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19 August 2021

The Honorable Deb Haaland  
Secretary of the Interior  
1849 C St., N.W.  
Washington, D.C. 20240

Dear Secretary Haaland,

The Ornithological Council is a consortium of scientific societies of ornithologists; these societies span the Western Hemisphere and the research conducted by their members spans the globe. Their cumulative expertise comprises the knowledge that is fundamental and essential to science-based bird conservation and management.

We are writing today to ask that you consider reversing the Department of the Interior's moratorium on the use of unmanned aircraft systems (or drones) and that you move forward with the regulatory process required to permit the use of drones to research, study, and manage wildlife.

Drones are a valuable tool for wildlife management and research. Many members of our ornithological societies use drones to study birds and much of that research serves as a foundation of wildlife management and species conservation. Drones (aka "small unmanned aerial systems" or "small unmanned aerial vehicles") allow access to places that are otherwise difficult or impossible to reach and can gather valuable information while reducing disturbance to wildlife, as would otherwise occur if humans approached the wildlife to be studied. The use of drones also promotes researcher safety by eliminating the need for survey by piloted aircraft and reducing the need for activities such as cliff-climbing, tree-climbing, and wading through swamps.

### **The Department of Interior's drone moratorium**

In January 2020, Secretary's Order 3379 temporarily grounded the Department of the Interior's drone fleet, with the exception of flights for emergency operations and training. The moratorium unnecessarily limited the ability of wildlife managers and researchers within the Department to do their work. Although the title of the order itself indicated that the moratorium was temporary, nearly 19 months after its signing, the ban remains.

Therefore, we encourage the Department to find ways to address national security and other concerns surrounding drone use while still permitting their use for legitimate wildlife management and research needs.

### **Our previous request for a determination from the Solicitor**

Several years ago, the Ornithological Council became aware that there was significant uncertainty among the federal and state agencies about the applicability of the Airborne Hunting Act (AHA) to the use of drones as it relates to wildlife research. Most researchers were – and still are – unaware that there is at least a possibility that there is a restriction or that permits may be needed. Therefore, the OC is concerned that many researchers are unaware of their potential violation of the Airborne Hunting Act.

Because of this uncertainty, in late 2017, the Ornithological Council asked the Office of the Solicitor to advise the U.S. Fish and Wildlife Service, other federal agencies, and the state agencies that the use of drones for wildlife research is not subject to the Airborne Hunting Act (16 U.S.C. 742j-1). We also asked that if the Solicitor determines that the use of drones to study wildlife is subject to the AHA, then the Solicitor should address the need for federal permits because there are few, if any, state laws pertaining to drone use for wildlife research and monitoring.

In our request to the Solicitor, we also asked for guidance to the USFWS to the effect that the agency could include drone use under the Migratory Bird Treaty Act (MBTA) scientific collecting regulation (50 CFR 21.23). That regulation is broad enough that permits issued under that provision could include scientific research and monitoring from manned or unmanned aircraft. The term “collecting” is not defined in the regulations or in the statute (16 U.S.C. 703 *et seq.*) and there is no reason why this permit could not be broadened to include other research activities, including drone/aircraft-based research and monitoring. In fact, the state agencies often title their permits “scientific collecting” when, in fact, those permits are issued for all research activities.

Of course, the MBTA regulations and permits apply only to species birds. Thus, other taxa would need concomitant regulatory changes. Nevertheless, regulatory changes for avian research could be issued under the MBTA permit provisions.

### **Our previous petition for rulemaking**

In early 2018, the Ornithological Council filed a petition for rulemaking, asking the U.S. Fish and Wildlife Service to issue permits for the use of drones to study wildlife. That petition for rulemaking proposed the changes necessary for the USFWS to issue permits under the AHA, since, if the Solicitor determines that the use of drones for wildlife research is covered by the AHA, permits would be needed. A single federal permit issued by USFWS would be far more efficient and practical than requiring state-level permits. In fact, in most states there is no

existing statute that could accommodate a provision for drone use for scientific research and monitoring generally, much less by non-governmental institutions and individuals.

The changes we requested in our petition are:

1. Revocation of the following provision:

50 CFR 19.21 No Federal permits will be issued to authorize any person to hunt, shoot, or harass any wildlife from an aircraft, except for Federal permits to scare or herd migratory birds referred to in § 21.41 of this subchapter.

However, we ask that this provision be replaced with a provision that expressly permits issuance of federal permits for the use of manned or unmanned aircraft for either the scientific study or monitoring of wildlife, such as (new text in italics):

50 CFR 19.21 No Federal permits will be issued to authorize any person to hunt, shoot, or harass any wildlife from an aircraft, except:

- (a) permits to scare or herd migratory birds referred to in § 21.41 of this subchapter;
- (b) permits to allow the scientific study and monitoring of wildlife, provided that for the scientific study and monitoring of birds, permits authorized under 50 CFR 21.23 may include authorization for the use of manned or unmanned aircraft. Permits issued under this provision may be used only if required state permits (if any) for scientific collecting and/or drone use have been obtained and FAA registration requirements have been met.*
- (c) if a state issues a permit pursuant to Subpart D of this regulation, no federal permit is required.*

2. Modification of this provision:

50 CFR 19.31 State permits.

(a) Except as provided in § 19.3, States may issue permits to persons to engage in airborne hunting or harassing of wildlife for purposes of administering or protecting land, water, wildlife, livestock, domestic animals, human life or crops. States may not issue permits for the purpose of sport hunting.

(b) Upon issuance of a permit by a State to a person pursuant to this section, the issuing authority will provide immediate notification to the Special Agent in Charge having jurisdiction according to § 10.22.

as follows (new text in italics):

50 CFR 19.31 State permits.

(a) Except as provided in § 19.3, States may issue permits to persons to engage in airborne hunting or harassing of wildlife for purposes of administering, protecting land, water, wildlife, livestock, domestic animals, human life or crops *or for the purpose of scientific research and monitoring. The use of manned or unmanned aircraft for scientific research*

*and monitoring may be authorized in scientific collecting or scientific research permits.*  
States may not issue permits for the purpose of sport hunting.

(b) Upon issuance of a permit by a State to a person pursuant to this section, the issuing authority will provide immediate notification to the Special Agent in Charge having jurisdiction according to § 10.22.

Drones are valuable tools for wildlife managers and researchers that often reduce real physical risks to biologists and other personnel both within the Department of the Interior and throughout the United States. Therefore, we urge you to remove barriers to drone use, by ending the Department's moratorium on drone use and by taking action on our previously submitted requests regarding drones and the Airborne Hunting Act. We thank the Secretary and the USFWS for your consideration of these requests

Sincerely,



Laura M. Bies  
Executive Director

cc: Martha Williams, Principal Deputy Director, U.S. Fish and Wildlife Service  
Jerome Ford, Assistant Director for Migratory Birds  
Noah Matson, Deputy Assistant Director for Migratory Birds  
Ken Richkus, Chief, Division of Migratory Bird Management  
Eric Kershner, Branch Chief, Branch of Conservation, Permits and Regulation  
Jennifer Miller, National Permits Policy Lead