

CHRISTMAS COUNTS IN THE COURTS

by Phil Martin, Olympia, Washington

Just in time for the 77th annual Christmas Bird Count, the U.S. Supreme Court has made a decision which has effectively ended a five-year legal battle stemming from a controversy over the interpretation of Count data. The high court let stand the judgment of a lower court that National Audubon Society vice-president Roland Clement and the New York Times were not liable for damages because the Times had printed an article quoting Clement's accusation of three men of distorting Christmas Count data.

The controversy arose primarily from a strongly worded statement by editor Robert S. Arbib, Jr., in the April, 1972, issue of American Birds which criticized the pesticide industry and various un-named scientific spokesmen for using the ever-increasing totals of birds recorded on Christmas Counts as "proof" that the use of DDT and other chlorinated hydrocarbon pesticides was not having a deleterious effect on North American bird populations.

Arbib contended that there was clear evidence of DDT reducing some bird species populations and wrote further:

The apparent increases in numbers of species and individuals on the Christmas Bird Counts have, in most cases, nothing to do with real population dynamics. They are a result of ever-increasing numbers of birders in the field, better access to Count areas, better knowledge of where to find birds within each area, and increasing sophistication in identification.

With increased local coverage by the press of Christmas Bird Count activities it is important that Count spokesmen reiterate the simple and truthful fact that what we are seeing is resultant of not more birds, but more birders. Any time you hear a "scientist" say the opposite, you are in the presence of someone who is being paid to lie, or is parroting something he knows little about.

Contacted later by the New York Times, Audubon's Roland Clement was willing to name Dr. J. Gordon Edwards of San Jose State University in California, Dr. Thomas Jukes of the University of California at Berkeley, and Dr. Robert H. White-Stevens of Rutgers University as people who had regularly misused Count data. After the New York Times published an article on the controversy, the three sued both Mr. Clement and the Times for libel. A Federal District Court ruled against the defendants and awarded the professors damages totalling \$61,000. However, the U.S. Court of Appeals reversed the decision, ruling that the Audubon Society letter which named the three men was not libelous and that the Times was entitled to print impartial and accurate accounts of such an accusation from a "responsible, prominent organization like the National Audubon Society."

With the Supreme Court's decision not to review the case, the case is evidently closed. Buried in this legal entanglement over who has the right to say what about whom are the more important underlying questions over the use of pesticides, scientific ethics, population trends of North American

birds, and about the use and usefulness of the masses of data we all cheerfully collect each year on Christmas Bird Counts.

A SUPERB 1977-78 INVASION OF RED-BREASTED NUTHATCH

by Leif J. Robinson, Wellesley

It is well known that southward autumn migrations of the Red-breasted Nuthatch are quite unpredictable, though they are probably induced by failures of the northern cone crop (C. E. Bock and L. W. Lepthien, American Birds, 26, 3, 558).

As observed in Weston, the 1977-78 autumn invasion and subsequent wintering was unprecedented and may reflect the greatest influx of this species ever recorded in Massachusetts. For example, Bailey's Birds in Massachusetts (1955) gives this characterization: "During years when definite fall flights have materialized, 6 to 20 birds have been reported per day." Yet, during about four hours on December 26th, I and three companions saw approximately 200 Red-breasted Nuthatches!

The accompanying graph shows my birds-per-hour counts at Weston Reservoir, an area especially favored by this species. Open circles represent data from June, 1974, through June, 1977--an interval without pronounced autumn migration--dots from July, 1977, through March, 1978. From these observations, I conclude that the 1977-78 invasion probably began in late August (the June dot pertains to fledging success of local breeding birds). Though this timing is in substantial agreement with Bailey, the 1977-78 flight continued until December, in marked disagreement with his statement that autumn migration ceases by mid October. After reaching a peak, the numbers declined about as rapidly as they built up. I attribute this fall-off to the exhaustion of food supplies; during February, when the decline was most rapid, my back yard population increased substantially.

In another paper (American Birds, 25, 6, 945), Bock and R. Smith found that invasions of Red-breasted Nuthatch were correlated with those of Red Crossbill. Observations in Weston during the winter of 1977-78 support that conclusion; it was an excellent year for all "winter finches."

In summary, the birds-per-hour data revealed that the autumn migration of Red-breasted Nuthatch (at least during this flight year) persisted $1\frac{1}{2}$ months or so longer than the limit cited by Bailey. It seems impossible to determine whether this extension was due to the magnitude of the invasion, an anomalous local concentration of birds, or deficiencies in the data Bailey assessed. Banding records might substantially illuminate the interpretation of the remarkable 1977-78 flight of this topsy-turvy bird.

FOR SALE: The Land-Birds and Game-Birds of New England, 1895, by H.D. Minot. For information contact Mrs. Lyman S. Hayes, 19 Gypsy Trail, Weston, MA 02193. Telephone 894-1470.