



**July 31, 2023**

**Comments Regarding Proposed Rule Regarding Regulatory Authorizations for Migratory Bird and Eagle Possession by the General Public, Educators, and Government Agencies**

**Department of the Interior  
U.S. Fish and Wildlife Service**

Submitted by:

**Energy and Wildlife Action Coalition**

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To the attention of:

Public Comments Processing  
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The Energy and Wildlife Action Coalition (“EWAC”)<sup>1</sup> submits these comments in response to the United States Fish and Wildlife Service (“USFWS”) proposed rule revising regulatory authorizations for migratory bird and eagle possession (“Proposed Rule”).<sup>2</sup>

EWAC is pleased to support the Proposed Rule. We anticipate that it will provide useful clarifications and reduce administrative burdens on EWAC members and on USFWS personnel.

In particular, EWAC supports authorizing actions by rule in place of individual or general permits. As USFWS observes, regulatory authorizations are appropriate for situations with straightforward eligibility criteria that do not require case-by-case customization of conditions.<sup>3</sup> EWAC also agrees with the USFWS assessment that “[r]egulatory authorizations can include conditions and recordkeeping, reporting, and inspection requirements but otherwise have a relatively low administrative burden and require little to no interaction with the Service.”<sup>4</sup> The same policy considerations that favor use of regulatory authorizations in this rule also would support their use for a future MBTA incidental take authorization rule.

The preamble’s discussion of the proposed salvage authorization differentiates between one-time salvage situations and those who salvage birds “with some regularity.”<sup>5</sup> This appears to be simply an illustration, since the proposed language of the rule<sup>6</sup> does not draw this distinction. However, the term “with some regularity” is ambiguous. EWAC would appreciate clarification in the preamble to the final rule that the salvage authorization applies to those who routinely salvage the remains of migratory birds in the course of their business enterprise.

EWAC supports the proposed regulatory authorization allowing any person to salvage (i.e., pick up and donate or destroy) migratory bird specimens, meaning whole birds found dead, parts, and feathers, as well as inactive nests and nonviable eggs.<sup>7</sup> EWAC also strongly supports the inclusion of the salvage of bald eagles and golden eagles, with direction regarding disposition of the eagle remains, in this regulatory authorization.<sup>8</sup> The alternatives for disposition of eagle remains are consistent with existing practice.

EWAC understands that, should its members seek authorization for relocating or removing active nests, they still will be required to obtain a special purpose permit for that activity.

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<sup>1</sup> EWAC is a national coalition formed in 2014 whose members consist of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States, and related trade associations. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner.

<sup>2</sup> 88 Fed. Reg. 35809 (June 1, 2023) (“Proposed Rule”).

<sup>3</sup> 88 Fed. Reg. at 35810.

<sup>4</sup> *Id.*

<sup>5</sup> 88 Fed. Reg. at 35810.

<sup>6</sup> Proposed 50 C.F.R. § 21.6.

<sup>7</sup> Proposed 50 C.F.R. § 21.16.

<sup>8</sup> *Id.*

We do request clarification that the term “any person” in the proposed rule includes any company or other entity and not just individuals. The apparent intent of the proposed rule is that if an employee, in the course of their work, collects and donates or disposes of the remains of a migratory bird in accordance with the terms of the regulatory authorization, then their actions would be authorized both individually and as to the company for whom they work. Confirmation that this is the agency’s intent would be appreciated.

EWAC also supports the proposed rule change that would allow USFWS to authorize the use of unmanned aircraft systems (drones) for surveys and observations that may potentially harass migratory birds.<sup>9</sup> The preamble for the proposed rule explains that the Airborne Hunting Act<sup>10</sup> prohibits the use of an aircraft to harass any wildlife, including migratory birds, and drones are classified as aircraft for purposes of that Act.<sup>11</sup> It also explains that under current regulations, harassment of migratory birds under the Airborne Hunting Act can be authorized only under depredation permits.<sup>12</sup> The proposed rule would remove that limitation and allow harassment of migratory birds via aircraft, including drones, to be authorized under any form of migratory bird or eagle permit.<sup>13</sup>

EWAC encourages USFWS to link this revision to the Airborne Hunting Act regulations to a new regulatory authorization for the use of drones in nest surveys. As proposed, an eagle or migratory bird permit would be needed to authorize use of a drone. However, a drone survey could be used to determine whether a migratory bird or eagle permit is warranted. Obtaining a special permit for this limited purpose seems like an unnecessary administrative burden, for both USFWS and the applicant.

In conclusion, the proposed regulatory authorization for salvage of migratory bird remains, including bald and golden eagles, offers a common sense approach that will reduce administrative burdens while providing helpful direction regarding the proper management of those remains. The proposed change to the Airborne Hunting Act regulations to facilitate use of drones is warranted, and would be improved by adding a regulatory authorization to the migratory bird rules allowing the use of drones in nest surveys.

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<sup>9</sup> Proposed 50 C.F.R. § 19.21.

<sup>10</sup> 16 U.S.C. § 742j.

<sup>11</sup> 88 Fed. Reg. at 35813.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*