (CoP) 14, and was deleted from CITES definitions. This occurred before the existing Part 23 went into effect, but the Service still chooses to include it within the terms defined in 23.5, even though no breeding operation within the US meets the standards of this definition. Service officials have since tried to give this definition meaning and purpose without success. The Service made an effort to tie the definition of "bred for noncommercial purposes" to another definition, the "cooperative conservation program." This is defined in 23.5 as **"a program in which participating captive-breeding facilities produce Appendix-I specimens bred for noncommercial purposes and participate in or support a recovery activity for that species in cooperation with one or more of the species' range countries."** Export data provided to the CITES Secretariat indicates the Service still issued export permits to breeders of Appendix-I specimens for noncommercial purposes routinely under the pretense both the exporter and importer met the standards of these two definitions in 23.5 when they clearly did not, yet refused legitimate export applications for raptors, claiming they did not meet the standards set forth by the definitions. The Service should eliminate these two definitions and use nothing more than those used by CITES. Of course the Service had a reason for leaving these two definitions in 23.5 as these officials claimed it provided the opportunity for them to designate captive breeding facilities of Appendix-I species as being "commercial operations" and therefore, contrary to CITES Provisions, disqualified from exporting on noncommercial purpose transactions. But to retain or modify a definition not used by CITES is to go beyond CITES Provisions and the Part 23 mandate. The Service proposal discusses Article VII, paragraphs 4 and 5 and their meanings, according to Res. Conf. 12.10. It should be recognized the primary emphasis

of Res. Conf. 12.10 is to explain registration procedures and requirements to trade for commercial purposes. Earlier 12.10 states: **"Recognizing also that the provisions of Article III of the Convention remain the basis for permitting trade in specimens of Appendix-I species of animals that do not qualify for the exemptions of paragraphs 4 and 5 of Article VII."** In saying this and in fact applying the requirements of Article III, if an import is noncommercial, the facility source of the species exported is irrelevant and can be from a noncommercial operation, a commercial operation that is not registered or a commercial operation that is registered with the Secretariat. This was confirmed by a statement from Marcos Silva of the CITES Secretariat, where he provided: **"The consideration concerning whether trade is for commercial purpose or not is made by the Management Authority of the IMPORTING country (Art. III, para 3c). On the matter of EXPORT, the question does not concern commercial or noncommercial purpose, but whether the other provisions of Article III are met."** The deletion of a definition does not however, suggest the meaning of Article VII, paragraph 5 or any other Provision of CITES is open to interpretation by each Party to the Convention. The Service should go over all definitions listed in 23.5 and delete the terms no longer in use by CITES. Also, terms like "parental stock" should be redefined to match that used by CITES. The 23.5 definition of "parental stock" refers to wildlife AND plants in stating **"Parental stock means the original breeding or propagating specimens that produced the subsequent generations of captive or cultivated specimens;"** the CITES definition of "parental stock" refers to only plants by defining it as **"The ensemble of plants grown under controlled conditions that are used for reproduction and which must have been, to the satisfaction of the designated CITES authorities of the exporting country."** "Breeding stock" is the term used by CITES in reference to live animals but this definition is missing from 23.5.

7. Comments on What is prohibited? (23.13): This proposed change is to hold the importer to the original standards of import, indefinitely. CITES Provisions sets standards that must be met to import a specimen. For example, all Members of the Treaty, excepting the Service, recognize the use of raptors in falconry as for "personal use," requiring a "P" purpose code on the import permit, thereby designating the entire import/export transaction for noncommercial purposes. Assuming the Service will eventually reach agreement with the Secretariat and join other members of the Treaty by recognizing falconry as noncommercial and begin issuing import permits as such, the changes proposed for 23.13 and 23.55 would hold the importer indefinitely to that use. If an imported raptor was injured or for some reason unable to perform as a falconry bird, these changes would prevent the use of this raptor for breeding as the Service considers breeding to be commercial. Below, we provide a discussion of how other CITES Parties treat domestic breeding of Appendix-I and II raptors as compared to how the Service treats this activity.
8. Comments on Documents for Export (23.18): In the discussion of Article VII the Service states: **"Our current regulations require commercial breeders of Appendix-I wildlife to be registered with the CITES Secretariat in order to export Appendix-I specimens, regardless of the purpose of import."** This is clearly false to anyone who has read 23.36 and as stated by Marcos Silva mentioned above and, ignores the existence of CITES Article III. Our current 23.36 is the regulation outlining the requirements to export wildlife and it specifically covers exporting on a noncommercial transaction purpose code IAW CITES Article III, on which 23.36 is based. At 23.36 (c) (7) it reads: **"For wildlife with the source code "W" or "F," the export is for noncommercial purposes."** Then with a reference to 23.24 (d) to understand the meaning of source code "F," it reads: **"Bred for commercial purposes, but the commercial breeding operation is not registered with the Secretariat - F."** In the past four years, the Service has refused to

abide by 23.36 and therefore, CITES Article III. They have instead, by unwritten policy, consistently refused to honor the purpose code designated by importing countries and changed the transaction purpose from "noncommercial" to "commercial" as the exporting country. CITES Res. Conf. 5.10 clearly defines the manner in which an MA determines the purpose of a transaction and leaves little doubt as to who makes this determination: the MA of the IMPORTING country, not the exporting MA. On reading 5.10, it also becomes clear the "purpose of a breeding facility" in the exporting country has no bearing on the "purpose of a transaction" or end use of an imported specimen, in the importing country. This has been pointed out to Service officials by two Members of Congress and an attorney, William Horn, who specializes in wildlife law and was once himself the Assistant Secretary for Fish and Wildlife and Parks. The unlawful Service policy that has been applied for the past four years has been to deny legitimate applications for raptor exports for noncommercial purposes yet many exports have been permitted for other Appendix-I specimens for noncommercial purposes. This can be verified in documents submitted by the U.S. MA and recorded on the CITES database system. The long list of Appendix-I species from chimps to big cats and macaws is there to be seen. The conclusion is this: it is true the Service denies export permit applications for Appendix-I for noncommercial purpose if the specimens are raptors, but clearly does issue permits if the specimens are NOT raptors. These denials of permit applications are not IAW requirements outlined in CITES Article III, not supported by the current Part 23 and are in fact a violation by Service officials of our own regulation 23.36. This is arbitrary and capricious.

The Service states the decision tree in 23.18 is structured in a manner that disallows exports by commercial facilities which are not CITES registered, even when in possession of an import permit containing source code "F" and a noncommercial purpose code. We encourage anyone with basic reading skills to work through the decision tree in 23.18 with an import permit in hand containing a noncommercial purpose code to reach their own conclusion. Note there are TWO ending blocks that state: **"Requires export permit (23.36) that shows source code "F." Article III of the Treaty."**Again, this statement by the Service is false and appears to be another effort to cover Service violations of this regulation for the past four years. At some point the question must be asked again, what is the purpose of Part 23? If Part 23 is written to implement CITES and nothing more, why are Service officials questioning the meaning or clarity of their own regulations when they should be questioning the CITES Secretariat if they fail to understand the Treaty? In this case, the Secretariat was questioned on this matter and provided a personal reply that was provided to Service officials by attorney William Horn. The Secretariat confirmed an Appendix-I specimen can be exported from a commercial breeding facility, not registered with the Secretariat, for a noncommercial purpose transaction. Service officials know this and understand CITES Provisions yet now contend they are unable to follow the Provisions set forth in CITES due to their anti-commercial agenda driven misinterpretations of regulations they wrote to implement the Treaty. It should be noted that while Article VII is mentioned in the decision tree, the blocks of the tree can be negotiated properly with references only to 23.36 for noncommercial purposes exports. The title of 23.36 is: "What are the requirements for an export permit" and no mention of Article VII is made in this regulation. Reference is made however, to Article III for Appendix-I specimens. If 23.18 is modified, the change must clearly demonstrate that an export allowed by CITES Provisions is also allowed by this regulation, as it is by 23.36, and when CITES requirements are not met, this too must be reflected.

9. Comments on Validity of CITES Documents (23.26): The MA ought to have the right to challenge the validity of a CITES permit but we fail to see a need to restrict the MA to a formal list within 23.26 triggering such challenges. Any indicator of wrongdoing should give the MA the authority to verify the authenticity or legitimacy of a permit; however, once a permit has been issued and accepted by an applicant, only evidence of wrongdoing should nullify the permit. There is a case of an American citizen in Europe for two years who acquired a pair of domestic bred red kites while living there. This species is Appendix-II so when he eventually returned to the U.S., he applied for and received a CITES import permit from our U.S. MA to bring the birds home with him. At the last moment he received a letter from our MA telling him his permit was invalid. The reason given was that there was a risk of him breeding them, and that "risk" and the possibility of him "selling" the offspring changed the purpose of his import from "personal" and noncommercial to commercial, for Appendix-II specimens. He was forced to leave his pets in Europe to avoid prosecution by Service officials. The thought process expressed in this incident by Service officials currently holding positions of authority is disturbing and dangerous and appears unsupportive of conservation interests, by openly discouraging domestic breeding of Appendix-I and Appendix-II species as well as violating this individual's rights. This is at a time CITES very clearly ENCOURAGES domestic breeding of wildlife and especially of Appendix-I and Appendix-II species. The International Union for Conservation of Nature (IUCN) goes further to recommend creating domestic bred populations of threatened species BEFORE they become endangered, something the Service currently discourages.
10. Comments on Applications for export permits (23.36, 23.41, 23.69, 23.70 and 23.71): The Service proposal goes into an explanation of the application process without explaining a significant requirement of 23.41 that conflicts with CITES Article VII, paragraph 5, for which it was written. Article VII, paragraph 5 states: **"Where a Management Authority of the State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or is a part of such an animal or plant was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Article III, IV or V."** U.S. raptor breeders are required to have state and federal propagation permits to conduct breeding activities, and all use marking bands issued by the Service on native species and are required to report annually, documenting their activities. The intent of Article VII, paragraph 5, is to reduce needless red tape and allow the export of documented captive produced Appendix-I wildlife, to reduce the demand for wild take, yet 23.41 (d) (2) appears written to prevent this. It indicates in order to qualify for a "bred-in-captivity" certificate, a wildlife specimen must be **"bred for noncommercial purposes"** or part of a traveling exhibition, then refers the reader to the obsolete terms used in 23.5, which CITES had determined as serving no useful purpose, before publication of this current Part 23. To remove any possible doubt on this point, Res. Conf. 10.16 (Rev.) goes into detail regarding the term "bred in captivity" and states: **"the definition provided below (bred in captivity) shall apply to specimens bred in captivity of species included in Appendix I, II or III, whether or not they were bred for commercial purposes."**
11. Comments on Registration of a commercial breeding operation (CBO) for Appendix-I wildlife (23.46): At Conference of the Parties (CoP) 13 in 2003, the Secretariat expressed doubt on the utility of an international registry of operations that breed Appendix-I species. It was to provide a simpler application process and once a CBO was registered, to expedite permit processing with reduced fees for those CBOs, as well as to reduce Service administrative costs and time. The Secretariat continues today to

believe registering of CBOs has no useful purpose, yet many Members of the Treaty insist it remain in the Provisions. First, we recommend the wording in the title of 23.46 add the words: "for Appendix-I raptors" as this regulation only applies to raptor breeders; breeders of other Appendix-I species are free to export under 23.36 without restriction as can be evidenced in the annual CITES database reports. There are 18 CITES registered facilities in the U.S., all raptor breeders. Article VII, paragraph 4, of the Treaty DOES state: **"specimens of Appendix-I animal species bred for commercial purposes (at a CITES registered facility) shall be deemed to be specimens of species included in Appendix-II."** Then the Service goes on to say they will still be treated as Appendix-I. There is no such exception in CITES Provisions, that a specimen bred at a registered facility and "deemed" Appendix-II for export reverts back to Appendix-I on arrival in the importing country. This could be a problem for registered crocodile breeders in foreign countries who breed and export Appendix-I specimens, without impact on the wild population, for harvest and commercial use in importing countries. If the words "treated as specimens of species included in Appendix-II for the trade transaction only" were meant, then the words "deemed to be specimens of species listed in Appendix-II(period)" should not have been used.

It is true that Res. Conf. 12.10 and 23.46 each outline the requirements for a breeding facility to register with the Secretariat and both directives are nearly in agreement. Res. Conf. 12.10, Annex 1, (5) states as one requirement, "evidence that the PARENTAL (breeding) stock has been obtained IAW relevant national measures" and 23.46 (d) (2) requires proof the "PARENTAL" stock was **legally acquired**. As mentioned before, this regulation appears to apply only to raptor breeders and for raptors (which is arbitrary and capricious), a FWS form 3-186 serves as proof for this CITES requirement. As in other cases, documentation required by regulation and that which the Service requires by unwritten policy are very different. To meet the requirement of 23.46 (d) (2) Service officials demand documented proof that FOUNDING stock, not the parental (breeding) stock at the facility as required by Res. Conf. 12.10, but the parents of these birds, and their parents, etc., at other facilities going back to the original wild source, were all legally acquired. This is an unreasonable burden on citizens and with no compelling public welfare issue at stake, especially when we consider there is no laundering of wild taken young raptors going through breeding projects. Again, refer to 24.5 for the definition of "parental stock" which applies to wildlife and plants, then check the CITES definition which relates only to plants, and confusion quickly sets in. In the case of an application to register for Barbary falcons, an applicant had proof the breeding stock and the parents of THOSE birds were legally acquired, but he could not prove that a number of generations back, the original imported birds 25+ years ago, had come into the country legally. For this reason, his application was rejected. Regardless of the changes applied to 23.46, it would better serve citizens if Service officials were held accountable to follow CITES Provisions and U.S. regulations as the citizens are. In fact, Service officials should be held to higher standards than citizens.

The Service states an annual report is required of registered facilities to assist in monitoring activities. For raptor breeders, this is redundant as all raptor breeders are required to submit an annual report of activities to the Service, whether registered or not. So, we agree this redundancy should be eliminated. As for adding a renewal requirement, this serves no useful purpose, is not a CITES requirement and in no way contributes to conservation. In this country, every transaction of raptors is already closely monitored and to add to the workload of registered breeders goes against the recommendations of CITES to make registering easier and a benefit rather than an additional burden. The Service should consider processing permit applications for all applicants, including registered operations, in a timely

manner as required by U.S. law and CITES, and reducing the cost of permit fees, as urged by Res. Conf. 12.10. Also, the Service should eliminate the existing requirement for a registered facility to provide an import permit. As noted in this proposal by the Service, import permits are not required by CITES Provisions on commercial transactions so this additional burden of time and money should be eliminated. If Part 23 is designed to implement CITES Provisions and nothing more, this should be reflected in the regulations and most importantly, followed by Service officials.

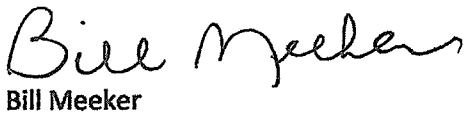
12. Comments on 23.62: There is no proposed change to 23.62 but an inconsistency with this regulation and CITES Provisions demands attention. The title of 23.62 is: What factors are considered in making a finding of not for "primarily commercial purposes." CITES Provisions states this is a function performed only by the country of import, however the U.S. MA considers it also a duty of the exporting country, a contradiction to Res. Conf. 5.10. In 23.62 (b) (5) it states: "While the nature of the transaction between the owner in the country of export and the recipient in the country of import or introduction from the sea may have some commercial aspects, such as the exchange of money to cover the costs of shipment and care of specimens during transport, it is the intended use of the specimen, INCLUDING THE PURPOSE OF EXPORT, that must not be for primarily commercial purposes." (Emphasis added.) This blatantly contradicts Res. Conf. 5.10, General principles 4, which states: "Article III, paragraph 3 (c) and 5 (c), of the Convention concern the intended use of the specimen of an Appendix-I species in the country of import, **not the nature of the transaction between the owner of the specimen in the country of export and the recipient in the country of import. It can be assumed that a commercial transaction underlies many of the transfers of specimens of Appendix-I species from the country of export to the country of import. This does not automatically mean, however, that the specimen is to be used for primarily commercial purposes."**
13. Comments on Required Determinations: A statement is made that the Office of Management and Budget (OMB) has determined this rule is not significant, and lists the criteria used. In the paragraph discussing impact on small businesses it estimates the declared value for international trade in CITES wildlife as $1.0 billion in 2007 and $846 million in 2008, a drop of $154 million or 15%, in one year. These figures and dates are noteworthy as it was late 2007 when changes were last made to Part 23. These numbers reflect a measurable impact on trade resulting from these regulation changes. This current proposal for Part 23 by the Service appears designed to further reduce the trade in wildlife (even though domestic bred raptors can no longer be considered wildlife - ferae naturae, i.e., of a wild nature; versus ferae mansueta, i.e., of a tamed nature - as the language of wildlife law provides) and put more small businesses out of business, even when domestic propagation contributes to conservation if trade is allowed.
14. Comment on the statement at the bottom right of page 14209: The Service states that as of March 8, 2012, the date of this proposal, there are currently 15 U.S. commercial breeding operations registered with the Secretariat. Actually, at the beginning of 2012 there were 18, but more significant is that all are raptor breeding operations with no other breeding operations for any other species listed as Appendix-I.
15. General comment: CITES was not seen as a threat by those participating in the animal trade, back in 1975. Most thought it was a good plan, to provide a tool to wildlife managers throughout the world, and worth the nominal fees and slight delays we were told to expect as described in CITES Provisions. But as we fast forward to 2012 we see it is no longer a "wildlife management tool" and had a very short life as one. It appears now to be used quite effectively as a weapon against the wildlife trade. At one time, CITES recognized the economic value of wildlife and through this, the benefit of supporting habitat.

Today, in less developed countries, trade in wildlife is a measurable part of their economy. As restrictions to export prevent trade in many species, the habitat for those species loses its value to local citizens and as a consequence, we see forests harvested and land cleared that once supported impressive biodiversity. Many wonder why these habitats are being destroyed at an alarming rate today yet to local people, they see no value in preserving it and have to make a living to support their families. In 1975, the whole basis of CITES as a global conservation treaty was that sustainable trade was a positive force to conservation of wildlife, but today this is no longer the case and must bring into question the future of CITES. It now fails to promote sustainable trade, certainly as implemented and enforced by U.S. law. If CITES is to survive, it MUST return to its original intent.

As for trade in Appendix-I raptors, the European Union (EU) has a very different approach than our U.S. International Office. Article III (3) (c) states as a key requirement: **"A Management Authority of the State of import is satisfied that the specimen is not to be used primarily for commercial purposes."** Res. Conf. 5.10 provides assistance to importing country MAs by defining "primarily commercial purposes" and listing some examples. One example referring to all species suggests that generally, importing Appendix-I specimens for domestic breeding is a special case and depending on the circumstances, could go either way, for commercial or noncommercial purposes. The past Secretary-General, Willem Wijnstekers, wrote a useful handbook entitled "The Evolution of CITES" and addresses this issue on page 126. One example of purpose that might meet the conditions of both Article III (3) (a) and (c) includes: **"Captive breeding and artificial propagation, either with a view to the reintroduction of the species in the wild to increase small existing wild populations, or to reduce the number of specimens that would otherwise be taken from the wild."** This is when it becomes useful to understand a reasonable decision that an import is for commercial or noncommercial purposes is not so much an absolute determination, but one based on whether or not the import is PRIMARILY commercial or not. The EU position is that in spite of commercial activity sometimes being involved in the use of imported raptors, the overriding benefit of reducing the pressure on wild take makes it an effort toward conservation of the wild populations, thereby offsetting the commercial aspect of the import. The Service may not agree, but this policy is fully endorsed by both, the International Union for Conservation of Nature (IUCN) and CITES. For exports, the EU follows Article VII, paragraph 5, which again states: **"Where a Management Authority of the State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or a part of such an animal or plant or was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Article III, IV or V."**

CITES isn't the problem; it's our government officials supposedly implementing it that is the true problem. As an example, take the peregrine falcon. This is a species found nearly worldwide. Out of seven possible species status ratings, the IUCN Redlist gives it the lowest possible rating of "least concern." However, based on the decision of the 175 member nations of CITES, the peregrine falcon has the most RESTRICTIVE rating of Appendix-I, reserved for this species **"THREATENED WITH EXTINCTION which are or may not be affected by trade."** Is the IUCN Redlist rating misleading and is the peregrine falcon truly near extinction, or have the Party members of CITES failed by not downgrading the peregrine falcon from the Appendix-I list? We have seen no effort by the U.S. MA to amend the Appendices so we assume Service officials believe the IUCN Redlist to be in error. Still, even if the peregrine falcon is "threatened with extinction" in the wild, CITES Provisions allow the trade in

Appendix-I species for noncommercial purposes. This includes "wild taken" specimens but only for noncommercial purposes. CITES encourages domestic breeding of wildlife and especially Appendix-I species, as trade in these domestic bred specimens will decrease the demand for wild take. This is precisely the position of the IUCN, to encourage domestic breeding of wildlife BEFORE they reach the level of being listed as threatened or endangered. The Action Plan for the Conservation of Migratory Birds of Prey in Africa and Eurasia also supports domestic breeding of raptors in Activity 5, 5.7 and states: **"governments should seek to promote appropriate programs of captive breeding so as to alleviate the pressure of wild harvests on populations of birds of prey."** Yet the U.S. MA discourages this effort for conservation. CITES Provisions also encourages trade in domestic bred Appendix-I species for noncommercial purposes both, in Article III and paragraph 5 of Article VII, but the U.S. does not permit this trade in domestic bred specimens, unless the breeder is registered with the Secretariat. When an American citizen produces Appendix-II animals in captivity, while being able to get export permits for Appendix-II specimens, few foreign customers are interested in acquiring these animals from US breeders. To export, an American citizen must first purchase an importer/exporter license at a cost of $100, then a non-designated port license for $100 if exporting from other than a designated port. The cost of the CITES export permit from the Service is another $100 fee and when presented at the port for export, another $186 will be charged at a designated port or $238 at non-designated ports. This adds $286 to $338 to the cost of the specimen(s) without including the costs of licenses, health certificates or shipping. This renders American breeders uncompetitive for anything but high value wildlife, unavailable from any other source. American breeders are gifted in their ability to produce species more difficult to breed in captivity but simply cannot compete internationally with the restrictions put upon them by the Service, which it appears is the Service's intent. In summary, the Service no longer uses CITES as a wildlife management tool, but as a device to discourage or prevent trade in wildlife. Whether intentional or not, this proposal is one more step from the 2007 version of Part 23 and will likely reduce trade by another 15%, as did the last change. In a final note, there are many divisions within the Service doing a commendable job of managing wildlife for conservation and use by the citizens of this country; the International Office is clearly not among them.



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