

4 March 2003

Forest Service, USDA
Attn: Director, Recreation, Heritage and
Wilderness Resources (RHWR) Staff (2720)
Mail Stop 1125
Washington, DC 20250-1125

RE: Special Use Permits
Proposed rule (68 FR 2948)

Dear Mr. Holland,

The Ornithological Council appreciates the opportunity to comment on the proposed amendment of the special use regulations. The Ornithological Council is an umbrella organization for 11 scientific societies of ornithologists in the western hemisphere. Seven of these organizations - the American Ornithologists' Union, the Cooper Ornithological Society, the Association of Field Ornithologists, the Wilson Ornithological Society, the Pacific Seabird Group, the Waterbird Society, and the Raptor Research Foundation - are comprised primarily of ornithologists who conduct their research in the United States. Many of these ornithologists work in the forests and on the grasslands of the National Forest System.

We suggest that ornithological research falls squarely within proposed sections 251.50 (e)(1) and 251.50 (e)(2) for the following reasons:

1. Ornithological research is unlikely to have more than nominal effects on National Forest System lands, resources or programs

Ornithological research involves a wide range of research methods, but most entail little or no impact to the natural environment in which the research occurs. In most cases, ornithological research comprises observation of birds in the wild, which requires minimal alteration of vegetation or other natural features if mist nets are used. For instance, a few stems of a bush may be bent away from a mistnet, or a few square yards of ground vegetation may be tramped down by foot or cut away. The type and extent of the impact is no greater than might result from hunting, off-trail hiking, or camping. If mistnets are not used, the impact is negligible. In any case, the impacts are quickly erased by regrowth.

On occasion, and particularly in the case of ecological research, which explores the relationship of organisms to their natural environment, more significant habitat modification may be required. An experiment of this nature might involve the clearing of forest patches or of understory vegetation. However, it is more common than not that existing clearings and naturally-altered vegetation (e.g., deer-browsed areas) are used for this purpose.

Ornithological research typically involves a very small number of people - frequently just one or two scientists or technicians will be at a given location. Their activities are very quiet and unobtrusive and are unlikely to interfere with other uses. Ornithologists attempt to locate their research sites away from high-traffic areas, but in some cases, it may be necessary to ask a later-

user (e.g., commercial user or recreational users) to move a short distance away.

Because proposed paragraph 251.50(e)(1) would not eliminate the application process, the Forest Service's authorizing official would be able to determine if the likely impact would require a special use authorization. However, we urge that a guidance be developed to ensure uniform and reliable implementation of this rule. We would also urge that the guidance provide that the authorizing official consult with Forest Service research scientists to determine if the effects will likely be more than nominal. These scientists have both experience and expertise in research methodology and should be a valuable resource in helping the National Forest System and the researcher to avoid needless and time-consuming paperwork.

2. Ornithological research is regulated in a manner that is adequate to protect National Forest System lands and resources

Research on birds is closely regulated by the U.S. Fish and Wildlife Service (USFWS), which has authority under the Migratory Bird Treaty Act over all native bird species (both migratory and resident). The USFWS also requires permits for all research involving threatened and endangered species, Bald Eagles and Golden Eagles. These authorities are implemented through permit requirements for nearly every activity involving live birds. A Migratory Bird Treaty Act permit is needed to capture a bird, mark it with leg bands, radio transmitters, or other forms of marking, or to remove birds from the wild. Endangered Species Act permits are needed simply to conduct surveys to determine the presence or absence of a listed bird species.

In addition, all federally-financed research involving live vertebrates is thoroughly scrutinized by Institutional Animal Care and Use Committees (IACUCs) operating under the authorities of the Animal Welfare Act and the Public Health Service Extension Act. Technically, research involving birds is exempt from Animal Welfare Act regulations, but in fact, the IACUCs are reviewing research involving birds. They do so in part because the Public Health Service Extension Act, which applies to all federally-financed research, does not exempt birds. They also do so even when no federal funds are involved, because the physiological and psychological distinctions between birds and other vertebrates do not result in lowered pain and stress responses.

Many states require separate state permits for some or all kinds of research involving birds, although most typically, permits are required to capture and mark birds.

For these reasons, we submit that ornithological research should be exempted under proposed paragraph 251.50 (e). Because we would not expect most authorized officers to know about the characteristics of this research and about the other, extensive permitting and oversight requirements, we respectfully request that the Forest Service either enumerate specific exemptions, including ornithological research, in the regulation, or issue guidance to this effect.

Sincerely,

Ellen Paul
Executive Director