James H. Maynard (N.J. Bar No. 040801992)
Maynard Law Office, LLC
65 Madison Avenue, Suite 540
Morristown, New Jersey 07960
Phone: 973-540-0054
jhm@maynardlawoffice.com
LEAD COUNSEL
Pro Hac Vice

René P. Voss (CA Bar No. 255758)
Natural Resources Law
15 Alderney Road
San Anselmo, CA 94960
Phone: (415) 446-9027
Email: renepvoss@gmail.com
LOCAL COUNSEL

Attorneys for Amicus Curiae

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

PETER STAVRIANOUDAKIS, et al.,
Plaintiffs,

v.

UNITED STATES FISH AND WILDLIFE SERVICE, et al.,

Defendants.

No. 1:18-cv-01505-LJO-BAM

AMICUS BRIEF OF THE NORTH AMERICAN FALCONERS ASSOCIATION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

OTHER AUTHORITIES

REGULATIONS

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The North American Falconers Association (hereinafter, referred to as "NAFA") is a non-profit organization established to "encourage the proper practice of the sport of falconry and the wise use and conservation of birds of prey."[1] NAFA is the largest membership falconry organization in the world and represents the interests of the North American falconry community. *Id*. The intrinsic value of wildlife and conservation-ethics constitutes a core guiding principle of both NAFA and the falconry community.

As members of NAFA were instrumental in the creation of the federal and state regulations at issue in this case, NAFA is uniquely positioned to provide definitional clarity regarding "falconry," as well as key historical and contextual information related to the development of both falconry and falconry regulations in the United States. Specifically, this brief will address the appropriateness of regulations governing falconry inspections, the extent to which raptors held under a falconry permit may be used in commercial and other activities, and the derivation of authority to regulate falconry, including inspections. To avoid redundancy, NAFA will not include discussion of subject matter addressed by the State Defendants' brief at pp. 10-18 and pp. 19-20, and the Federal Defendants' Brief at pp. 20-21. NAFA concurs with the legal argument and analyses set forth therein, and adopts and incorporates by reference those portions of the State and Federal Defendants' briefing.[2]

NAFA provides references to articles and other documents in its brief, including via hyperlinks, and asks the Court to take judicial notice of this publicly-available evidence. See

---

[1] North American Falconers Association, About the North American Falconers Association, https://wwww.n-a-f-a.com/AboutNAFA (last visited March 21, 2019).

[2] NAFA concurs with the position and articulation of the State Defendants' brief regarding the constitutionality of regulations governing inspections in this matter; therefore, NAFA adopts and incorporates by reference those portions of the State Defendants' briefing, beginning on ¶1, on p. 10 to ¶1 on p. 18. NAFA concurs with the position and articulation of the State Defendants' brief in response to Plaintiffs' Free Speech claims; therefore, NAFA adopts and incorporates by reference that portion of the State Defendants' briefing, beginning on ¶2 on p. 19 to ¶3 on p. 20. NAFA concurs with the position and articulation of the Federal Defendants' brief related to Plaintiffs' claim that the federal regulations exceed the authority of the MBTA under the APA; therefore, NAFA adopts and incorporates by reference that portion of the Federal Defendants' briefing, beginning on ¶4 on p. 20 to ¶2 on p. 21.

Fed. R. Evid. 201(b) (court may take judicial notice of facts that are not subject to reasonable dispute because they "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned").

I. INTRODUCTION

A. Definition and Historical Origins Of "Falconry"

Falconry is the "taking [of] wild quarry in its natural state with a trained raptor."[3] Raptors are birds of prey, which includes (among others) eagles, hawks, falcons, and the Great Horned Owl.[4] Federal regulations more formally define raptors permitted for use in falconry as "live migratory bird[s] of the Order *Falconiformes* or the Order *Strigiformes*, other than a bald eagle (*Haliaceetus leucocephalus*) or a golden eagle (*Aquila chrysaetos*)." *Id.*, citing 50 *C.F.R.* § 21.3.

The practice of falconry is ancient and dates back more than 3,000 years, with evidence pointing to its origins in Japan, the Middle East, and Central Asia. *Id.*, at 352. Falconry has been practiced by a multitude of cultures, and passed down over the course of many generations. Falconry is as much of an art form as it is an activity, and in 2016, the United Nations Educational, Scientific and Cultural Organization, (hereinafter "UNESCO") officially designated it as an "intangible cultural heritage."[5] As a **"Living Human Heritage,"** the United Nations documented falconry's long-held role in culture and conservation.

As a "cultural heritage," UNESCO states that falconry is "a practice, a craft, and a way of life that showcases diversity in its practice across countries…and represents cultural diversity [and] demonstrate[s] the extraordinary creativity of humanity." *Id.,* at 9. "The modern practice of falconry aims at safeguarding not only falcons [i.e., raptors], quarry, and habitats but also the practice itself as a living cultural tradition." *Id.,* at 6.

---

[3] North American Falconers Association, *What is Falconry?*, https://www.n-a-f-a.com/page/What_is_Falconry (last visited March 12, 2019).

[4] Robert F. Kennedy Jr., *Falconry: Legal Ownership and Sale of Captive-Bred Raptors*, 4 PACE ENVTL. L. REV. 349, 350 (1987) (available for download at: https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1222&context=pelr).

[5] UNESCO, Intangible Cultural Heritage, 11.33 Falconry- A living heritage, Nomination Form (File 00732) (Dec. 2012) (https://ich.unesco.org/doc/download.php?versionID=17016) (available for download at: https://ich.unesco.org/en/11-representative-list-00520)

B. Raptor-Related Activities That Are Not Properly Considered "Falconry".

Falconry places great emphasis on the welfare of the birds it employs, and values the deep relationship that develops between raptor and falconer. The falconry community is comprised of a broad array of individuals and groups, including: citizen scientists, conservationists, biologists, villages and kinship groups, tribes, families and individuals, falconry clubs, and falconry heritage trusts and institutions. *Id.* at 2. Though the community is diverse, with local traditions and culture contributing to the distinct ways in which falconry is practiced, the well-being of raptor populations is fundamental to the continued practice of falconry, and remains at the heart of the falconry community. As a result of the falconry community's priority on the welfare and safety of the birds in their possession, many falconers are involved in the health management and rehabilitation of injured birds of prey.[6] Falconers possess expertise in preventative care and the physical conditioning of raptors, as well as skills in advanced husbandry and raptor behavior.

While many raptor-related activities involve both raptors and the use of falconry techniques, it is important to distinguish those activities from the true activity of "falconry." For example, pursuant to the United States Fish and Wildlife Service, "abatement" is clearly distinguished from falconry. Indeed, the forms for obtaining an abatement permit explicitly state that "Falconry is the art of training and using a raptor to hunt quarry for sport," whereas "Abatement is the act of using a raptor to pursue (and in some cases to take) depredating birds or other wildlife to mitigate damage."[7] The federal abatement permit also indicates that the permit holder may "...receive payment for providing abatement services," (*id.*), further demonstrating how the commercial activity of abatement is distinct from "falconry." Additionally, falconry "does not include the keeping of birds of prey as pets or prestige items, for captive-breeding

---

[6] UNESCO, Intangible Cultural Heritage, 6.45 Falconry- A living human heritage, Nomination Form (File 00442) (Nov. 2010) https://ich.unesco.org/doc/download.php?versionID=07511 (available for download at: https://ich.unesco.org/en/6-representative-list-00335)

[7] U.S. Fish & Wildlife Service, *Frequently Asked Questions About a Federal Special Purpose – Abatement Permit*, p. 1 (Rev 6/2018), (available for download at: https://www.fws.gov/migratorybirds/pdf/policies-and-regulations/3-200-79FAQ.pdf)

purposes, for rehabilitation or education purposes, for shows, renaissance fairs and the like, or for purely scientific purposes."[8]

II. THE INTERESTS OF "FALCONRY" VERSUS THE INTERESTS OF OTHER RAPTOR-RELATED ACTIVITIES

A. The Primary Interests of the North American Falconry Community

The history of North American falconry is deeply intertwined with conservation leadership and the advocacy of fair regulations to protect raptor populations and their environment. A large group of notable falconers who were also conservationists and/or biologists was instrumental in advancing legal protections for the Peregrine Falcon under the **Endangered Species Act**, 16 U.S.C.A. §§1531-1543, the banning of DDT under the authority of the Clean Water Act, 33 U.S.C.A., §§1311-1330, the inclusion of raptors under the authority of the **Migratory Bird Treaty Act**, 16 U.S.C.A. §§701-719, the establishment of the Raptor Research Foundation and the recovery of Peregrine Falcon populations, among other achievements.[9] These early falconry leaders advocated for the protection of wildlife in the face of economic interests that threatened their existence.

The North American Falconers Association was integrally involved in the formulation of federal falconry regulation –assisting in producing the first draft of the federal regulations, which were adopted in 1976 and revised twice thereafter (first in 1989 and then again in 2008).[10] Indeed, several of the key regulatory mechanisms were volunteered by NAFA; including, the requirement of a qualifying test, facility inspections, a sponsor/apprentice mentoring system, a mandatory two-year apprenticeship, and limits on the raptor species available to apprentices. NAFA also provided suggestions for the contents of the qualifying tests and facility guidelines. *Id.*

---

[8] North American Falconers Association, *Falconry Ethics*: NAFA Policy: 09-004, https://www.n-a-f-a.com/page/Ethics (last visited March 15, 2019).

[9] *See,* n. 4, above, at pp. 361-362

[10] *See*, S.K. Carnie & R.R. Rogers, *A Quarter Century of American Falconry Regulation: An Example of Management/User Cooperation,* attached hereto as Exhibit 1.

Shortly after the 1976 federal falconry rules were adopted, half of the states in the country adopted falconry as a legal hunting method. Currently, all forty-nine states in the United States (with the exception of Hawaii) recognize falconry as a legitimate hunting activity and have set forth legal regulations for the possession of protected raptors for use in falconry. *See,* 50 *C.F.R*. § 21.29(b)(9).

III. THE NORTH AMERICAN MODEL OF WILDLIFE CONSERVATION UNDERLIES CURRENT UNITED STATES FALCONRY REGULATION

The "North American Model of Wildlife Conservation" is "a distillation of regulations that govern wildlife management in the United States and Canada."[11] The Model comprises seven main tenets, which are based on statutory and case law, as well as administrative rules and regulations. The seven tenets of the *North American Model of Wildlife Conservation* (*id.*), include the following:

1) Wildlife Resources Are a Public Trust
2) Markets for Wildlife Are Eliminated
3) Allocation of Wildlife Is by Law
4) Wildlife Can Be Killed Only for a Legitimate Purpose
5) Wildlife Is Considered an International Resource
6) Science Is the Proper Tool to Discharge Wildlife Policy
7) Democracy of Hunting Is Standard

At its core, the Model is "based on recognition that the privatization of wildlife and related open commerce fuels exploitation and reduces public access. Privatization and commercialization of wildlife places economic value on wildlife and further incentivizes

[11] J. F. Organ, et al. 2012. The North American Model of Wildlife Conservation. 12 THE WILDLIFE SOCIETY TECHNICAL REVIEW 04, 2 (2012) (available for download at: https://wildlife.org/wp-content/uploads/2014/05/North-American-model-of-Wildlife-Conservation.pdf).

privatization and unregulated commerce. These market forces often lead to an increase in illegal take."[12]

The North American Wildlife Model provides several strategic protections for falconry. The Model provides a legal buffer from future public opposition to the practice of falconry by aligning the falconry community with the conservation community, and with the state and federal regulatory agencies that are legally mandated to conserve wildlife for present and future generations. The Model also provides the falconry community with the right to take raptors from the wild and to possess them for the purpose of falconry, as well as the right to pursue wild quarry with trained raptors. As a result of these key protections, the Model is the foundation upon which the falconry community has achieved a legally permitted status, equitable access to wild raptors and the legal ability to pursue wild quarry in its natural habitat with a trained raptor —the very definition of falconry.

IV. NAFA'S RESPONSE TO THE LEGAL ISSUES RAISED BY PLAINTIFFS

A. Plaintiffs' Fourth Amendment Arguments

It is common knowledge that wildlife populations are sensitive to disruption of their environment, and that human interaction with wildlife has the potential to impact the well-being of the individual specimen, or even the sustainability of the species. Therefore, the take and possession of wildlife is a rational basis to trigger elevated levels of regulation. Because falconry involves wildlife (both raptors and quarry), that are subject to the Public Trust Doctrine, it is governed by many state and federal regulations –indeed, it is difficult to conceive of a more "pervasively regulated" activity. *See* ECF No. 25-1, pp. 10-18.

Governmental oversight plays an important role in ensuring compliance with wildlife laws and regulations, and therefore measures such as compliance inspections are foreseeable and

[12] G.R. Batcheller, et al., *The Public Trust Doctrine: Implications for Wildlife Management and Conservation in the United States and Canada.* 10 THE WILDLIFE SOCIETY TECHNICAL REVIEW 01 (2010) (available for download at: https://wildlife.org/wp-content/uploads/2014/05/ptd_10-1.pdf)

normal in highly-regulated activities like falconry –as well as other raptor-related activities. NAFA accepts the need for measures such as compliance inspections to ensure adherence to falconry regulations. However, such inspections must be reasonable in scope and implementation, conducted in a courteous, respectful manner and confined to a legitimate regulatory need. "[F]alconers support regulations designed to protect individual raptors possessed, at the expense of the sport and even of the falconers, if necessary. Current falconry regulations, as championed by the falconry community, ensure that only individuals who demonstrate the knowledge and possess the equipment and motivation to possess raptors safety are allowed to do so."[13]

B. Plaintiffs' Free Speech Claims

NAFA supports the current legal framework which allows only duly licensed persons to possess raptors, and provides separate permits for different raptor-related activities. The federal falconry regulations, adopted in 2008 and codified at 50 *C.F.R.* § 21.29(f)(9), set forth specific provisions regarding the use of raptors held pursuant to a "falconry" permit in "other educational uses." NAFA's position is that raptors held pursuant to a "falconry" permit must be used exclusively for falconry, with the limited exceptions provided for in 50 *C.F.R.* § 21.29(f)(9). However, there is no exception to the requirement that such "other educational uses" must be non-commercial.[14] NAFA strongly opposes the use of raptors possessed under a "falconry" permit in a manner that is compensated for profit.

CONCLUSION

NAFA believes that the contextual and definitional information contained herein provides a critical "subtext" to the adjudication of the claims raised by Plaintiffs. It is intended that the information and argument of this brief should be viewed in conjunction with the components of

[13] *See,* n. 10 above, at p. 143.

[14] Charitable and educational purposes may be permitted and reimbursement for costs permissible.

the State and Federal Defendants' briefing, which has been adopted and incorporated herein by reference.

First, NAFA believes that the definition of "falconry" is key to determining the primary legal issues raised by Plaintiffs, and the requested injunctive relief. The appropriateness of regulations governing falconry inspections, as well as the extent to which raptors held under a falconry permit may be used in commercial and other activities, are questions that may only be resolved based on the law and regulations that are applied to "falconry." By definition, falconry does not include the keeping of birds of prey as pets or prestige items, for captive-breeding purposes, for rehabilitation or education purposes, for shows, renaissance fairs and the like, or for purely scientific purposes. Nor does the definition of falconry permit the use of raptors for commercial purposes.

Regarding the free speech claims made by Plaintiffs, such claims are intrinsically mooted by the fact that their assertions are based on activities (and interests) that are not consistent with the possession of their raptors pursuant to a "falconry" permit, which prohibits the commercial use of "falconry" raptors. Similarly, any claims made by Plaintiffs regarding the appropriateness of regulations governing falconry inspections must be determined based on the context of possession and use of raptors for "falconry" – not raptors possessed and used for abatement[15] or any other raptor-related use that is not "falconry."

The claims made by Plaintiffs must be evaluated and adjudicated in light of the overarching legal and historical context, which places modern American falconry within the North American Model of Wildlife Conservation, and also recognizes that the current falconry regulations in the United States are the product of a collaborative process between the falconry community and the regulatory agencies. The appropriateness of regulations governing falconry inspections and the limitations on the use of raptors held pursuant to a falconry permit has been, as a general proposition, endorsed by the falconry community.

[15] Some raptors held under a falconry permit may be used for abatement by the abatement permit holder.

Modifications of specific provisions of falconry regulation may be desired, or subject to ongoing negotiation between the falconry community and the regulatory agencies, but such continued evolution of falconry regulation must be based on the fundamental principles that have established the legal existence of falconry in the United States, the collaborative relationship between the falconry community and the regulatory authorities, and the ethics of falconry — which places the well-being of their birds before their own interests. For example, while NAFA is a strong supporter of private ownership rights of captive-bred falconry raptors, NAFA also believes that administrative "compliance" inspections are a reasonable and necessary component of the balance envisioned by the Public Trust Doctrine, and the right to possession and private ownership of wildlife.

NAFA encourages the Court to examine and consider the interests of the larger falconry community because the issues raised by Plaintiffs in this matter will likely affect many other falconers, both in and beyond California. For example, the relief requested by Plaintiffs' Preliminary Injunction Motion has the potential to lead to an immediate and complete termination of the right to practice falconry in the State of California, because state falconry regulations must be at least as restrictive as the federal falconry regulations. See 50 *C.F.R.* § 21.29(b)(1)(ii). The preliminary injunctive relief requested by Plaintiffs, if granted by the Court, would result in a violation of that regulatory requirement, and therefore could lead to the suspension of all California falconry permits.

In sum, NAFA believes that the regulation of falconry, and other raptor-related activities, must prioritize the welfare of the wildlife that is at the core of these activities and which forms the basis of the legal analysis.

Date: March 22, 2019

Respectfully submitted,

/s/ *James H. Maynard*
James H. Maynard, *Pro Hac Vice*
René Voss, *Local Counsel*

Attorneys for Amicus Curiae

James H. Maynard (N.J. Bar No. 040801992)
Maynard Law Office, LLC
65 Madison Avenue, Suite 540
Morristown, New Jersey 07960
Phone: 973-540-0054
jhm@maynardlawoffice.com
LEAD COUNSEL
Pro Hac Vice

René P. Voss (CA Bar No. 255758)
Natural Resources Law
15 Alderney Road
San Anselmo, CA 94960
Phone: (415) 446-9027
Email: renepvoss@gmail.com
LOCAL COUNSEL

Attorneys for Proposed Amicus Curiae

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

PETER STAVRIANOUDAKIS, et al.,
Plaintiffs,

v.

UNITED STATES FISH AND WILDLIFE SERVICE, et al.,

Defendants.

No. 1:18-cv-01505-LJO-BAM

EXHIBIT SUBMITTED WITH AMICUS BRIEF OF THE NORTH AMERICAN FALCONERS ASSOCIATION

EXHIBIT 1

S.K. Carnie & R.R. Rogers, *A Quarter Century of American Falconry Regulation: An Example of Management/User Cooperation,*
In *Transactions of the Sixty-first North American Wildlife and Natural Resources Conference: conference theme: Facing realities in resource management; March 22-27, 1996 Adams Mark Tulsa at Williams Center, Tulsa, Oklahoma*
(K. G. Wadsworth and R. E. McCabe, eds,, 1996).

A Quarter Century of American Falconry Regulation: An Example of Management/User Cooperation

S. Kent Carnie
Archives of American Falconry: The Peregrine Fund
Boise, Idaho

Ralph R. Rogers
North American Falconers Association
Winifred, Montana

During the 1995 North American Wildlife and Natural Resources Conference, Michigan State University Professor R. B. Peyton presented an in-depth examination of the American falconry community (Peyton 1995 et al.). He concluded an oral presentation with comments on the development of specialist groups of hunters and fishermen within the recreational community. Peyton indicated that such groups have developed their own ethics and strong attitudes concerning the stewardship of the natural resources with which they are associated. According to Peyton, specialist groups not only accept many forms of regulation, but often lobby for more restrictive regulation of their sport and associated resources. He stated these groups can be powerful allies for management agencies. Conversely, when alienated, they can prove demanding, competitive or even obstructive. Peyton continued that management agencies are beginning to realize the significance of this specialization process and the usefulness of cooperating with groups that possess unique skills and information. He further indicated that falconers exhibit many of the characteristics of such a highly specialized recreational group and recommended that state and federal agencies explore their relationships with American falconers as a small but unique group of such specialists.

We agree that falconers are a specialized group of sportsmen adhering to the Peyton concept. There has been a constructive and cooperative relationship between wildlife managers and falconers throughout the last 25 years. We feel this relationship can serve as a model for both managers and sportsmen.

This paper provides a chronology which explores significant events in the history of this relationship including: a description of how falconers were allowed to provide input to management agencies—enabling them to develop insight into the falconers' unique needs; how wildlife managers judged falconers' proposals based on biological merit; and how this cooperative relationship resulted in increased recreational opportunities, decreased administrative burden and successfully "partnershipped" conservation efforts, including the restoration of an endangered species.

Falconry: Definition and Description

In order to understand the sport and the unique regulatory burdens that allow a specialist group to undertake such activities, several key points about falconry must be understood: 1) we define falconry as the taking of wild quarry in its natural state and habitat with trained raptors; 2) as one of man's oldest field sports, falconry has great historical credibility. From circa 2000 BC until the expanded use of firearms in the seventeenth century, falconry was widely practiced and literally was "the sport of kings." In North America, falconry can be traced to a hawk caught at the direction of Montezuma for training by one of Cortez's captains (Aguilar Rivera 1995). However, the majority of the sport's practice on this continent took place after 1920 and was virtually unregu-

lated until the 1950s; 3) among hunting sports, falconry almost alone utilizes one form of wildlife (raptorial birds) to pursue others (traditional game or unprotected species). In doing so, falconry necessitates unique regulations allowing take and possession of otherwise protected wildlife (raptors); 4) falconry has been called "a special form of bird-watching" (Cade 1982). It is among the least efficient means of hunting and its effect on game species is insignificant. The attraction to its followers lies in the spectacle of the "chase" rather than the harvesting of animals. In this respect, it is much like flyfishing. Similarly, as in flyfishing, knowledge of the quarry and the manufacturing of one's own equipment are significant components of its enjoyment and success. Because it is so ineffective, falconers seek and are granted additional time in the field for their activities; 5) because of the massive time demands and even life-style changes necessary to train and care for a raptor successfully, falconry has been a self-limiting, slow-growth hunting activity. Regulations to limit numbers of participants, such as license quotas or drawings, remain unnecessary; and 6) of particular significance, regulations that falconers have proposed to management agencies reflect a strongly held hierarchy of ethical concerns including: first, the well-being of the individual raptors possessed; second, the sport; and, only last, the falconer. In other words, falconers support regulations designed to protect individual raptors possessed at the expense of the sport and even of the falconers, if necessary. Current falconry regulations, as championed by the falconry community, ensure that only individuals who demonstrate the knowledge and possess the equipment and motivation to possess raptors safely are allowed to do so.

A Chronology of Falconry Regulations

Despite falconry's 4,000-year history, the intensive regulatory interaction of falconers with U.S. wildlife agencies dates back only a quarter century. Prior to that time, federal involvement with raptors was virtually nonexistent outside the Bald Eagle Act, and there were few state falconry regulations. Those state regulations that did exist most often reflected isolated efforts of a few motivated individuals or small clubs. By 1971, there were only 2,200 licensed falconers in the U.S. Probably more than half of those individuals did not actively practice the sport as we have defined it. In many states, falconry was illegal, not because it was prohibited by regulation, but because it was not specifically allowed as a means to take game—it simply never had been considered. Of the seventeen states where the sport was not illegal, most had accepted it on faith since there was little information available to wildlife administrators on its practice (U.S. Fish and Wildlife Service [USFWS] 1976a). Based on a similar lack of information and experience, opposition to the sport was widespread among private conservation organizations (Graham 1992).

In that same year (1971) the senior writer appeared on behalf of the North American Falconers Association (NAFA) at a special session of the North American Wildlife and Natural Resources Conference in Portland, Oregon. The purpose for NAFA's participation was to begin a dialogue leading to consensus among falconers (users) and the various management agencies for an appropriate set of "model" regulations to uniformly govern our sport (Carnie 1971a).

That "North American" session, sponsored by the National Audubon Society, was occasioned by the precipitous decline in populations of the peregrine falcon in the preceding decade. Despite the absence of any clear evidence then as to the cause of this decline, falconers often were blamed for it. Of particular concern to falconers was the atmosphere generated by an Audubon-proposed moratorium on the take of any peregrines or gyrfalcons (telegram, Roland C. Clement, Vice-President, National Audubon Society to Directors of the Canadian Wildlife Service and selected state conservation agencies, October 1, 1968). The model regulations which NAFA proposed to the 1971 Conference were very restrictive in nature (NAFA 1971a). This early attempt by falconers to propose rules for our sport clearly reflected Peyton's concept of ethical motivation in

a specialized group and closely adhered to the falconers' hierarchy of ethical concerns for the well-being of captive raptors noted above.

As a result of that conference, the Wildlife Management Institute recommended that NAFA present its proposed regulations to the International Association of Game, Fish and Conservation Commissioners (International) meeting in Rhode Island in September of that same year (Morse 1971). The proposal NAFA then presented to the International included changes solicited from the states following our proposal at the North American (Carnie 1971b, 1971c, NAFA 1971b). The pattern of cooperation between falconers and managers developed at the North American in Portland continued during this subsequent meeting of the International. That association established a special subcommittee of wildlife administrators and falconers to develop model regulations for state administration of falconry. The subcommittee essentially endorsed the set of regulations proposed by NAFA. Cooperation between falconers and the International Association of Game, Fish and Conservation Commissioners, at the recommendation of the Wildlife Management Institute, thus, produced a model for uniform (albeit restrictive) regulation of falconry throughout the United States.

Before it was possible for the states to consider implementation of this model, however, the Migratory Bird Treaty Act was renegotiated in 1972, placing all raptorial birds, and therefore falconry, under federal jurisdiction—a move supported by the falconry community. The federal government suddenly was challenged to understand falconry's impact, both on quarry populations—with which they were familiar—and on populations of raptorial birds, with which they had little experience. This challenge was exacerbated by the ravages wrought on some raptor populations by what we now know were the metabolites of DDT.

Development of federal regulations commenced with meetings in March and May 1972. Those meetings built on what had been, originally, the International's special subcommittee, and included representatives from USFWS, state agencies, National Audubon Society and NAFA (Carnie 1972a, 1972b). The regulations which had been the final product of NAFA's International presentation were reconsidered on a national, rather than individual state, basis. The new regulators (USFWS) approached the sport within the concept of use management, appropriately controlled by adequate regulation. Among federal biologists were those with sufficient understanding of the sport to be able to keep the protestations of the protectionists in perspective. In the course of its deliberations, the USFWS produced an Environmental Assessment to examine the potential impact of the sport (USFWS 1976a). While the USFWS concluded that falconry offered no significant threats either to quarry species or to the raptors themselves, it recognized that legalization of falconry would impact wildlife administrators most. Additionally, falconers themselves were requesting regulatory activities more involved than those required for any other type of hunting.

Consistent with Peyton's model of an ethics-motivated group and our own hierarchy of needs for captive raptors, falconers proposed regulations that mandated passage of a test on falconry, a detailed inspection of facilities and equipment, and, for novices, two years of apprenticeship under a previously licensed falconer before independent license could be granted. Mindful that this proposal carried a considerable administrative burden, falconers worked with administrators to develop means by which that burden could be lessened. Where examinations were proposed, NAFA provided sample tests. Where facilities and equipment inspections were necessary, NAFA provided guidelines to help with such inspections. NAFA produced generic falconry regulations to facilitate state compliance with the intricacies of the proposed federal regulations. By working with conservation organizations and wildlife administrators, falconers were able to develop a set of regulations which insured both the protection of the sport and the raptors possessed. An additional benefit was that the rigor of the falconers' proposal aided federal regulators in assuaging some of the concerns of the protectionist community.

Federal falconry regulations were published in 1976 (USFWS 1976b) and closely resembled the proposals falconers originally proffered at the 1971 meeting of the International. Within eighteen months, 25 states had adopted falconry as a legal hunting means. With the advantage of a national agency to establish basic standards, falconers were able to achieve several subsequent regulatory goals. Included were federal regulations covering captive propagation of raptors and the exemption of certain propagated raptors from provisions of the Endangered Species Act (USFWS 1983).

While we enjoyed the benefits of single-point federal negotiations, we learned that such also had their problems. As an example, in 1972, Congress passed legislation allowing falconers to use depredating golden eagles that had been marked for destruction by federal animal control agents. Federal regulations to allow such use were not promulgated until 12 years later (USFWS 1984a). Subsequent law enforcement regional autonomy within the USFWS also further diluted that earlier "single-point" advantage.

NAFA's policy is to support local falconers with technical information, rather than becoming directly involved in state issues. Because the new federal regulations required the states to conduct the majority of the administration of the sport, the dialogue between local falconers and state agencies increased. NAFA also encouraged falconers to approach their respective state agencies to promulgate regulations dealing with some of the more unique needs of the sport or issues not federally controlled. The result has been numerous state regulations allowing extended falconry seasons, reasonable permit fees, protection from prosecution for inadvertent kills and nonresident take of raptors.

Many early state regulations were restrictive even beyond what was requested by falconers or mandated by the federal regulations. This situation was understandable, given agency inexperience with the sport and concerns for then declining raptor populations. Some of those regulations, however, reflected political rather than biological concerns or pressures from protectionists and antihunting groups. As understanding of raptor populations and falconry has improved, many states streamlined their regulations within the federal standards. Some still have not.

Another cause for the continuation of overly complex regulations has been a trend for managers—having once examined and accepted falconry—to turn administration and subsequent revision of regulations over to law enforcement personnel. The principal focus of law enforcement has, in some cases, been the regulations themselves, rather than management of the activity or resources involved. While falconers recognize enforcement as an essential tool of management, there has been an inclination in some jurisdictions for the enforcement "tail" to wag the management "dog."

Culminating in 1984, a three-year covert investigation of the falconry community by the USFWS Law Enforcement Division purported to uncover large-scale, profit-motivated illegal activities by falconers. Despite early news releases to the contrary (USFWS 1984b), this "Operation Falcon" did not produce evidence of major wrong-doing by falconers. The falconry community subsequently was exonerated by the USFWS itself. The Service went on record as "supporting falconry," indicating that, in its experience, "the overwhelming majority of falconers practice their sport in full compliance with Federal and State Regulations." It further stated that "...most falconers are conservationists who have a deep and abiding love for the migratory bird resources" (USFWS 1989).

In the long run, however, this federal law enforcement action proved to be a significant event in the relationship between falconers and the USFWS and produced significant erosion in the spirit of cooperation with federal authorities that had guided the production of regulations and administration of our sport until that date (Shor 1994). As predicted by the Peyton model for specialized groups, this highly publicized "sting" resulted in a degree of alienation in the falconry

community toward the Law Enforcement Division of the USFWS, an alienation the community perceives as mutual.

Despite that eventual Service exoneration, the USFWS Law Enforcement Division explicitly cited "Operation Falcon" as the basis for an extensive revision of falconry regulations commenced in 1985 (USFWS 1987). The regulations developed by the Law Enforcement Division in the name of the USFWS (1987) put forth changes not only to the falconry regulations but to the general permit procedures for all migratory birds. The proposed regulations increased prohibitions and penalties and essentially granted judicial authority to enforcement personnel. The Service proposed establishment of new, separate, parallel state and federal permit systems requiring a new federal permit and fee, and mandated new reporting procedures and forms. Some portions of the regulations which falconers had championed since 1971 were to be eliminated. Gone would be the testing, inspection and apprenticeship programs that were in place specifically to protect birds held in captivity.

The Law Enforcement Division proposed these regulatory changes for public comment a half-year before a second Environmental Assessment addressing the subject and undertaken by the USFWS Office of Migratory Bird Management was made public (USFWS 1988). That assessment had been prepared as a "part of the decision making process in analyzing regulatory changes" (letter, USFWS Director to International Association of Fish and Wildlife Agencies [IAFWA] President, May 21 1986). It addressed the effect of falconry, including the findings of "Operation Falcon," over the previous 12 years of federal regulation. Its findings included that falconry was a "small scale activity having little or no impact on raptor populations" and that "most raptor populations have increased from lows reached during the early 1970's." The assessment findings for proposed regulatory changes were that "the degree of regulation imposed by the federal regulations governing falconry appears to be unnecessary."

The states, with a decade of experience implementing federal regulations, already had begun to voice concerns about their unnecessary complexity and enforcement (letter, Larry R. Gale, Director, Missouri Department of Conservation to William P. Horn, Assistant Secretary of Interior, December 31, 1985). In 1986, the IAFWA formed a special subcommittee to re-examine falconry regulations. In expressing his pleasure that IAFWA would be providing the USFWS with the results of that review, the Director, USFWS wrote to its President that the IAFWA's views would "be carefully and thoroughly considered" (letter, Frank Dunkle to Gary T. Myers, May 21, 1986). Based on recommendations of its subcommittee (Brohn et al. 1986), the IAFWA "strongly encouraged" the USFWS to "simplify such [regulatory] requirements to the fullest extent consistent with appropriate protection of raptor populations" (IAFWA 1986). "The Association's recommendations and the [its] resolution were all but ignored by the Fish and Wildlife Service" (memorandum, Jack H. Berryman, Executive Vice-President, IAFWA to state governmental members, February 11, 1988).

The Law Enforcement Division (in the name of the USFWS) was proposing massive increases in regulation, the Office of Migratory Bird Management was recommending decreases in regulation and the states, through the IAFWA, were recommending simplification in regulation. The falconry community was caught squarely in the middle.

While this series of events decreased cooperation between the federal Law Enforcement Division and falconers, the relationship between the states and falconers had grown as a result of 10 years of interaction during the implementation phase of the federal regulations. The states, the IAFWA and falconers collectively succeeded in blunting some of the more onerous aspects of the proposed federal regulations (USFWS 1989). It is ironic that the above-cited USFWS support for falconers and falconry was so explicitly stated in the preface to regulations originally intended to "crack down" on the sport.

Important to falconers was the fact that the states continued to agree that testing, inspections and apprenticeship prior to further licensing were significant and should be preserved. In recognizing the necessity for these time- and labor-consuming portions of the regulations, the states essentially had recognized the importance of the safety of captive birds and their own role in the hierarchy of ethical concerns our group holds.

Some simplification did result from those regulatory changes and the process itself provided an opportune basis for states to further revise their own regulations, putting into effect lessons learned in 13 years of experience administering falconry. While a few states remain unchanged, we see continuing progress in elimination of unnecessary control and administration. That progress is a direct reflection of increasing understanding and cooperation between state administrators and their local falconry communities.

Today, while the number of falconers has remained minuscule in relation to other hunters, the number of states where falconry is recognized legally has expanded to virtually the entire nation. Opposition now is limited for the most part to those who oppose all forms of hunting. We have created regulations respected and commended internationally, even by the sport's detractors (Robinson 1991).

Falconers and Conservation

Cooperation and understanding have been the focal points of the successful regulation of falconry. Falconers also have provided managers with their special knowledge and skills in raptor biology. Falconers have studied, understood and loved raptors for thousands of years. In the U.S., the activities of falconers as advocates for raptor protection began in times when such species were considered bountied "vermin."

In Idaho, long-time falconer Morlan Nelson was the major instigator for establishment of the federal Snake River Birds of Prey Natural Area. Wisconsin falconer Robert Rosenfield, more recently, has found, banded and studied more Cooper's hawks than were thought to exist in that state. While John and Frank Craighead are most famous for their work on grizzly bears, it was falconry and their subsequent study of raptors in Michigan that excited them and led them into a lifetime dedicated to wildlife.

The most successful marriage of wildlife professionals and falconers for conservation purposes undoubtedly is re-establishment of the peregrine falcon. In 1965, Joseph Hickey was planning the first conference to study the decline in peregrine populations. He assembled all the biologists known to him to be experts on this species. It is said that, in the final planning stages, he asked Frances Hamerstrom, "Shouldn't we invite some falconers to sit in on this meeting?" That biologist (and falconer) pointed out to Professor Hickey that many of the biologists invited were active falconers. In point of fact, 8 of the 11 presentations on North American peregrine populations delivered at that historic Madison conference were provided by falconers (Hickey 1969).

The demise of the peregrine falcon from the face of the earth, simply stated, was an option totally unacceptable to falconers. In the early stages of the peregrine restoration project, conceived and developed by Tom Cade of Cornell University's Laboratory of Ornithology and aided by several other individual falconers, the techniques, vocabulary, personnel, breeding stock and, to a large extent, the funding, originated with falconers. To date, nearly 5,000 peregrines leave been released into the wild (Peregrine Fund 1995) and the USFWS has filed notice of intent to delist this species under the provisions of the Endangered Species Act (USFWS 1995)

The techniques developed by falconers for breeding and hacking (releasing) peregrine falcons now are being applied in restoration efforts involving Mauritius kestrels, aplomado falcons, bald eagles, California condors and even the Hawaiian crow. The success of the peregrine

program is a direct result of cooperation between management agencies, private foundations, educational institutions and private individuals, but, at each stage, falconers have been there with the knowledge, motivation and specialized skills unique to their group.

Conclusions

The history of falconry regulation offers lessons to both sportsmen and wildlife administrators. While some aspects of this history are unique to falconry, most will be useful in creation or revision of regulations for any sport. The falconers' campaign for legal recognition and sensible administration was facilitated by assumption of jurisdiction over raptorial birds at the federal level. Falconers, at least at first, had a single agency with which to deal nationwide. Falconers were able to participate in regulatory development from its inception and were met with open minds. This specialized group of sportsmen responded with regulatory proposals that were reasonable, stringent and biologically sound. Where their recommendations were labor consuming, falconers actively provided tangible assistance to alleviate the administrative impacts of those proposals.

After a quarter century of regulation and analysis, managers have confirmed that falconry has no negative impact on game or raptorial species. Conversely, agency biologists and managers have made use of the specialized knowledge and skills falconers possess which has resulted in positive impacts on raptors and aided in the recovery of some populations.

Simply put, regulation and, indeed, the recognition of falconry in the United States has been a success based on the biological merits of the sport itself and cooperation between the sportsmen and managers who were willing to allow a specialist group to participate in both the process and the outcome. We both have come a long way in the past 25 years and look forward to similar progress in the coming quarter century.

References

Aguilar Rivera, J. 1995. Falconry in (the first) America. J. No. Am. Falconers Assoc. 34: 78-81.

Brohn, A., C. Cushman, T. Juelson, J. Salyer and G. Taylor. 1986. Report of the subcommittee on falconry rules. Int. Assoc. of Fish and Wildl. Agen., Washington, D.C. 7 pp.

Cade, T. 1982. The falcons of the world. Cornell Univ. Press, Ithaca, NY. 192 pp.

Carnie, S. 1971a. Report on the "falcon meeting" held in conjunction with the North American Wildlife and Natural Resources Conference, Portland, Oregon, March 9, 1971. Hawk Chalk X(I): 21-29.

_____. 1971b. Proposal for a model law covering falconry and the protection and management of birds of prey. Pages 75-77 *in* International Association Convention Proc., Int. Assoc. of Game, Fish and Conserv. Commiss., Washington, D.C.

_____. 1971c. Technical advisory committee report. Hawk Chalk X(3): 24-28.

_____. 1972a. Technical advisory committee report. Hawk Chalk XI(I): 19-21.

_____. 1972b. Technical advisory committee report. Hawk Chalk XI(2): 24-28.

Graham, F., Jr. 1992. The Audubon ark; A history of the National Audubon Society. Univ. Texas Press, Austin. 350 pp.

Hickey, J., ed. 1969. Peregrine falcon populations: Their biology and decline. Univ. Wisconsin Press, Madison. 596 pp.

International Association of Fish and Wildlife Agencies. 1986. Resolutions adopted by the International Association of Fish and Wildlife Agencies at its 76th annual convention; Providence, Rhode Island, September 17, 1986. Int. Assoc. of Fish and Wildl. Agen., Washington, D.C. 10 pp.

Morse, W. 1971. Falcon meeting, held in conjunction with the North American Wildlife and Natural Resources Conference, March 9. Wildl. Manage. Inst., Washington, D.C. 5 pp.

North American Falconers Association. 1971a. Falconry and management of birds of prey: Preliminary review copy. March 9. No. Am. Falconers Assoc. 14 pp.

_____. 1971b. Falconry and the management of birds of prey: Second edition. 17 pp.

Peregrine Fund. 1995. Newsletter no. 25 (fall). Boise, ID. 8 pp.

Peyton, R., J. Vorro, L. Grise, R. Tobin and R. Eberhart. 1995. A profile of falconers in the United States: Falconry practices, attitudes and conservation behaviors. Trans. No. Am. Wildl. and Natur. Resour. Conf. 60: 181-192.

Robinson, P. 1991. Falconry in Britain. A report to The [British] League Against Cruel Sports, June 1991. 27 pp.

Shor, W. 1994. Operation falcon in retrospect—Ten years later. Hawk Chalk XXXIII(2): 12-17.

U.S. Fish and Wildlife Service. 1976a. Final environmental assessment: Proposed falconry regulations. U.S. Fish and Wildl. Serv., Washington, D.C. 68 pp.

_____. 1976b. Migratory bird permits; Falconry permit regulations. Fed. Reg. 41(10): 2,237-2,240.

_____. 1983. Implementation of the endangered species act exemption for certain raptors; Raptor propagation permits; Federal falconry standards; Final rule. Fed. Reg. 48(132): 31,600-31-610.

_____. 1984a. Eagle permits; Permits for falconry purposes; Final rule. Fed. Reg. 49(4): 887-892.

_____. 1984b. Press release (June 29); "Operation Falcon." U.S. Fish and Wildl. Serv., Washington, D.C. 4 pp.

_____. 1987. Migratory bird permits; Uniform rules and procedures; Proposed rule. Fed. Reg. 52(248): 48,948-48,957.

_____. 1988. Final environmental assessment: Falconry and raptor propagation regulations. U.S. Fish and Wildl. Serv., Washington, D.C. 44 pp.

_____. 1989. Migratory bird permits; Uniform rules and procedures: Final rule. Fed. Reg. 54(177): 38,142-38,154.

_____. 1995. Notice of intent to remove American peregrine falcons from the list of threatened and endangered wildlife. Fed. Reg. 60(126): 34,406-34,409.

Laken D. Padilla

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Friday, March 22, 2019 2:40 PM
To: CourtMail@caed.uscourts.dcn
Subject: Activity in Case 1:18-cv-01505-LJO-BAM Stavrianoudakis et al v. U.S. Department of Fish & Wildlife et al Brief.

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered by Maynard, James on 3/22/2019 at 2:39 PM PDT and filed on 3/22/2019

Case Name: Stavrianoudakis et al v. U.S. Department of Fish & Wildlife et al
Case Number: 1:18-cv-01505-LJO-BAM
Filer: North American Falconers Association
Document Number: 33

Docket Text:
BRIEF by North American Falconers Association. (Attachments: # (1) Exhibit)(Maynard, James)

1:18-cv-01505-LJO-BAM Notice has been electronically mailed to:

Ali Ahmad Karaouni ali.karaouni@doj.ca.gov, michelle.fowler@doj.ca.gov, rochelle.udaquillen@doj.ca.gov

Anthony L. Francois alf@pacificlegal.org, incominglit@pacificlegal.org, prc@pacificlegal.org

James H. Maynard , PHV jhm@maynardlawoffice.com, kkent@maynardlawoffice.com

James M. Manley , PHV jmanley@pacificlegal.org

Linda Lea Gandara Linda.Gandara@doj.ca.gov, Lucinda.Witte@doj.ca.gov

Philip A. Scarborough Philip.Scarborough@usdoj.gov, CASEVIEW.ECF@USDOJ.GOV, kimberly.siegfried@usdoj.gov, phil.scarborough@gmail.com, USACAE.ECFSACCV@USDOJ.GOV

Rene Peter Voss renepvoss@gmail.com

Timothy Ray Snowball tsnowball@pacificlegal.org, incominglit@pacificlegal.org, jcoukoulis@pacificlegal.org

1:18-cv-01505-LJO-BAM Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=3/22/2019] [FileNumber=9915875-0
] [523f28d6d9a2b7d49539ed54bc48b155639875dd8b0ddacb7221b1d84784b1566fe
7190bfd2a3d38a8fb988b910aabf6bb723cdbae7878cd542d7ab39bee73f8]]
Document description: Exhibit
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=3/22/2019] [FileNumber=9915875-1
] [b08b6296fe5f171f9e684d2799175d74cfecbac20ea0a46351158ca93b21fe85c77
4d098630a1eea30ac15b51652d7a4bd4c535c52029e33d7b79128306a4bcb]]