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Public Comments Processing

Attn: FWS-R9-ES-2012-0013

Division of Policy and Directives Management

U.S. Fish and Wildlife Service

4401 N. Fairfax Drive

Arlington, VA 22203

Dear Branch Chief Van Norman:

Thank you for the opportunity to comment on the proposed threatened listing and draft 4(d) rule for the hyacinth macaw (*Anodorhynchus hyacinthinus*). These comments are submitted on behalf of the Center for Biological Diversity (Center) and the Animal Welfare Institute (AWI). The Center is a nonprofit conservation organization with more than 1,200,000 members and online activists dedicated to the protection of endangered species and wild places. The Center and its members have a long standing interest in the conservation of foreign species and their habitat, including the hyacinth macaw. AWI is a nonprofit, charitable organization founded in 1951 and dedicated to reducing animal suffering caused by people. AWI has been engaged in efforts to confront issues associated with wildlife trade, particularly the commercial trade in wild-caught birds. We have had a long-standing interest in the conservation of the hyacinth macaw and concern for the detrimental effects of trade coupled with habitat loss on the species.

We vehemently disagree with the suggestion that the hyacinth macaw should be listed as threatened instead of endangered under the Endangered Species Act (ESA or Act). Habitat loss is still a significant threat to this species, as is the pet trade. Moreover, the United States Fish and Wildlife Service's (USFWS or Service) Significant Portion of the Range Policy (SPOR policy) is unlawful as evidenced by the agency's decision here that the birds are threatened throughout their range and therefore a significant portion of their range need not be analyzed.

Even if the hyacinth macaw could be listed as threatened, for several reasons, the Service has failed to demonstrate that the proposed 4(d) rule is necessary or advisable for the conservation of the species. The draft rule exempts several of the very activities that led to the decline of the hyacinth macaw in the first place. These exemptions fail to conserve the species and as a result we propose adoption of a very different 4(d) rule.

I. THE HYACINTH MACAW SHOULD BE PROTECTED AS ENDANGERED.

We are disappointed by the USFWS's decision to change its proposed listing of the hyacinth macaw from endangered to threatened. Based on the threat factors before the agency and the requirements of the ESA, an endangered listing is warranted for this species.

A. Based on the ESA's Listing Factors the Hyacinth Macaw Should Be Protected as Endangered

The ESA requires a species, subspecies, or distinct population segment to be listed as "endangered" if it "is in danger of extinction throughout all or a significant portion of its range."¹ A species is "threatened" if it "is likely to become an endangered species within the foreseeable future."² The USFWS must list a species if it is imperiled by any one of several factors, including habitat destruction, overutilization, disease, or inadequate regulatory protections.³ The Service must base all listing determinations "solely on the basis of the best scientific and commercial data available."⁴

The USFWS has erred in determining that the hyacinth macaw qualifies for a threatened designation when, based on the evidence provided by the USFWS itself, additional scientific resources, and the ESA's requirements, the species clearly must be designated as endangered. On July 6, 2012 the USFWS proposed to designate the hyacinth macaw as "endangered" (77 FR 39965). In its revised proposed rule, the USFWS determined that the species only qualifies for a "threatened" designation. This determination appears to be based solely on a claim that "there are no reports of extreme fluctuations in the number of individuals" (hyacinth macaws) and due to a decrease in deforestation rates in Pará, in the Cerrado, and Patanal regions of Brazil. Notably, deforestation is continuing in all of these regions but, according to the USFWS, the rate of deforestation has declined. This evidence was sufficient for the USFWS to conclude that "if these rates are maintained or are further reduced, the loss of all native habitat from these areas, including the species of trees needed by the hyacinth for food and nesting, and the hyacinth's risk of extinction is not as imminent as predicted" (81 FR 85504).

This rationale is belied by the overwhelming evidence contained in the revised proposed rule which clearly indicates that the species must be designated as "endangered." A "threatened" designation, while it may placate the pet industry and those engaged in domestic and international trade in the species, will not provide the protection to the species and its habitat that is indisputably warranted.

In the case of the hyacinth macaw and based on the evidence contained in the revised proposed rule, all five ESA listing factors are relevant to the current status of the species. A review of the

¹ 16 U.S.C. § 1532(6).

² *Id.* § 1532(20).

³ *Id.* § 1533(a)(1).

⁴ *Id.* § 1533(b)(1)(A).

evidence contained in the revised proposed rule reveals that the hyacinth macaw must be designated as endangered.⁵ Such evidence includes:

- Biological and behavioral characteristics that make the hyacinth macaw susceptible to extinction and reduces the ability of the species to recover from population reductions and anthropogenic perturbations to its habitat. These characteristics include a low reproductive rate, low fledging rate, extended time between breeding, low recruitment rate, specialized diets, specialized habitat needs (particularly for nesting habitats),
- The range of the species has declined. It originally occupied large areas of Central Brazil and the Bolivian and Paraguayan Pantanal. Today, it is limited to three areas of approximately 537,000 km² almost exclusively in Brazil (Eastern Amazonia in Para, Brazil, the Gerais region of northeastern Brazil, and the Pantanal of Mato Grosso). The species also occurs in small numbers in Bolivia and Paraguay.
- Population numbers have slightly increased but the reliability and accuracy of current population estimates are unknown. The USFWS claims that the total population of hyacinth macaws increased from approximately 3,000 (range of 2,500 to 5,000) in 1986 to an estimated 6,500 individuals in 2003 yet it admits that the methods or techniques used to calculate the 2003 estimate are not described and that, therefore, “the reliability of the estimation techniques, as well as the accuracy of the estimated increase, are not known” (81 FR 85491). Although the 2003 population estimate is 14 years old, the USFWS fails to provide a more recently population estimate although it concedes that the “overall population trend for the hyacinth macaw is reported as decreasing” (81 FR 85491).

B. Habitat Loss and Fragmentation as well as Inadequate Existing Regulatory Mechanisms Warrant an Endangered Listing

Any one factor can support an endangered listing for a species. The loss and fragmentation of habitat remains a grave concern that supports an endangered listing for the hyacinth macaw. Deforestation continues in all hyacinth macaw occupied regions.

In the Pará state of Brazil, conversion of forests to pasture land to promote cattle ranching (which was triggered by the expansion of soy cultivation in other areas in Brazil) has caused 70-80 percent of deforestation over a 10 year period starting in the late 1990s. Livestock grazing affects seedling recruitment (adversely impacting the trees that the hyacinth macaw relies on for food and nesting cavities) via trampling and grazing. Cattle also compact the soil severely reducing regeneration of forest species leading to an ecosystem dominated by invasive species. The Pará region has one of the highest deforestation rates in the Brazilian Amazon with a loss of 139,824 km² forest habitat from 1988 to 2015. From 2004 to 2015, annual deforestation losses ranged between 1,741-8,780 km² (see 81 FR 85493). The USFWS concedes that due to the significant expansion of cattle herds in the Brazilian Amazon, “the remaining forested areas of Pará are at risk of being cleared” (81 FR 85493).

⁵ As the following information is taken directly from the revised proposed rule, we have omitted any references to the scientific literature cited in the proposed rule.

The Cerrado biome is found within the Gerais region. In this biome, hyacinth macaw mainly nest in rock crevices likely due to the destruction of nesting trees. Deforestation in this region for soy cultivation and cattle ranching threatens the remaining native Cerrado habitat including the palm species that hyacinth macaws rely on as a food source. Approximately 50 percent of the original Cerrado vegetation has been lost with some estimates placing the loss at 80 percent. The area continues to experience high rates of habitat loss. The USFWS provides conflicting data on deforestation rates in the region including an annual deforestation rate of more than 14,200 km² each year from 2002 to 2008, 12,949 km² per year from 2000 to 2005, and 11,812 km² annually from 2005 to 2010 (see 81 FR 85493). As conceded by the USFWS, “although the annual rate of deforestation is generally decreasing, satellite monitoring of the area indicates a slow and steady increase in deforested area” (81 FR 85493). Indeed, the specific areas occupied by the hyacinth macaw (Maranhão, Tocantins, Piauí, and Bahia states) are experiencing rapid habitat conversion, the government of Brazil as proposed a 731,735 km² agricultural development with 91 percent within the Cerrado, the area is subject to imminent conversion of land for biofuel production, and the legal deforestation of 40 million hectares of land designated as “environmental surplus” caused the USFWS to concede that “this region will likely continue to suffer high deforestation rates” (81 FR 85494).

Within the Pantanal region, 95 percent of the land is privately owned and 80 percent of that land is used for cattle grazing which represents the greatest cause of habitat loss in the region. Within the Pantanal, the manduvi trees, which hyacinth macaws rely on nearly entirely for nesting habitat, grow in cordilleras which are found in only 6 percent of the vegetative areas. As up to 80 percent of the Pantanal is subject to seasonal flooding, when this occurs ranchers move their cattle to the cordilleras increasing cattle impacts to these areas including to the manduvi trees. As these and other trees that may be used for nesting are lost, this increases competition among hyacinth macaws and other cavity nesting species for the remaining trees reducing hyacinth macaw reproduction rates and increasing the loss of eggs and chicks. In addition, these cordilleras are subject to clearing to create pasture lands. When this occurs, cattle will eat the nuts from the remaining palm trees forcing the hyacinth macaw to obtain the nuts eliminated by the cattle from cattle fecal deposits. While the amount of forested habitat loss to deforestation in the Pantanal is small compared to the Pará and Gerais regions and reportedly decreasing, “satellite monitoring of the area indicates a slow and steady increase in deforested area.” Furthermore, other impacts associated with cattle grazing including introduction of exotic vegetation, compaction, trampling, grazing, land burning, soil compaction, and fragmentation can negatively impact hyacinth macaw nesting trees including by reducing recruitment of manduvi trees to a size required to provide nesting cavities. As reported by the USFWS, “5 percent of manduvi trees are lost each year to deforestation, fire, and storms” (81 FR 85495).

Deforestation results in both direct and indirect impacts on the hyacinth macaw including by reducing availability of food resources, creating a shortage of suitable nesting sites, increasing intra and inter-specific competition for food sources and nesting cavities, all of which results in lowered recruitment and a reduction in population size (see 81 FR 85495). A reduction in food sources causes inadequate nutrition can contribute to poor health and a reduction in reproduction in hyacinth macaws. Similarly, the reduction in the availability of mature trees that provide nesting cavities for the species as a result of the direct and indirect impacts of cattle grazing, “can

jeopardize the persistence of the hyacinth macaw by constraining breeding density, resulting in lower recruitment and a gradual reduction in population size” (81 FR 85494). The USFWS concedes that such impacts to the viability of hyacinth macaw populations are particularly problematic in the Pará and Pantanal where persistence of nesting trees is compromised (see 81 FR 85494).

The government of Brazil has not demonstrated its ability to effectively enforce laws protecting its forests and the laws themselves have been weakened. In 2012, the government of Brazil adopted a new Forest Code which was intended to be a compromise between the interest of farmers and environmentalists but, ultimately, reduces the total amount of land required to be maintained as forest and increases deforestation rate, particularly in the Cerrado. The new Forest Code reduced the total area of Hilltop Preservation Areas by 87 percent, environmental debt areas (that under the previous Forest Code were required to be restored at the landowners expense) were reduced by 58 percent, 90 percent of Brazilian rural properties qualified for amnesty eliminating the need for forest restoration, and other changes to the environmental debt provisions “reduced the total amount of land farmers are required to preserve and municipalities and landowners are required to restore” (81 FR 85496). Overall, the new Forest Code “reduced the total areas to be restored from approximately 50 million hectares ... to approximately 21 million acres” (81 FR 85496). In addition, both the old and new Forest Code permits the legal deforestation of an additional 88 million hectares on private properties deemed to be “environmental surplus” which includes 40 million hectares within the Cerrado alone. As a result of the deficiencies in the Forest Code, the USFWS concluded that:

“It is unclear whether the Brazilian Government will be able to effectively enforce the new law. The original code was largely ignored by landowners and not enforced, leading to Brazil’s high rates of deforestation. Although Brazil’s deforestation rates declined between 2005 and 2010, 2011 marked the beginning of an increase in rates due to the expectation of the new Forest Code being passed. Another slight increase occurred in 2013, then doubled over 6 months. Corruption in the government, land fraud, and a sense of exemption from penalties for infractions, have contributed to increases in illegal deforestation” (citations omitted, see 81 FR 85496 and 85497).

Additional deficiencies in Brazil’s laws to protect the species and its habitat include the fact that law enforcement is “often non-existent” as Brazil’s enforcement agency, Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (IBAMA) is “underfunded and understaffed” (81 FR 85497). Indeed, according to the USFWS, “only 1 percent of the fines IBAMA imposed on individuals and corporations for illegal deforestation is actually collected” (81 FR 85497). In the Para state, between August 2011 and July 2012, 78 percent of logging was illegal. Furthermore, while state laws in Brazil do, for example, prohibit the cutting of manduvi trees in the Mato Grosso State (in the Pantanal region), such protections do not extend to other species resulting in the other species being cut leaving manduvi trees exposed to winds and storms which can cause them to fall or break making them useless for hyacinth macaws as nesting trees. Such inadequacies in both the text and implementation of the relevant laws caused the USFWS to hold that:

“Although laws are in place to protect the forests of Brazil, lack of supervision and lack of resources prevent these laws from being properly implemented. Ongoing deforestation in the Amazon, Cerrado, and Pantanal are evidence that existing laws are not being adequately enforced. Without greater enforcement of laws, deforestation will continue to impact the hyacinth macaw and its food and nesting resources” (81 FR 85497).

While deforestation directly heightens the vulnerability of extinction of the hyacinth macaw, indirectly it can have a major and adverse impact on the reproductive success of the species as a result of competition, predation, disease, destruction or flooding of nests, and climatic conditions (81 FR 85498). In the Pantanal region, for example, 17 species compete with the hyacinth macaw for access to nesting cavities in mature manduvi trees. As a consequence, reduced recruitment of manduvi trees due to impacts from cattle grazing, fires, climate change, and deforestation will only increase competition for the remaining trees causing a decline in reproductive success of the hyacinth macaw as well as an increase in infanticide and egg destruction by other hyacinths and other macaw species. A 10-year study conducted in the Miranda region of the Pantanal found that 63 percent of hyacinth macaw nests failed, either partially or totally, during the egg phase with 52 percent of eggs lost to predation (81 FR 85499). Of the remaining failed nests, infertility, complications during embryo development, and inexperience of nesting birds were determined to have caused the failures. Of the nests that successfully produced chicks, 49 percent experienced a total or partial loss of chicks with 62 percent of the losses caused by starvation, low temperatures, disease, infestation by ectoparasites, flooding, and branch breakage (81 FR 85499).

Conservation measures have been inadequate to protect the hyacinth macaw or its habitat. As of 2005, the government of Brazil has protected 478 areas totaling 37,019,697 hectares of land. Within the states where the hyacinth macaw are found, there are only 53 protected areas (which include strictly protected areas and areas protected by open to sustainable use) but the hyacinth macaw is found in only three of those areas (81 FR 85499). Within the Pará, hyacinth macaws are found in no protected areas. Only 2.25 percent of the original extent of the Cerrado is protected with the hyacinth macaw only found within the Araguaia National Park and the Parnaíba River Headwaters National Park. In the Pantanal, only 4.5 percent of its area is designated as protected areas with the hyacinth macaw only occurring within the Pantanal National Park (81 FR 85499). According to the USFWS, none of the national parks in which hyacinth macaw are found are “effectively protected” (81 FR 85500).

As noted by the USFWS, the effectiveness of protected areas in Brazil is limited due to competing priorities of encouraging development for economic growth versus protecting resources (81 FR 85499). Past Brazilian regulations, policies, incentives, and subsidies have actually encouraged occupation and development of previously unsettled lands which caused large-scale habitat conversions for agriculture and cattle-ranching that occurred throughout the Amazon, Cerrado, and Pantanal biomes (81 FR 85499). In addition, within the Pantanal and Cerrado regions, the Brazilian Ministry of Agriculture is considering a 1 million km² for agricultural expansion which will only speed up deforestation (81 FR 85500). In the Pantanal alone, its designation as a biosphere reserve is, as noted by the USFWS, “almost entirely without

merit because of a lack of commitment by public officials” (81 FR 85500). Ultimately, as reported in the revised proposed rule:

“The hyacinth macaw continues to be hunted in Pará and the Gerais region, and habitat loss due to agricultural expansion and cattle ranching is occurring in all three regions. Therefore, it appears that Brazil’s protected areas system does not adequately protect the hyacinth macaw or its habitat” (81 FR 85500).

Other conservation measures including the Farmland Environmental Registry program, efforts to increase awareness of the importance of protected the biodiversity of the Cerrado biome, and the creation of a network of nongovernmental organizations to promote local sustainable-use practices for natural resources have been created. However, as reported in the revised proposed rule, “although these programs demonstrate awareness of the need for protection and efforts in protecting the Cerrado, we have no details on the specific work or accomplishments of these programs, or how they would affect, or have affected, the hyacinth macaw and its habitat” (81 FR 85500). Similarly, the USFWS reports having “no details on the success” of a proposal by the government of Brazil to recuperate at least 8 million hectares of degraded pastures by 2020, to reduce deforestation by 40 percent, decrease forest fires in the Cerrado, and expanded protected areas (81 FR 85500).

The USFWS touts the benefits of the Hyacinth Macaw Project which has installed artificial nest boxes for hyacinth macaw to compensate for the loss of nesting cavities in manduvi and other tree species. While this project has, according to the USFWS, contributed to an increase in the hyacinth macaw population, this increase has been minimal (for every 100 couples that reproduce, 4 juveniles are added to the population and only 35 percent of eggs laid in artificial nests survive to the juvenile stage), the Project does not cover the entire Pantanal region and it has only been able to place 180 artificial nesting boxes on the landscape (81 FR 85501). As noted by the USFWS, if land conversion continues in the Pantanal to facilitate cattle ranching and since recruitment of the manduvi tree has been severely reduced due to the impacts of cattle grazing and maintenance of pastures using fire, “the hyacinth’s preferred natural cavities will be severely limited and the species will completely rely on the installation of artificial next boxes...” (81 FR 85501).

C. Climate Change and its Resulting Effects also Support an Endangered Listing

The changing climate in Brazil which is projected to include an increase in ambient temperatures and a decrease in precipitation amounts “may induce significant reductions in forestland in all Brazilian regions” (81 FR 85497). These changes are expected to have the greatest impact over the Amazon rainforest, including the Pará region where forest loss, both directly from warming temperatures and declining precipitation, and the increased frequency of drought and expanded risk of wildfires could result in additional suitable habitat for the macaw (if dense forests were replaced with more savanna-type vegetation) but the potential impact to specific food sources and nesting habitat is unknown. In the Cerrado region, temperatures are expected to increase with projections, based on a 30-year average (2040-2069), revealing serious effects to Cerrado tree diversity in coming decades including the extinction of 18-56 species and a decline of over 90 percent of 91-123 species (see 81 FR 85497). As reported by the USFWS, “geographically

restricted birds, such as hyacinth macaw, are predicted to become rarer” in the Cerrado (81 FR 85497).

The hyacinth macaw, due to its small numbers, large size, and highly specialized needs (food and habitat) is “more vulnerable to climatic variation and at a greater risk of extinction” (81 FR 85498). Furthermore, climate change may result in the additional loss of the specialized habitat needed by the species while the ability of the hyacinth macaw to adapt to ecological changes caused by climate change is questionable precisely because of the species specialized habitat needs.

D. Hunting, Poaching, and the Bird Trade Continue to Threaten Hyacinth Macaws and Adequate Regulatory Mechanisms Do Not Address These Impacts.

Hunting of hyacinth macaws continues to adversely impact the species. In the state of Pará, hyacinth macaw are hunted for subsistence (to eat and to sell as live birds) and for the feather trade. As reported by the USFWS, an increase in the commercial sale of feather art by an aboriginal group in Brazil may be of particular concern since 10 macaws are required to make a single headdress (81 FR 85498). In the Gerais region, hyacinth macaw are hunted to eat. While the USFWS doesn’t provide any information about hunting in the Pantanal region, it concluded that:

“Because the hyacinth macaw populations in Pará and the Gerais region are estimated at only 1,000 – 1,500 individuals, combined, the removal of any individuals from these small populations has a negative effect on reproduction and the ability of the species to recover. Any continued hunting for either meat or the sale of feather is likely to contribute to the decline of the hyacinth macaw in these regions, particularly when habitat conversion is also taking place.”

Although Brazil has laws prohibiting hunting of the hyacinth macaw without authorization, “continued hunting in some parts of its range is evidence that existing laws are not being adequately enforced” (81 FR 85498). As noted by the USFWS, “without greater enforcement of laws, hunting will continue to impact the hyacinth macaw” (81 FR 85498). Researchers have documented that even with these laws in place, the bird trade is still substantial in Brazil and other South American countries.⁶

While legal and illegal trade in wild-caught hyacinth macaws in the 1970s and 1980s, including a large number of exports to the United States, caused a massive decline in macaw numbers, based on an analysis of CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) trade records, the USFWS notes that “international trade of parrots was significantly reduced during the 1990s as a result of tighter enforcement of CITES regulations, stricter measures under EU (European Union) legislation, and adoption of the WBCA (Wild Bird Conservation Act), along with adoption of national legislation in various countries” (81 FR 85502). As a result, the USFWS concludes that it has “no information indicating trade is currently impacting the hyacinth macaw” (81 FR 85502).

⁶ Alves, et al. (2013).

The FWS concedes, however, that, due to the high price of hyacinth macaws, illegal domestic trade may be occurring but it claims that there is no information to suggest that “illegal trapping for the pet trade is currently occurring at levels that are affecting the populations of the hyacinth macaw in its three regions” (81 FR 85502). Several recent studies call into question this conclusion. These studies document on-going (and often illegal) bird trade.⁷ One researcher explains that once wild birds are poached for local bird markets, more sophisticated wildlife traders then buy those birds for use in trade beyond local markets.⁸ Another concern is that hyacinth macaws may be taken from the wild in their range states, then transported and exported from other countries as “captive” birds.⁹ The bird trade may not be what it once was, but it is still occurring and still a concern for hyacinth macaws.

Based on the compelling evidence documenting the significant and ongoing threats to the hyacinth macaw and, in particular, to its habitat, this species indisputably qualifies for listing as “endangered” under the ESA. The summary of that evidence, as contained in the “Finding” section of the revised proposed rule provides a clear foundation for an “endangered” designation. A “threatened” designation, as currently proposed by the USFWS, will not provide the hyacinth macaw with the level of protection it needs commensurate with the threats faced by the species, would not be consistent with the legal standards of the ESA, and will, without question, necessitate the uplisting of the species to “endangered” within just a matter of years. If the USFWS wrongly concludes that a “threatened” designation is sufficient then, any associated 4(d) rule must, as explained in greater detail below, prohibit the import and export of the species (wild caught and captive bred) and, if interstate trade is allowed within the United States at all, it must be limited to non-commercial trade only if accompanied by a permit issued by the USFWS.

E. Reliance upon the Illegal 2014 Significant Portion of the Range Policy will Result in an Unlawful Listing.

The Service has relied on its illegal 2014 SPOR policy in determining that the hyacinth macaw is not endangered throughout a significant portion of its range. Under this policy, finalized on July 1, 2014, the Service announced that, for the first time, if a species is threatened throughout its range, that is the end of the analysis, and the Service will not separately consider whether the species should be listed as endangered in light of the conservation status in a significant portion of its range.

The 2014 SPOR policy renders the terms “significant portion of its range” in the definition of “endangered species” superfluous. Under the plain language of the ESA, to fully evaluate the conservation status of a species, and, in particular, to discern whether it may be “endangered,” the agency must consider not only its status range-wide, but also whether it is endangered in a significant portion of its range. The final 2014 SPOR Policy ignores this requirement altogether, providing that if a species is “threatened” throughout its range, the Service will not even consider

⁷ Alves, et al. (2013, p.60) (“The Hyacinth Macaw *Anodorhynchus hyacinthinus*, for example, is mainly threatened by a large and persistent illegal trade”); Herra and Hennessy (2007); Raso et al. (2013); Pires (2012).

⁸ Pires and Clarke (2011).

⁹ Herra and Hennessy (2007); Alves, et al. (2013); Bush, et al. (2014).

whether it is endangered in a significant portion of its range.¹⁰ Thus, the use of “significant portion of the range” language in the definition of an “endangered” species is stripped of all meaning for a species that is determined to be threatened range-wide. This is a legally indefensible interpretation of this phrase.

The great concern here and with the 2014 SPOR policy is the policy’s creation of a *new* hierarchy, whereby a species’ range-wide status trumps its status in a significant portion of its range. Under this hierarchy, a species threatened throughout its range cannot become an endangered species based on its status in a significant portion of its range, even though the species might have satisfied the legal standard to be listed as endangered in a significant portion of its range, had it *not* been designated as threatened throughout its range. This interpretation of the Act and the purposes behind it turns the ESA on its head. The Service’s reliance on the illegal 2014 SPOR policy, coupled with its failure to list the hyacinth macaw as endangered throughout a significant portion of its range, violates Section 4 of the ESA and is arbitrary, capricious, and contrary to law.

II. THE PROPOSED 4(D) RULE IS UNLAWFUL

A. FWS Articulated the Wrong Standard under Section 4(d) of the ESA

We are disappointed by the FWS’s articulation of its obligations under Section 4(d) of the ESA in the Federal Register notice. The International branch of the Service previously had a stellar record for actually explaining to the public what the Act provides, instead of providing an articulation of how some at the agency might like this provision to be read. As a result, we provide a detailed legal analysis of this provision to demonstrate that FWS in fact has a legal obligation under Section 4(d) to conserve species that is *not* discretionary.

Section 4(d) of the Endangered Species Act, provides that the Service “shall” issue regulations that are necessary and advisable for the conservation of the species.¹¹ The provision goes on to note that the Service “may” extend Section 9’s prohibitions to threatened species.¹² As is well known, “shall” is not discretionary. Therefore, FWS is obligated to adopt 4(d) rules that conserve threatened species.

The ESA contains a very specific definition of “conservation.” It means:

the use of *all* methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat

¹⁰ 79 Fed. Reg. at 37,609 (explaining that a portion of a species range can only be “significant” [and thus considered as a SPOR] “if the species is not currently endangered or threatened throughout its range.”).

¹¹ 16 U.S.C. § 1533(d).

¹² *Id.* Section 4(d) rule further notes that Section 9’s prohibitions may be extended to threatened species “except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 1535 (c) of this title only to the extent that such regulations have also been adopted by such State.”

acquisition and maintenance, propagation, live trapping, and transplantation, and, *in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.*¹³

The term “conservation” includes ensuring a species’ survival as well as promoting its recovery.¹⁴ In *Defenders of Wildlife v. Andrus*, the court construed the relationship between Section 4(d) and the ESA’s conservation definition, stating:

It is clear from the face of the statute that the Fish and Wildlife Service, as part of Interior, must do far more than merely avoid the elimination of a protected species. It must bring these species back from the brink so they may be removed from the protected class, and it must use all methods necessary to do so. The Service cannot limit its focus to what it considers the most important management tool available to it to accomplish this end. ... [T]he agency has an affirmative duty to increase the population of protected species.¹⁵

That Congress intended FWS to use Section 4(d) of the Act to affirmatively protect threatened species and their habitats is made clear not only by the statutory text, but by the ESA’s legislative history. The Senate Report states:

[The section] requires the Secretary, once he has listed a species of fish or wildlife as a threatened species, to issue regulations to *protect* that species. Among other protective measures available, he may make any or all of the acts and conduct defined as “prohibited acts” ... as to “endangered species” also prohibited acts as to threatened species.¹⁶

The issue of how much protection to afford to threatened species was considered in hearings in both the House and Senate. “It was the firm intent of both the House and Senate that the purpose of the Act was to restore the population of a threatened species.”¹⁷ The final Conference Report accompanying the Act demonstrates further that the ESA’s definition of “conservation” also limits FWS’s ability to permit taking of threatened or endangered species:

In view of the varying responsibilities assigned to the administering agencies in the bill, the term [conservation and management] was redefined to include generally the kinds of activities that might be engaged in to improve the status of the endangered and threatened species so that they would no longer require special treatment. The concept of conservation covers the full spectrum of such activities: from total “hands-off” policies involving protection from harassment to

¹³ 16 U.S.C. § 1532(3) (emphasis added).

¹⁴ *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1070 (9th Cir. 2004) (quoting *Sierra Club v. United States Fish & Wildlife Serv.*, 245 F.3d 434, 441-42 (5th Cir. 2001) (“‘Conservation’ is a much broader concept than mere survival. The ESA’s definition of ‘conservation’ speaks to the recovery of a threatened or endangered species.”)).

¹⁵ 428 F. Supp. 167, 170 (D.D.C. 1977).

¹⁶ S. Rep. No. 93-307, 93d Cong., 1st Sess. 8 (1973) (emphasis added).

¹⁷ *Sierra Club v. Clark*, 577 F. Supp. 783, 788 (D. Minn. 1984), *aff’d in part and rev’d in part* by 755 F.2d 608, 611 (8th Cir. 1985) (citations omitted).

a careful and intensive program of control. In extreme circumstances, as where a given species exceeds the carrying capacity of its particular ecosystem and where this pressure can be relieved in no other feasible way, this “conservation” might include authority for carefully controlled taking of surplus members of the species. To state that this possibility exists, however, in no way is intended to suggest that this extreme situation is likely to occur – it is just to say that the authority exists in the unlikely event that it ever becomes needed.¹⁸

As these legal authorities evidence, the Service can only adopt a 4(d) rule if that rule will actually work to recover the species. Likewise, the Service can only decide not to extend Section 9’s prohibitions if doing so will actually work to recover the species.

B. The Draft 4(d) Rule for the Hyacinth Macaw Was Not Properly Noticed

The current draft of the 4(d) rule for the hyacinth macaw is actually an amendment of an existing 4(d) rule for several other species of parrots.¹⁹ The existing rule does not require an ESA permit for: 1) import or export of parrots held in captivity prior to the species being listed under the ESA or for specimens traded using a captive bred code; and 2) interstate commerce in the species. As discussed below, the captive bred provision and the second provision regarding interstate commerce were not proposed for the hyacinth macaw.

The rule proposed for the hyacinth macaw provides:

(1) Except as noted in paragraphs (c)(2) and (c)(3) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to these species.

(2) Import and export. . . . you may import or export all other specimens without a permit issued under § 17.32 of this part only when the provisions of parts 13, 14, 15, and 23 of this chapter have been met and you meet the following requirements:

* * * * *

(ii) Specimens held in captivity prior to certain dates: You must provide documentation to demonstrate that the specimen was held in captivity prior to the dates specified in paragraphs (c)(2)(ii)(A), (B), (C), (D), or (E) of this section. Such documentation may include copies of receipts, accession or veterinary records, CITES documents, or wildlife declaration forms, which must be dated prior to the specified dates.

* * * * *

¹⁸ Conf. Rep. No. 930740, 93rd Cong., 1st Sess. 23 (1973), U.S.C.C.A.N 1973, at 2989, 3002. This language “clearly indicates an intent to limit the Secretary’s discretion to permit the taking of threatened species.” *Sierra Club v. Clark*, 755 F.2d 608, 615 (8th Cir. 1985) (“Because a ‘conference report represents the final statement of terms agreed to by both houses, next to the statute itself it is the most persuasive evidence of congressional intent.” (citing *Demby v. Schweiker*, 671 F.2d 507, 510 (D.C. Cir. 1981)).

¹⁹ 50 C.F.R. § 17.41(c).

(E) For hyacinth macaws: [EFFECTIVE DATE OF THE FINAL RULE]
(the date this species was listed under the Endangered Species Act of
1973, as amended (Act) (16 U.S.C. 1531 et seq.)).

Most notably, the draft rule for the hyacinth macaw leaves out two provisions of the existing rule for parrots. It leaves out the exception for import and export of captive bred specimens, which provides:

(i) Captive-bred specimens: The source code on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) document accompanying the specimen must be “F” (captive-bred), “C” (bred in captivity), or “D” (bred in captivity for commercial purposes)(see 50 CFR 23.24);

The draft rule also leaves out the final provision of the 4(d) rule for parrots that states:

(3) Interstate commerce. Except where use after import is restricted under § 23.55 of this chapter, you may deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase in interstate commerce a live salmon-crested cockatoo.

While the Service discusses these provisions in the preamble of its 4(d) rule, it does not propose to include this actual language in the text of the draft rule. The ESA requires the Service, “not less than 90 days before the effective date of the regulation,” to “publish a general notice and *the complete text of the proposed regulation* in the Federal Register”²⁰ Here the Service has failed to meet this mandate and, hence, has not provided sufficient notice and opportunity for comment on this 4(d) rule. Moreover, the difference between the description of the rule in the Federal Register notice and the actual text proposed creates substantial confusion. Indeed, the text of the proposed 4(d) rule may be viewed by some members of the public and not commented upon because it does not appear to exempt interstate commerce or allow import and export of any “captive” specimen. Thus, the public process for this draft rule has not been adequate.

The remainder of these comments address the parrot rule in its entirety. If FWS intended to only apply some of the existing parrot rule to hyacinth macaws, we apologize for the comments below regarding the captive bred and interstate commerce provisions that were not proposed for this species.

C. Commercial Trade in Hyacinth Macaws Does Not Conserve the Species

The trade in parrots for the pet industry – both legal and illegal – has led to the diminishment of numerous bird species.²¹ This is particularly true in the Amazon.²² While habitat loss, destruction, and fragmentation are significant threats to the hyacinth macaw so too is the pet trade.²³ Indeed, among bird species, parrots are the most frequently traded.²⁴ Obviously, the trade

²⁰ 16 U.S.C. § 1533(b)(5)(A)(i) (emphasis added).

²¹ Pires, et al. (2016, p. 2).

²² Moura, et al. (2014).

²³ Pires (2011, p.7).

in hyacinth macaws is not what it was in the 1980s²⁵, but this trade still poses a risk to the species that requires regulation under the ESA.²⁶ With individual birds selling for \$20,000 USD or more,²⁷ continued trade in this species is undeniable.

Indeed, when a legal market for trade in imperiled species is created, along with it comes the black market and the related black market trading of wildlife for profit.²⁸ Elephants are the most frequently cited example of this phenomenon²⁹ but it is well documented for other species, including parrots.³⁰ Accordingly, a primary concept behind the ESA is to protect imperiled species from being used as commodities. As such, the ESA consistently prohibits commercial use of endangered species and only allows limited exceptions for non-commercial activities³¹, and the statute's definition of "conservation" forecloses the take of species unless necessary to reduce population pressures on habitat.³² Thus, the goal in conserving species under the ESA must be to eliminate demand – not to sanction some form of "lawful" trade occurring at a level that at some point in time seems "sustainable."

As discussed previously in these comments, we contest the Service's finding that the pet trade is no longer a threat to this species. A rule that allows commercial trade in this species to continue without a finding that such trade would enhance the survival of the species (as required under Section 10 for an ESA permit) does not conserve the species as required by the ESA. As a result, we ask that you amend the proposed 4(d) rule to remove all exceptions for commercial trade in hyacinth macaw.

²⁴ Bush, et al. (2014, p. 668) ("Parrots (Psittaciformes), song birds (Passeriformes), and falcons (Falconiformes) were the most common avian orders in reported trade. Parrots were reported in the pet trade 14 times more often than if selection among avian orders was random, indicating a strong bias for them in this context."); Pires (2011, p.7) ("Parrots have the largest proportion of endangered species among all birds worldwide").

²⁵ 81 Fed. Reg. at 85,501 ("Trade in parrots in the 1980s was particularly high due to a huge demand from developed countries, including the United States, which was the main consumer of parrot species at that time (Rosales et al. 2007, pp. 85, 94; Best et al. 1995, p. 234).").

²⁶ 81 Fed. Reg. at 85,502 ("2012 through 2014 (the most recent year for which data is available from the WCMC–UNEP database), a total of 250 hyacinth macaw specimens, including 193 live birds, is reported in international trade in the WCMC–UNEP database. Except for five scientific samples imported by Switzerland in 2012, none of the other specimens were reported as being wild caught; all were either recorded as captive bred or captive born.")

²⁷ Tensen, L. (2016) ("The price that bird collectors pay for rare parrots such as Hyacinth macaws, *Anodorhynchus hyacinthinus*, and Spix's Macaws, *Caynopsitta spixii*, went up to over US\$ 20 000 after these species became extremely rare in the wild, further increasing poaching pressure (Wright et al., 2001).").

²⁸ Lavigne (1996, p. 260) (establishment of "legal markets for valuable wildlife products" "provide[s] incentives for poaching [because] when the prices of wildlife products are sufficiently high, they also attract criminal elements into poaching, making wildlife protection not only increasingly difficult but also dangerous"); Tenson, L. (2016) ("It is well recognized that legalized trade in an imperiled species is likely to be detrimental to conservation efforts by increasing demand for the "product." (Servheen, 1994; Abbot van Kooten 2011).").

²⁹ Guracha (2004); Panjabi (2014, p. 78-79) ("the experience of earlier one-time sales was drastic and tragic for elephants and rhinos. It was confusing for customers in China who were no longer sure about the legalities surrounding ivory. It opened the door to the escalation in poaching and the decimation of wildlife")

³⁰ Tensen, L. (2016) ("The price that bird collectors pay for rare parrots such as Hyacinth macaws, *Anodorhynchus hyacinthinus*, and Spix's Macaws, *Caynopsitta spixii*, went up to over US\$ 20 000 after these species became extremely rare in the wild, further increasing poaching pressure (Wright et al., 2001).").

³¹ 16 U.S.C. § 1538.

³² *Id.* § 1532.

D. CITES and WBCA Do Not Serve the Same Objective as the ESA

We appreciate the stock the Service has placed in the CITES and the WBCA to protect these birds, but as just discussed, the ESA plays a unique and important role and its provisions are important here for ensuring the conservation of the species. CITES and WBCA are designed to control international trade. The ESA has other objectives. In passing the ESA, Congress found that “economic growth” was a factor in “various species of fish, wildlife, and plants in the United States [that] have been rendered extinct.”³³ Thus, “overutilization for commercial [and] recreational” purposes is one of the grounds for protecting species under the Act.³⁴

In the more than thirty years since the ESA was enacted, the public has increasingly moved away from commercializing our imperiled wildlife and instead developed a strong appreciation for *preserving* wildlife in its natural habitat. This shift in public attitudes has led to both a dramatic increase in eco-tourism and in funding for habitat protection and other conservation efforts around the world. As a result, it has now become largely unacceptable, both here and in other parts of the world, to commercially exploit imperiled species.³⁵

Of course, the pet trade is a notable exception. As just discussed, the ESA’s objective is to de-commercialize species and nowhere does FWS grapple with this aspect of the ESA in contrast to CITES and WBCA.³⁶ Indeed, ESA Section 10’s enhancement requirement for permitting acts otherwise prohibited by Section 9 is not reflected under CITES (and its non-detriment finding requirement for Appendix I species) or the WBCA. The ESA permits various acts that will enhance the species’ survival or that are undertaken for scientific purposes, but all other acts are not permitted.³⁷ Therefore, it is not sufficient to use these regulatory schemes (i.e., CITES and the WBCA) in the ESA’s place. Doing so, certainly fails to de-commercialize these birds and reduce the demand and trade in this species. As such, the 4(d) rule fails to conserve the species.

Furthermore, neither the current CITES nor WBCA regimes provide for public notice and comment, which is required for ESA permits for endangered species.³⁸ Not protecting the hyacinth macaw as endangered means that the public receives no notice about import or export or interstate movement of these parrots. This makes it difficult to track and protect these species from the pet trade. The lack of notice is a grave detriment for another reason. Birds in the pet trade, including hyacinth macaws, have been found to carry numerous diseases.³⁹ The failure to

³³ 16 U.S.C. § 1531(a)(1).

³⁴ *Id.* § 1533(a)(1); *see also* H. Rep. No. 412, Legislative History at 141 (the threat to species arises “principally” from “pollution, destruction of habitat and the pressures of trade”); *id.* at 145 (endangered species are “harried and hunted by those who would use them for their own advantage”); S. Rep. No. 93-307, 93d Cong., 1st Sess., Legislative History at 301 (“[t]he two major causes of extinction are hunting and destruction of natural habitat”).

³⁵ *See* Geist (1988, p. 16) (U.S. wildlife conservation has been “based on three primary policies ... 1) the absence of market in the meat, parts, and products of [wildlife] 2) the allocation of the material benefits of wildlife by law, not by the market place ... 3) the prohibition on frivolous killing of wildlife.”); Sand (1997, p. 26) (“a number of substitution effects on the consumption side of the wildlife market which may legitimately – at least partly – be attributed to CITES” include “the food and fashion industries.”).

³⁶ While the Appendix I listing of the birds on CITES and the WBCA result in a prohibition on import and export for commercial purposes, these laws do not foreclose personal possession for non-conservation purposes.

³⁷ 16 U.S.C. § 1539(a)(1)(A).

³⁸ 16 U.S.C. § 1538(c).

³⁹ *See e.g.*, Raso, et al. 2013.

provide for public notice and comment on imports of these birds and their movements within the U.S., in particular, makes it more difficult for the public to track emerging diseases for which these birds may serve as vectors. Thus, an endangered listing provides an important public notice function that you are proposing to do away with. Losing this information will not only hamper the conservation of hyacinth macaws but potentially many other species as well.

E. The Captive Bred Exception is too Broad to Conserve the Species

FWS is proposing an import and export exemption for “captive” specimens. This proposal fails to comport with the ESA and the conservation needs of the species. First, trade in allegedly “captive” birds often includes laundering of wild stock.⁴⁰ By exempting all captive birds, FWS is undeniably allowing the import of at least some wild birds without an ESA permit.⁴¹ The laundering of wild birds and passing them off as captive is a grave concern and the 4(d) rule as proposed does nothing to protect against wild birds being imported into the U.S. as “captive” specimens.⁴² While the FWS has downplayed the impact of the pet trade on hyacinth macaws in the revised proposed rule, it has offered no evidence to demonstrate that wild caught hyacinth macaws are not being laundered as captive-bred.

Moreover, this exemption is far too broad to be useful. Much of the trade in hyacinth macaws occurs under the source code for “captive” birds. Thus, exempting most of this trade simply fails to conserve hyacinth macaws. The exemption applies to all source code “C,” “D,” or “F” specimens as designated under CITES. These are *very* different source codes with very different meanings under CITES and offer some to no protection for the birds. Res. Conf. 12.3 (Rev 17) defines these source codes as:

- D Appendix-I animals bred in captivity for commercial purposes in operations included in the Secretariat's Register, in accordance with Resolution Conf. 12.10 (Rev. CoP15), and Appendix-I plants artificially propagated for commercial purposes, as well as parts and derivatives thereof, exported under the provisions of Article VII, paragraph 4, of the Convention;⁴³

⁴⁰ Bush, et al. (2014) (“where [captive breeding] is successful it rarely acts as an absolute alternative to wild-sourcing because demand remains for fresh stock from the wild to bolster breeding programs (Exotic Pets 2012).”); Tenson, L. (2016) (“As long as laundering of illegally retrieved wildlife products cannot be prevented, commercial breeding and a legalized trade should be avoided.”); Pires (2012, p. 122) (“Exporting wild-caught species and declaring them as “bred” is not exclusive to the reptile trade though. Evidence suggests that this problem occurs in the parrot trade as well (Low, 2003).”).

⁴¹ Only a minimal number of the birds in trade occur under the wild source code. 81 Fed. Reg. at 85,502 (“With the information given in the UNEP–WCMC database, from 1987 through 2011, only 24 of the 1,804 live hyacinth macaws reported in trade were reported as wild-sourced, 1,671 were reported as captive bred or captive born, 35 were reported as pre- Convention, and 74 were reported with the source as unknown. Since our 2012 proposed rule published, CITES trade data from the UNEP–WCMC CITES Trade Database for the years 2012 through 2014 has become available.”).

⁴² Tenson, L. (2016) (“For wildlife traders, captive breeding often offers a perfect guise”).

⁴³ We point that there are no registered captive-breeding facilities in the hyacinth macaw’s range, only in the U.S. Thus, no birds coming into the U.S. will have met this more protective standard.

- C Animals bred in captivity in accordance with Resolution Conf. 10.16 (Rev.), as well as parts and derivatives thereof, exported under the provisions of Article VII, paragraph 5;
- F Animals born in captivity (F1 or subsequent generations) that do not fulfill the definition of ‘bred in captivity’ in Resolution Conf. 10.16 (Rev.), as well as parts and derivatives thereof;

These are three entirely different tiers of allegedly “captive” specimens. The D code is the most protective in that the captive breeding facility must meet the requirements of Res. Conf. 12.10 including the registration requirement, although questions still arise with how this source code is implemented.⁴⁴ The C code is less protective, requiring only that the exporting country declare the specimens are captive without review by the importing country.⁴⁵ And the F code offers barely any protections to ensure the specimen is actually from captivity instead of the wild. Nevertheless, the draft 4(d) rule exempts trade in any one of these source codes lumping them all together. This fails to protect against trade in wild birds being laundered as “captive” birds. While our preference is for an “endangered” designation and no 4(d) rule, if a 4(d) rule is promulgated any trade in captive bred specimens must be limited to specimens legitimately designated as source code D.

F. The Exemption for Birds Held in Captivity is Unworkable

The exemption for birds held in captivity in the proposed 4(d) rule fails to conserve the species for two primary reasons. First, there is no way to adequately verify that birds that are being imported to the US were held in captivity before the ESA listing. In captivity these birds can live up to 50 or 60 years. While records documenting when recently captured birds were brought into captivity may be available, for older captive birds, records sufficient to document when the animal was captured may not be available. In this case, the exporter may attempt to manufacture such records including by colluding with corrupt government officials or veterinarians to create one or more documents in an attempt to claim that the specimen was held in captivity before the listing date. This, in turn, could provide a cover for birds to be smuggled out of the wild and labeled as “held in captivity” to avoid ESA permitting.⁴⁶ Again, FWS fails to address the laundering of wild birds as captive and the draft 4(d) rule provisions fail to account for this threat to the species.

Second, for birds in the U.S., allowing commercial trade of specimens already in captivity essentially sanctions a key problem that led to the need to list the species – the pet trade. The parrot trade contributed greatly to the currently diminished populations of wild hyacinth

⁴⁴ Tenson, L. (2016) (“CITES permits the trade of commercially bred animals for Appendix II species. CITES regulations indicate that only the second generation (F2) from captive-breeding operations can be legally traded (CITES, 2014). However, enforcement of these regulations is often lacking (Challander et al., 2015 and Keane et al., 2008) and it is difficult for importing countries to differentiate between wild and captive-bred specimens (Challander et al., 2015 and Lyons and Natusch, 2011; Williams et al., 2015). CITES-listed species are even sometimes concealed among similar-looking non-CITES species (Rosen and Smith, 2010).”).

⁴⁵ See Res Conf. 10.16.

⁴⁶ See e.g., Pires and Clarke (2011).

macaws.⁴⁷ While the Service downplays the current trade, it cannot ignore the historic trade that led to all the birds that are currently in captivity in the U.S. Nevertheless, under the draft 4(d) rule the very individuals who contributed to the species' original demise are being given a free pass to engage in commercial activities with members of the species including exporting their birds, importing additional birds, and otherwise engaging in commercial, interstate trade in this species. This fails to conserve the species.

G. Commercial Interstate Commerce Should Not be Exempted

As discussed above, a primary goal of the ESA is to de-commercialize imperiled species to remove any incentive for legal or illegal trade or sale of the species. Allowing continued interstate commerce in hyacinth macaws is contrary to these primary objectives of the Act. Moreover, while we understand giving current owners of hyacinth macaws the ability to relocate their families (including their birds) within the U.S. and FWS's desire to allow breeders to move their birds to improve the captive stock – not that we per se agree these are valid exemptions – this is entirely different from allowing pet traders and birds owners who have taken advantage of these birds to continue to profit from the species. Any interstate commerce undertaken for commercial purposes should not be exempted from the ESA.

H. An Alternative 4(d) Rule for Hyacinth Macaws

Given our comments and the discussion above, we propose that the Service adopt a more streamlined 4(d) rule for this species that will actually result in its conservation. We propose the following:

(f) hyacinth macaw (*Anodorhynchus hyacinthinus*)

(1) Except as noted in paragraphs (f)(2) and (f)(3) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to these species.

(2) Import and export. You may import or export specimens of this species without a permit issued under § 17.32 of this part only when the species comes from a captive-breeding facility registered with the Secretariat of CITES pursuant to Res. Conf. 12.10 and that also meets the requirements of paragraph 4 of Article VII of CITES, any relevant Resolutions pertaining to this provision;

(3) Interstate commerce. Except where use after import is restricted under § 23.55 of this chapter, you may deliver, receive, carry, transport, or ship in non-commercial interstate commerce a live hyacinth macaw.

I. Permitting Import of Wild-caught Birds into and out of the United States Will Not Satisfy the Conservation Mandate of the ESA

The FWS proposes to permit the import of hyacinth macaw removed from the wild after the species is listed under Act as long as the requirements of 50 C.F.R. §§17.31 and 17.32 are met

⁴⁷ Bush, et al. (2014).

including the issuance of a permit under the Act (81 FR 85505). Despite the requirement for a permit for such imports and exports, considering the small number of hyacinth macaw remaining in the wild and the persistent threats to the species, including ongoing loss of habitat due to deforestation, cattle grazing, and burning, permitting the import of any wild-caught hyacinth macaw is inconsistent with the conservation mandate of the ESA and should not be authorized.

CONCLUSION

Thank you for your work on this species and for your consideration of this comment letter. Please feel free to contact us with any questions.

Sincerely,



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