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Public Comments Processing
Attn: FWS–HQ–MB–2023– 0015
U.S. Fish and Wildlife Service
MS: JAO/3W
5275 Leesburg Pike
Falls Church, VA 22041–3803

Re: Docket No. FWS–HQ–MB–2023–0015

Submitted via [regulations.gov](https://www.regulations.gov)

Thank you for the opportunity to submit these comments regarding the U.S. Fish and Wildlife Service’s June 1, 2023 Advanced Notice of Proposed Rulemaking regarding the exhibition of migratory birds and eagles.

The Ornithological Council is a consortium of scientific societies of ornithologists. The research conducted by their members spans the globe and their cumulative expertise comprises the knowledge that is fundamental and essential to science-based bird conservation and management. The members of these scientific societies may be researchers working for academic institutions, museums, agencies or non-profit organizations. Their work runs the gamut from field research, to teaching, to curating museum collections. Collectively, the ornithological research they conduct and facilitate enables ornithological conservation work around the globe.

Federal and state permit regulations are one of our key concerns, as they are almost always a prerequisite for the scientific research undertaken by ornithologists. While the proposed regulatory authorization for the exhibition of migratory bird and eagles will not affect research directly, many ornithologists also participate in public education programs. Therefore, we appreciate the opportunity to submit these initial comments on the proposal.

We appreciate the efforts of the U.S. Fish and Wildlife Service to reduce the regulatory burden on those exhibiting migratory birds and eagles by proposing a regulatory

authorization to allow the possession of live, non-releasable or captive-bred migratory birds for use in teaching people about migratory bird conservation and ecology without a permit.

The Ornithological Council is aware of the USDA's Animal Plant Health Inspection Service's recent rule, regulating the care of birds under the Animal Welfare Act. The Ornithological Council also submitted comments on that proposal, acknowledging the importance of ensuring the humane treatment and care of birds, while also cautioning that agency about the undue burden of additional regulatory schemes for bird welfare. Given our concern about regulatory burden, we support the USFWS's proposal to allow the possession and exhibition of migratory birds and eagles without a permit for AWA license holders.

As this rule making moves forward, we would ask the USFWS to state clearly that this new regulatory authorization/permit is not required in addition to a scientific collecting permit, should the holder of a scientific collecting permit wish to undertake public education programs using live birds held under the scientific collecting permit. The holder of a scientific collecting permit may not conduct enough programs to be eligible for a conservation education permit, but the programs conducted nonetheless would have the same value, and, in fact, enhance the value of the specimens held under the scientific collecting permit.

Second, we ask that the USFWS make it clear that, if a permit is needed under this rule, the exhibition permit is valid in all 50 states and U.S. territories, subject to state permit requirements. Therefore, if someone holds a banding, scientific collecting, or a rehabilitation permit in a certain state as well as a exhibit permit, but is asked to conduct an educational program in a second state, as many banders and researchers are often asked to do, that individual could do so under the terms of their exhibit permit without having to obtain an amendment to the underlying permit.

Below is feedback from the Ornithological Council based on the questions posed by the USFWS in the Federal Register notice.

Question 1. *What regulatory authorization conditions should the USFWS require in addition to AWA license conditions? (e.g., "migratory birds may not be handled by the general public" or "migratory birds may be held but not otherwise touched by the general public.")*

While the Ornithological Council does not, at this time, have specific authorization conditions to suggest, we encourage that any conditions be carefully drafted so as not to conflict with requirements under the AWA. In addition, there are a variety of resources available regarding humane care of birds (including, but not limited to, the OC's *Guidelines to the Use of Wild Birds in Research*) and we encourage the USFWS to take advantage of these resources in developing the authorizing conditions and to ensure that exhibitors are also aware of them.

Question 2. *The USFWS is seeking estimates of how many exhibitors are not likely to be required to or hold an AWA license. For these exhibitors, should the USFWS continue using special purpose permits for migratory birds or promulgate a new regulation for migratory bird*

exhibition. Additionally, should the USFWS continue to have separate permits for migratory birds and eagles, or combine exhibition authorization for migratory birds and eagles into a single permit?

The Ornithological Council does not have an estimate of bird exhibitors not required to hold an AWA license. Where a permit from the USFWS is required, we encourage the development of a new exhibition permit that would allow exhibition for both migratory birds and eagles.

Question 3. *Should the USFWS continue the requirement that the transfer of any wild bird to exhibition must be approved by the USFWS prior to transfer?*

The Ornithological Council supports the continuation of the requirements that (1) the transfer of any wild bird to exhibition must be approved by the USFWS prior to transfer, (2) the transfer from exhibition to another permit type or release to the wild must be approved by the USFWS prior to transfer, and (3) USFWS approval is not required for transfers between exhibitors.

Question 4. *The USFWS is considering being more restrictive in ensuring wild birds approved for exhibition are suitable for long-term captivity. Is this an appropriate role for the USFWS? How should the USFWS design the information requested and review of transfer requests to ensure birds are suitable for exhibition use without being unduly burdensome to exhibitors or the USFWS?*

The suitability of birds for long-term captivity is an important issue, but seems to fall outside the purview of the Migratory Bird Treaty Act. While ensuring that the permits issued under the MBTA contribute to the conservation of the species is a goal of the permit program, determinations of suitability for captivity would require extensive understanding of the normal ecology, physiology, biology, and behavior for each species being held.

Question 5. *Should there be restrictions on the compensation that can be received for exhibition, and if so, under what circumstances and conditions?*

It seems reasonable for exhibitors of migratory birds and eagles to receive some compensation for their efforts, such as through entrance fees, and it seems unnecessary for the USFWS to place conditions on these fees.

Question 6. *Should the breeding of exhibition birds be authorized, and if so, under what circumstances and conditions?*

The Ornithological Council supports the continuation of the current prohibition against the breeding of exhibition birds.

Question 7. *Exhibition activities are occasionally conducted by those who hold migratory birds under other permit types, such as falconry, raptor propagation, and others. For circumstances*

where exhibition is not the primary use of the migratory bird, the USFWS is considering the following three approaches. (1) For State-licensed falconers, a regulatory authorization where no permit is required for State-licensed falconers who receive less than a set amount in compensation per calendar year for exhibition programs (e.g., \$1,000). (2) For falconry schools, if a falconry school holds an AWA license, then an MBTA exhibition permit is not required. If the falconry school does not hold an AWA license, an MBTA exhibition permit is required. (3) For other MBTA permittees who conduct exhibition activities, but exhibition is not the primary use of the migratory bird, the following would apply: If the permittee holds an AWA license for exhibition, then an MBTA exhibition permit is not required. If the permittee does not qualify for an AWA license, exhibition authorization can be added to the existing MBTA permit (e.g., raptor propagation, waterfowl sale and disposal, etc.). Do the three approaches described above make sense for those unique use cases? Are there other unique cases we have not considered?

The Ornithological Council does not have feedback on this question.


Question 8. *Should the USFWS change practice and allow marked, individual migratory birds to be held under multiple permits? (i.e., a banded raptor could be authorized for falconry, raptor propagation, and exhibition)*

Without further context regarding why this change would be considered, it is not clear that allowing one bird to be held under multiple permits would be beneficial to the permittee or to the USFWS. On its face, it seems that this could create confusion, duplication of effort for both the permittee and the USFWS, and possibly lead to contradictory permit conditions and regulatory requirements. If this change receives further consideration, the USFWS should provide additional context and information about why it is being considered, how often it expects this situation to arise, and possible drawbacks of the proposal.

The Ornithological Council has been following this issue for several years and appreciates the efforts of the USFWS in developing this proposal for the authorization of exhibition of migratory birds and eagles. We look forward to working with you as the rule-making process continues.

Thank you for considering the views of ornithologists.

Sincerely,



Laura M. Bies
Executive Director