The Honorable Ryan Zinke
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

June 19, 2017

Subject: Reduction of Federal Falconry Related Regulations

Dear Secretary Zinke:

The American Falconry Conservancy (AFC) requests that the suggestions outlined below be submitted to the Department of Interior Regulatory Reform Task Force and that the task force review the regulations for repeal or modification.

AFC is a nonprofit organization dedicated to the art and sport of hunting with trained raptors, known as falconry. We represent a group of sportsmen whose goal is to protect and preserve falconry in the U.S. for future generations and to protect falconers' rights as legitimate sportsmen and conservationists.

Now that we have a President sympathetic to the reduction of regulations to a constitutionally reasonable level, we ask that you consider removing U.S. Fish & Wildlife Service (FWS) oversight of the art and sport of falconry and raptor *use* (in contrast to *harvest*). While the Migratory Bird Treaty Act (MBTA) authorizes the monitoring of migratory bird populations and the management of their harvest, it does not authorize FWS to manage an art and sport or birds that become the personal property of one who legally harvests them.

Starting in 1972, falconry was brought under FWS oversight at the request of a few falconers who hoped to avoid dealing with 50 different States with 50 different sets of falconry regulations. At that time, there was no consensus amongst falconers or wildlife managers regarding the need to establish falconry regulations, since raptors were considered by many as vermin prior to their inclusion under the MBTA. However, when the Federal falconry regulations were established, a majority of States adopted them as they were written, or added more regulations as they saw fit.

To help understand the reason for regulations over the use of raptors, the following explains the dynamics: There was a faction of falconers who worked with FWS in 1972 to write raptor regulations. However, they requested regulatory provisions that were offensive to the U.S. Constitution and to our system of free government in general. This faction still continues to lobby FWS for restrictive regulations over the use of raptors by citizens due to their elitist views that falconry is an art and sport for people of "superior intelligence," or for those who comply with these "superiors'" subjective views.

This led to the FWS taking the position that we are not allowed to do anything with our raptors (our private property) without FWS permission – that is, "Nothing is allowable unless we [FWS] expressly allow it in regulation." This asserts that citizens' rights are mere privileges and that government dictates what privileges citizens are allowed. This is in direct opposition to the intent of our Constitution and Bill of Rights.

Later, on Oct. 8, 2008, FWS published new falconry regulations that eliminated the need for Federal permitting.[1] However, their regulatory provisions required that States continue with the same control mechanisms that had been established in 1972, albeit with various alterations. It is AFC's position that Federal requirements over the use – as opposed to wild harvest – of raptors should be eliminated. The reason for this? Now that States have adopted regulatory provisions for the protection of wild raptors, Federal involvement in raptor use by citizens is redundant and costly.

AFC had previously asked FWS for redress of our grievances regarding unauthorized regulatory provisions, but the previous Administration did not respond to our written requests.

Below, is a list of activities that FWS currently regulates that we believe should be left to the States, the elimination of which would further reduce unnecessary Federal regulations, thereby contributing to the reduction of Federal expenditures.

1. The most offensive regulatory provision allows FWS to conduct unannounced, warrantless administrative searches (called inspections) to ensure birds are being treated humanely – which the MBTA certainly does not provide for and which violates Fourth Amendment protections. However, FWS bowed to the wishes of the elitist faction of falconers and therefore included inspection provisions in federal falconry regulations.
2. A Migratory Bird Acquisition and Disposition Report (Form 3-186A) must be completed and submitted to FWS for any wild take or any transfer of raptors from one citizen to another. This serves no purpose – especially since falconers have no impact on raptor populations[2] – and adds to FWS expenses. Please note that the federal electronic reporting program, which many states adopted into state regulations, has been out of service for an extended period of time.
3. Even though hybrid falcons were excluded from FWS authority in the Migratory Bird Treaty Reform Act (MBTRA) of 2004, on Nov. 1, 2013 in the Federal Register (65576), FWS decided to include hybrid raptors under the MBTA despite falconers' challenges to this perceived authority.[3]
4. The peregrine falcon had previously been listed as an endangered species. It was fully recovered and federally delisted by the 1990s and yet federal harvest numbers for this species are still managed as though it is a threatened species. This too adds to FWS management costs without any benefit to the species or society. We ask that it be managed like all other raptors and that a harvest of 5% be allowed as FWS's *Final Environmental Assessment and Management Plan:*

[1] 50 CFR Parts 21 and 22, Migratory Bird Permits; Changes in the Regulations Governing Falconry; Final Rule.

[2] See *Effects of Falconry Harvest on Wild Raptor Populations in the United States*, by Millsap and Allen, FWS, Feb. 22, 2006.

[3] In contrast to this position, on March 15, 2005 in the Federal Register, FWS provides: "The MBTRA amends the MBTA by stating that it applies only to migratory bird species that are native to the United States or its territories, and that a native migratory bird is one that is present as a result of natural biological or ecological processes. This notice identifies those species that are not protected by the MBTA, even though they belong to biological families referred to in treaties that the MBTA implements, as their presence in the United States and its territories are solely the result of intentional or unintentional human-assisted introductions." *Final List of Bird Species to Which the Migratory Bird Treaty Act Does Not Apply*, https://www.fws.gov/policy/library/2005/05-5127.html

Take of Migrant Peregrine Falcons from the Wild for Use in Falconry…, (August 2008, page 41) recommends.[4]

5. American falconers were once afforded the opportunity to acquire Golden Eagles in livestock depredation situations, as provided by a Congressional amendment to the Eagle Act. Implementing an arbitrary internal policy, FWS without any justification, began ignoring Congress' intent regarding the take of depredating eagles on sheep ranches by falconers for falconry purposes. The Golden Eagle is neither endangered nor threatened and never has been in North America. We ask that falconers be allowed to access this resource once again.

Some other offensive regulatory provisions are:

1. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) – Under the previous Administration's policies, FWS had to interpret CITES differently than other nations. Not only does this make American businesses unable to compete with foreign raptor breeders, but such interpretations choke off the international trade in domestic bred raptors, thereby increasing the pressure on wild taken raptors that are threatened with extinction in other nations.
2. The Wild Bird Conservation Act (WBCA) – Raptors were included under this Act due to the request by falconry elitists. This was done covertly by these falconers and we request that raptors be excluded from WBCA authority.
3. Bald & Golden Eagle Protection Act: Repeal this Act and bring eagles under the authority of the MBTA.
4. Raptor propagation regulations[5]: Federal oversight is unnecessary. We request that this be left to the States to regulate.
5. Raptor abatement regulations[6]: Federal oversight is unnecessary. We request that this be left to the States to regulate.
6. Raptor education regulations[7]: Federal oversight is unnecessary. We request that this be left to the States to regulate.

We thank you for considering our request for help concerning these issues. We look forward to hearing back from you.

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[4] See http://www.tnwatchablewildlife.org/files/Final%20EA%203%20December%202008.pdf

[5] See 50 CFR Part 21.30 Raptor propagation permits.

[6] "'Falconry based bird abatement' is the use of trained falcons and hawks to intimidate and scare off nuisance birds which cause loss of revenue for crop growers, health hazards in landfills, and safety concerns in airfields." http://www.falconforce.com FWS's definition is as follows: "'Abatement' means the use of a raptor to mitigate depredation and nuisance problems from other birds for the protection of human health and safety and domestic and wild animals." http://www.in.gov/legislative/iac/20110803-IR-312100667FRA.xml.pdf

[7] 50 CFR Part 21.27

Sincerely,

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