



ORNITHOLOGICAL COUNCIL
Annual Report
1 July 2015 – 30 June 2016

The Ornithological Council is pleased to provide this annual report covering activities from 1 July 2015 through 30 June 2016. The Board of Directors and the Executive Director express sincere gratitude to our member societies for their continuing support.

Please contact your society representatives (listed below) or Executive Director Ellen Paul [e-mail: ellen.paul@verizon.net; phone 301/986-8568] for more information on any matter of interest to you. We welcome your input at any time and are particularly interested in hearing about issues or problems of concern to you that we may not be addressing.

The Ornithological Council seeks to:

- *Ensure that the best ornithological science is incorporated into legislative, regulatory, and management decisions that affect birds;*
- *Enhance the ability of ornithologists to pursue professional activities; and*
- *Promote the influence of ornithology in public affairs.*

Our work focuses on animal welfare issues, permits, research funding, and other policies that affect ornithologists and ornithological societies. Activities representative of OC's work over the past fiscal year follow.

Animal Welfare

The OC continues to make significant progress in assuring that implementation of the Animal Welfare Act and related policies are more attuned to conditions encountered in wildlife research. These efforts aim both to facilitate improved animal welfare and improve the oversight of ornithological research. Our efforts this past year included the following:

- *Training and outreach for the ornithological community:* The OC has organized a special workshop to be held at the North American Ornithological Conference (NAOC). Speakers include the top policy makers in federal agencies that make and implement animal welfare policy and key staffers from leading private animal welfare organizations. The objective of this workshop is to help ornithologists understand the animal welfare policies in the U.S. and Canada and use this information to improve their own research protocols. Participants will achieve a better understanding of the protocol review process and effective methods for working with the IACUC. Through structured discussion with the audience, instructors will gain insights into wildlife research including study design and field methodology. This is a unique opportunity in that workshops of this type – sponsored by universities, government agencies, and others –

typically carry registration fees of several hundred dollars. Plans are underway for additional training opportunities including a webinar series and a workshop to be held in collaboration with the Scientists' Center for Animal Welfare and the American Society of Mammalogists (ASM).

○ Together with the ASM, the OC completed a detailed review of the application of key federal animal welfare policies in the context of wildlife research. This document was requested by the Animal Subjects subcommittee of the Federal Demonstration Partnership (<http://sites.nationalacademies.org/pgafdp/index.htm>), a consortium of federal funding agencies and research institutions and universities. *Status: The document was published in the ILAR Journal, which is the peer-reviewed publication of the Institute for Laboratory Animal Research (ILAR) of the National Research Council (of the National Academies of Science), a key resource for those who use, care for, or oversee the use of animals in research. The journal promotes the high-quality, humane care and use of animals and the appropriate consideration and use of alternatives. The citation for the volume is 2015; 56 (3): 271 – 353 Insight Gained from Wildlife Research in the Context of Global Anthropogenic Change. Free full text [http://ilarjournal.oxfordjournals.org/content/56/3/312.full] is available. This paper will also be included in a compilation of resources for IACUCs who review wildlife research; that compilation will be distributed to every IACUC in the country later in 2016.*

○ *Euthanasia and Institutional Animal Care and Use Protocol review* - In 2013, the American Veterinary Medical Association (AVMA) published revised Guidelines for the Euthanasia of Animals. The federal grant-making agencies require use of an AVMA-approved method of euthanasia as a condition of compliance with the Animal Welfare Act. Despite a submission from the OC of observational data to support the continued classification of what has until now been called thoracic compression (TC) as at least "conditionally acceptable," the AVMA chose to re-classify it as unacceptable. The AVMA would not reconsider this classification without data from a study that measured brain activity to support the contention that TC is humane, or at least as humane as other euthanasia methods considered by the AVMA as acceptable or acceptable with conditions. With financial support from the AOU, the OC arranged to have such a study conducted by Joanne Paul-Murphy, DVM Dipl. American College of Veterinary Medicine and Dipl. American College of Animal Welfare. With the assistance of ornithologist Andy Engilis (Curator, Museum of Fish and Wildlife Biology, UC Davis), Dr. Paul-Murphy compared the rapidity of TC with another method that the AVMA considers to be acceptable. The outcome supported the contention of ornithologists (as asserted in a fact sheet prepared by the OC) that the method actually entails cardiac compression rather than compression of the thorax and that it is extremely rapid. *Status: The study was completed in the spring of 2014 and in the spring of 2016, Dr. Paul-Murphy, Dr. Engilis, and their colleagues submitted the manuscript to the American Journal of Veterinary Research (an AVMA publication). Once the paper has been published, the OC will press the AVMA to change the classification of what will now be called rapid cardiac compression. In the meantime, the OC Fact Sheet has been used successfully by many ornithologists to convince their institutions to allow the use of cardiac*

compression. A second paper detailing the correct manner to conduct this technique and explaining the physiological process will be submitted to another journal.

- *Euthanasia and the USDA Animal Care program* – The Animal Welfare Act regulations, implemented by USDA Animal Care, do not require compliance with the AVMA euthanasia guidelines. However, a non-regulatory document intended for use by USDA inspectors *de facto* imposes those standards, which is essentially back-door regulation. By letter to the administrators of the Animal Care program, the OC protested this situation and asked that the language be removed or that the document be revised to include the standards of all outside organizations with demonstrated expertise. See note below regarding status of applicability of Animal Welfare Act to birds; this effort was made in anticipation of completion by Animal Care of the long-pending regulations pertaining to birds.

- *Euthanasia and the USFWS* - The Animal Welfare Act regulations require that research protocols include plans to render medical care (i.e., in the case of injuries sustained during the course of the research) or euthanize animals that would otherwise experience severe or chronic pain or distress that cannot be relieved. However, doing so in the United States would be illegal unless the Migratory Bird Treaty Act or Endangered Species Act permit expressly allows these activities. The OC has asked the USFWS to include a standard permit condition pertaining to euthanasia of injured birds, explaining the reasons for the request and offering proposed language. The USFWS feels it is best to await the change in the AVMA guidelines, as this particular method is likely to be used in the field setting. As soon as the AVMA guidelines are changed, the OC will press the USFWS for this addition to standard permit conditions.

- *USDA regulation of birds* – As the result of a lawsuit in 2000, the USDA reversed its long-standing exclusion of rats, mice, and birds from Animal Welfare Act (AWA) implementation. In 2004, USDA published an advance notice of public rule-making, asking the public “to help determine how we should regulate the care and use of those animals.” No further action has been taken since then. However, in April 2016, the OC learned that USDA is planning to hire a new staffer whose first task will be to draft the proposed regulation. In anticipation of the development of these regulations, the OC has been working with several research institutions that, because they work only with birds, have not been required to register with the USDA. The USDA maintains that because it has no regulations, it can’t inspect bird facilities and that therefore, they will not register such facilities at this time. However, other federal law, including grant-making rules, requires compliance with the AWA, which also entails the establishment of an IACUC, review of research protocols, and annual reporting to the USDA. By letter to USDA General Counsel and the Animal Care administrators, the OC has asked Animal Care to either accept registrations from these institutions or issue a formal letter from General Counsel stating that registration is not required so that the eligibility of these institutions for federal funding is not jeopardized by lack of compliance with federal law.

- *Eternal vigilance* – In 2012, the OC was delighted to announce that under the leadership of ornithologist John Wingfield (then NSF assistant director for biology), the National Science Foundation (NSF) had given official recognition to the OC publication *Guidelines to the Use of Wild Birds in Research* as the appropriate animal welfare standard for ornithological research. In

August 2015, the OC learned that NSF had entered into a Memorandum of Agreement with the National Institutes of Health Office of Laboratory Animal Welfare (OLAW), calling for OLAW to administer NSF's animal welfare program. It was said (by OLAW) that NSF would be revising its Grant Proposal Guide to remove recognition of the taxonomic guidelines and instead impose a requirement to adhere to the *ILAR Guide for the Care and Use of Laboratory Animals*, a standard that, beyond general principles, has almost no relevance to wildlife research. Thus far, the change has not occurred and the OC has worked to persuade NSF that the best animal welfare practices are biologically based and rest on expertise of biologists who work with those species and that therefore, NSF should continue to recognize the taxonomic guidelines.

○ The OC assisted dozens of individual ornithologists in devising effective strategies for responding to challenges encountered in obtaining approval of research protocols. For instance, OC is working with an ornithologist whose IACUC insisted that he submit a separate protocol for each species he planned to study. Typically, assistance begins by compiling official policy and agency guidance and may entail discussion with the IACUC or other university officials. On occasion, we are asked to address questions of occupational health and safety. These issues arise because at most institutions, they must be addressed in animal welfare protocols. For instance, in the past year, we assisted an ornithologist whose IACUC insisted that gloves must be worn at all times when handling birds. The OC also responded to several questions from IACUC members on a variety of research protocols such as diet supplementation prior to release of wild birds held in captivity.

Permits

○ Revisions to the several OC permit guides (for import/export to/from the U.S., for each of the 50 states, and for Canada) are ongoing; ever-changing regulations and procedures (some described below) are a significant challenge to their completion, but OC hopes to have all revisions completed by the end of 2016.

○ The ongoing effort to address continuing problems with the manner in which MBTA import permits are issued is beginning to produce results. As a result of OC's discussions with the USFWS Division of Migratory Bird Management (DMBM), the agency permit staff will develop a "national standard operating procedure" (NSOP) that will be implemented in all regions. The OC will continue to press for a continuation (or resumption) of the use of a single permit for all species from all countries, without numerical limits. *Status: A letter was sent to the DMBM for consideration as it develops its standard operating procedure. The agency was to have completed the NSOP by November 2015 and held a meeting with OC Executive Director Ellen Paul at that time, but the NSOP had not yet been completed then or at the time of this report. The agency is very short-staffed, has lost numerous senior staffers to retirement, and has focused all its energy on the development of two new major MBTA rules that are said to be nearing completion. At that point, the OC will resume its efforts to press for resolution of the import permit problem, although the pending election and change of administration is likely to cause additional delay.*

- In the late 1990s, the DMBM responded to OC's concerns about inconsistent implementation of permit issuance policy among the regions by initiating a regular discussion group among the DMBM regional permit staff to develop standard procedures. Those procedures have been compiled in an "administrative binder." Although the procedures are not regulatory and are therefore not legally binding, they can have a quasi-regulatory impact. Having a copy of the binder will aid the OC in providing accurate and complete guidance to MBTA permit applicants. It will also aid in the completion of the revision of the permit guides. *Status: Recently, OC requested a copy of the binder and was advised to file a Freedom of Information Act (FOIA) Request. That FOIA request was filed and the OC is awaiting a response from the USFWS.*
- The Federal Aviation Administration has now published regulations pertaining to the use of drones, also known as Small Unmanned Aerial Vehicles (SUAVs). Interest in the use of these devices to monitor wildlife is intense and a growing number of researchers are already using them to study birds. However, it is not known if the USFWS will take the position that such use violates the Airborne Hunting Act. The OC has asked the USFWS if it plans to allow the use of SUAVs; the USFWS has apparently developed a policy and has promised to provide it to the OC. Upon receipt, the OC will share it with the ornithological community via OrnithologyExchange.
- As reported in 2014-2015, the OC asked the USFWS Division of (CITES) Scientific Authority to propose removal of four species, previously considered to be birds-of-paradise, from the list of species protected under the Convention on International Trade in Endangered Species (CITES). The request was based on genetic and taxonomic research that determined that the four species were not birds-of-paradise, a taxon that was blanket-listed in 1975. Importing and exporting CITES species is extremely challenging and ornithologists have suggested that many species, most of them blanket-listed under the original, loose standards and with inadequate data, should be de-listed. *Status: The USFWS Division of Scientific Authority submitted the request to the CITES Animals Committee, which in September 2015 decided against the change on the basis that "Correctly assessing the nomenclature of birds at the family and order names is a highly complex issue and requires a deep and detailed knowledge. Therefore the AC recommends to the CITES Secretariat ... that it should – subject to the availability of funds – commission the analysis of the implications of adopting a new standard nomenclature reference birds at the family and order names taking into account the ongoing discussion with regard to a new nomenclature standard reference for birds on genus and species levels." Therefore, the matter was not advanced for consideration by the CITES Conference of the Parties to be held in September 2016. The OC has drafted a renewed request that will be submitted to the Animals Committee. Among other things, it points out that all current taxonomic authorities agree on this reclassification and that it therefore does not matter which authority the AC decides to adopt.*
- The CITES parties periodically suspend trade from numerous countries for various reasons. In the past, based on written guidance from the USFWS Division of Law Enforcement (LE), OC has advised ornithologists that imports shipped under Certificates of Scientific Exchange rather than permits could continue even if trade had been suspended. To verify that this policy was still in effect, OC queried the CITES Division of Management Authority (DMA) and learned that

DMA regarded the LE policy to apply only to one particular country and one particular cause for suspension. In response, OC requested clarification, asking for very precise explanation of the circumstances under which scientific research materials from suspended countries may continue to be imported under Certificates of Scientific Exchange. On May 6, DMA promised to respond the following week. *Status: We continue to await a response.*

○ In March 2016, the OC learned that the USFWS had determined some years ago that the Wild Bird Conservation Act permits were needed to import scientific specimens and samples of species protected under that law, notwithstanding the clear USFWS regulatory exemption: “Exotic bird means any live or dead member of the Class Aves that is not indigenous to the 50 States or the District of Columbia, including any egg or offspring thereof, **but does not include domestic poultry, dead sport-hunted birds, dead museum specimens, dead scientific specimens, products manufactured from such birds...**” The USFWS had never informed the scientific community of this change in policy, which apparently stemmed from the agency’s lack of criteria to decide if an import comprised a museum or scientific specimen. In effect, the determination was shifted to the law enforcement inspector at the point of import and made on a case-by-case basis. That situation is problematic because if the Law Enforcement inspector decides that a WBCA permit is needed, the researcher will not be allowed to import the material. The OC informed the ornithological community of the situation, advised everyone to consider obtaining WBCA permits, and is pressing the USFWS for a rapid resolution of the problem.

○ The OC continues to monitor the pending revision of the U.S. bird banding regulations, first drafted in 2009. The revision has apparently been moving through the approval process within the Department of the Interior ever since. In April 2015, OC learned that DOI had decided that this regulation was subject to the environmental impact assessment required by the National Environmental Policy Act (NEPA). The Bird Banding Laboratory was said to be in the very early stages of preparing that assessment. As of the date of this report, no “scoping notice” has been published. These notices, which are intended to give the public early input while the agency is undertaking its required NEPA analysis, are not mandatory under DOI regulations if the agency is preparing an environmental assessment rather than a full environmental impact statement. An environmental assessment with a finding of “no significant impact” of the proposed regulatory change is certainly a scientifically justifiable result in this situation. The OC will continue to monitor and participate in the process as opportunities arise, and will consult with partner organizations and individuals with expertise as to specific issues, as needed.

○ As the situation with Highly Pathogenic Avian Influenza changes daily, OC has been in contact with the Animal and Plant Health Inspection Service (APHIS) on a regular basis to determine how restrictions on imports of avian material are changing, and then relays this information to ornithologists immediately. In addition, APHIS has sought input from OC as to ways to reduce the burden of these restrictions. Recently, APHIS reached out to the OC to discuss potential measures to aid ornithologists in their efforts to comply with permit and procedural requirements. The OC is also working with the AOU Committee on Bird Collections to obtain scientific information about the persistence of HPAI on museum specimens, with the hope that this information might persuade APHIS to lift restrictions on imports of museum specimens.

- The California Department of Fish and Wildlife (CDFW) is revising its regulations for scientific collecting permits (state permitting agencies use the term “scientific collecting” to mean “scientific research”). In 2015, OC submitted extensive comments when the CDFW called for input prior to drafting the revision. Our response urged the CDFW to implement a provision in the existing regulations that would exempt holders of federal banding permits from the requirement for state permits. In addition, the OC urged the CDFW to extend this practice to all permits for ornithological research on species protected under the MBTA, except for state-listed endangered species. We also proposed a mechanism to facilitate this practice while accommodating the state’s legitimate concerns about protecting wildlife and about use of state lands. *Status: In June 2016, the CDFW has informed the OC that a proposed regulation will be published within the next three months. OC has notified members of the ornithological community in California and will consult with that community when preparing comments. If accepted it could become a model for other state and provincial governments.*
- The OC will pursue an effort to persuade all 50 states to consider exempting holders of federal MBTA permits from state permit requirements. The state wildlife agencies are operating under extremely difficult budget constraints (some more than others) and this change would free up resources without reducing protection for MBTA species.
- Together with the Society for the Preservation of Natural History Collections, OC is co-organizing and co-sponsoring a webinar on the impact of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits on the import and export of research material. The Nagoya Protocol arose from the Convention on Biological Diversity (CBD). The United States is not a party to the CBD international agreement and therefore cannot sign the Nagoya protocol but because U.S. law (the Lacey Act) requires that imports comply with all foreign laws, it will still have an impact on imports to the U.S. Mexico and several Central American and South American countries are parties and so imports and exports by ornithologists to and from these countries will also be impacted. The OC has communicated with the U.S. State Department to determine if the United States will implement the provisions of Nagoya and if so, by what mechanism.
- The OC helped nearly 100 ornithologists to obtain MBTA, ESA, and CITES permits, as well as permits issued by APHIS, and to navigate the complex import and export processes. Ornithologists also notify the OC about problems they have encountered and the OC works with the agencies to identify the source of the problem and devise ways to correct the problem. *Status: We continue to receive at least one and often several requests for assistance with permits each week.*

Other policies that affect research and scientific societies (including funding)

- In 2015, the USFWS announced plans to issue an environmental impact statement that would propose methods to regulate the take of bird species protected under the MBTA incident to otherwise lawful activities, such as energy production or telecommunications infrastructure. In July 2015, the OC submitted comments after consultation with the member society conservation committees. Consistent with the OC mission, the comments focused on issues such as the need for appropriate monitoring, research into mitigation measures, and predictive research to

determine which areas are most likely to be of concern. The comments also addressed the capacity of the USFWS, already stretched very thin, to handle this substantial new workload. *Status: The Programmatic Environmental Impact Statement (PEIS) has not yet been issued. It is rumored that the USFWS still plans to release it, along with a proposed regulation defining key terms under the MBTA. However, given that the election is only three months away, it would be impossible to promulgate a final regulation before the end of this Administration. Nonetheless, if and when the PEIS and proposed rules are published for comment, the OC will file comments and welcomes the participation of its member societies in drafting those comments or, if the societies prefer to file their own comments, would be glad to assist.*

- New import/export woes – At the direction of the White House, the Customs and Border Protection has developed and is implementing a new, online automated customs declaration system called "ACE" or Automated Commercial Environment. Notwithstanding the name, it also applies to non-commercial imports. It is indeed automated and access to the online system for declaring imports is really designed for the community of commercial importers and customs brokers. Eventually, all Customs declaration information as well as the import declarations required by other agencies such as APHIS and USFWS will be entered through ACE. In theory, this system will simplify the import process (by providing a single place to enter all required import declarations and related information. For the moment, however, it is a very large hurdle for the import of avian materials because it requires access to the ACE system. Obtaining that access is a complicated process; these online declarations are usually handled by customs brokers, which ornithologists rarely use, in part due to additional expense. The OC has been working with Customs and Border Protection, which has been extremely helpful, to try to determine what, if anything, can be done to simplify the system for wildlife research imports. Meanwhile, paper forms are available; OC has obtained them and is working through "translating" the abbreviations and codes and explaining where to find the required information.

Meanwhile, the OC has had a long and productive discussion with a very large, very sophisticated freight forwarder and customs brokerage based in Detroit. The Director of Compliance for this company serves on the ACE Working Group for the USFWS. Upon hearing about the problem with a hand-carried import in Detroit, she had her office contact the OC within minutes to offer assistance. The company will prepare a proposal for handling the imports and exports for wildlife research that the OC will distribute to the wildlife research community. This company is willing to develop the expertise to deal with the USFWS and APHIS paperwork and procedures (through a close working relationship with the Ornithological Council and SPNHC). The idea here is that if everyone uses this broker, there will be enough transactions that it will be worthwhile for them to develop the expertise (through a close working relationship with the OC) to handle avian imports. And of course, they would deal with this ACE entry system problem.

Other services to the ornithological community

- Small Grants Program continued for an additional year – The original donor and a second donor agreed to renew their contributions so the OC has continued the Small Grants program for another year. *The 2016 request for proposals was issued on May 5; awards will be made in October 2016.*
- Upon request, OC offers lectures for faculty and students on permits, animal welfare issues, the role of science in bird conservation, and other topics of interest. We are planning a series of webinars to expand the reach of this effort.
- The OC has kept scientists informed about policy changes that affect the way they do their research. Via Ornithology Exchange and direct e-mail as well as use of the NEOORN list owned by Van Remsen, OC posted updates on various issues of concern. At the suggestion of the AOU, OC investigated a legislative alert system. However, registration during a trial period led to the conclusion that there was insufficient interest among members so it was decided that the cost, though reasonable, could not be justified, especially given that there are other means to reach members.

Providing scientific information about birds

OC provides scientific information about birds to government agencies, business entities, landowners, the press, and others. Apart from the matters described above, no opportunities arose during this fiscal year. However, the OC continues to be available to its member societies to help craft statements or address policy issues of concern to the societies. For instance, in the past year, the Waterbird Society consulted with the OC on two issues pertaining to waterbird conservation and management.

OC management and news

Dan Klem, who represents the Wilson Ornithological Society on the OC Board of Directors, has been re-elected chair. Gwen Brewer, who represents the Neotropical Ornithological Society, has been re-elected vice chair.

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(Current as of 30 June 2016)

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