

Court Overturns Administration Efforts To Weaken The Migratory Bird Treaty Act

from the American Bird Conservancy

A federal court on August 11, overturned an Administration reinterpretation of the Migratory Bird Treaty Act (MBTA) that had upended decades of enforcement and let industry polluters off the hook for killing birds.

The Administration had argued that the law only applied to the intentional killing of birds and not "incidental" killing from industrial activities that kill millions of birds every year, such as oil spills and electrocutions on power lines. This reinterpretation was first put in place in December 2017 through a legal opinion authored by the Solicitor of the Department of the Interior and former Koch Industries employee, Daniel Jorjani.

Citing "To Kill a Mockingbird," U.S. District Court Judge Valerie Caproni wrote that "if the Department of the Interior has its way, many mockingbirds and other migratory birds that delight people and support ecosystems throughout the country will be killed without legal consequence." In rejecting the Jorjani opinion, the court noted that the MBTA makes it unlawful to kill birds "by any means whatever or in any manner" — thus the Administration's interpretation could not be squared with the plain language of the statute.

Had the Administration's policy been in place at the time of the Deepwater Horizon oil spill in 2010, for example, British Petroleum would have avoided paying more than \$100 million in fines to support wetland and migratory bird conservation to compensate for more than a million birds estimated killed by the accident.

The Administration policy was put in place over objections from Canada, a co-signer of the migratory bird treaty that had led to the law. Scientists now estimate North American birds have declined by 29% overall since 1970, amounting to roughly 3 billion fewer birds.

Since the Jorjani opinion, Snowy Owls and other raptors have been electrocuted by perching on uninsulated power lines in Delaware, Maryland, Tennessee, and North Dakota – with no consequences for the responsible utilities. Oil spills in Massachusetts, Idaho, and Washington, all of which caused the

subsequent deaths of many birds, did not prompt any penalties.

"Today's commonsense ruling is a much-needed win for migratory birds and the millions of Americans who cherish them," said Mike Parr, President of American Bird Conservancy. "The Migratory Bird Treaty Act is one of our nation's most important environmental laws and has spurred industry innovation to protect birds, such as screening off toxic waste pits and marking power lines to reduce collisions. This decision represents the next vital step on the path to restoring our nation's declining bird populations and is a major victory for birds and the environment."

"Like the clear crisp notes of the Wood Thrush, today's court decision cuts through all the noise and confusion to unequivocally uphold the most effective bird conservation law on the books — the Migratory Bird Treaty Act," said Sarah Greenberger, Interim Chief Conservation Officer for the National Audubon Society. "This is a huge victory for birds, and it comes at a critical time. Science tells us that we've lost 3 billion birds in less than a human lifetime and that two-thirds of

North American birds are at risk of extinction due to climate change."

Partner
organizations in
this suit include
American Bird
Conservancy,
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for Biological
Diversity,
Defenders of
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Council, and the
National Audubon
Society.



Peregrine Falcon photo by Peter Bauer, Winthrop

The mission of the North Central Washington Audubon Society is to:

"Enhance, protect and restore healthy natural ecosystems and native biodiversity using science, advocacy, education and on-the-ground conservation to promote the welfare of birds in North Central Washington"

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All phone numbers in the Wild Phlox are area code 509 unless otherwise indicated.

Do you Like Ducks?

by Mary Gallagher, Lake Wenatchee A relatively inexpensive way to help them is to purchase a Duck Stamp. The Migratory Bird Hunting and Conservation stamp went on sale July 1st.

Only \$25.00 will help protect the wetlands they need, and many other species will benefit! It will get you free entry to all the National Wildlife Refuges that charge a fee.

All the money from the sale of these stamps goes into the Migratory Bird Conservation Fund.

Not a hunter? That's fine. Show you are a birder that contributes. Go to the American Birding Association website and purchase your duck stamp there. You can find it for sale under the SHOP tab.

We just bought ours.



North Central Washington Audubon Society Wild Phlox Subscription Form Subscribe to NCW Audubon Wild Phlox One Year, Nine Issues - \$15 Suggested donation I prefer to get the Wild Phlox electronically (email address required below) Separate subscription to Phlox NOT needed for NAS members in good standing Donation: I would like to support NCW Audubon's programs of education and conservation. Enclosed is my additional donation of \$___ Please do NOT acknowledge my donation in the Wild Phlox Memorial in the name of _____ Please mail check and form to Post Office Box 2934 Wenatchee, WA 98807-2934. Name ______Address _____ City ______ State _____ Zip Code _____ Phone number ______ Email _____ Planned Giving: Please consider giving a planned gift to NCW Audubon to support our education and conservation programs for generations to come. Your charitable gift will be tax deductible. It could go to an endowment fund or to a specific program or as a gift to our general operating fund. Remember, your gift to North Central Washington Audubon will go to fund programs in North Central Washington!

To join the National Audubon Society which also includes a subscription to the Wild Phlox, please see their website at www.audubon.org

Summer is coming to an end. Spring was the longest season with the start of the pandemic, but summer went by pretty quickly. We have managed a few camping trips with at least one more in September. It has been a good way to be socially distant and still enjoy exploring

Editor's Notes

outside. With our short travels we have avoided restaurants and bars and done minimal shopping, picking up as much as possible before heading out. There is some comfort in the familiar. It is odd to avoid visiting museums, galleries, visitor centers and gift shops. Normally, those are part of our travels. Of course, many are closed.

I always manage to do some birding while we are out and about. June at Lost Lake, I was happy to see a fuzzy, gray baby Common Loon. And last week, we returned to Lost Lake and I was happy to see that it had grown up to be almost as big as its parents and was sporting all new feathers. The loons face many challenges bringing up youngsters with the biggest and most obvious one being the Bald Eagles always on the lookout for a tasty morsel in the form of a tiny loon or duckling. A not-so-obvious threat to loons is the presence of lead fishing tackle in our lakes and streams. One tiny bit of lead can kill a large bird such as a loon or swan. Also, lost fishing tackle can cause injury and death.

We went to the ocean in July and enjoyed the start of fall migration! Some shorebirds had already returned to the Washington coast from their breeding grounds in Alaska and other points. We saw many peeps (Western,



Common Loon adult and youngster photo by Teri J Pieper, Methow Valley



Lesser Yellowlegs photo by Janet Bauer, Winthrop

Least and Semi-palmated Sandpipers), plovers and Willets too. Brown Pelicans flew low over the waves and Bald Eagles cruised the beach in search of some tasty dead thing.

I have been hiking often in the North Cascades and fall migration is happening there too. Raptors are moving along ridgetops and through saddles in the mountains. Even though there is no 'official' HawkWatch on Chelan Ridge (see page 5), you can search the skies for raptors from now til the snow flies and practice raptor ID skills on your own. HawkWatch International has created an app for that. It is called Raptor ID, available for Android and IOS and is free from wherever you get your apps.

Shorebirds are moving through our area and have been spotted at Twin Lakes near Winthrop and high in the mountains on a former glacier near Maple Pass. It's a good time to stake out a muddy beach and see who uses it.

Birds have been a great distraction from the news but the biggest highlight for me this summer was the comet Neowise. I had great views of it from home and high in the mountains. It was an unexpected joy during troubled times.

NCW Recent Bird Sightings

Chelan: A Heerman's Gull and a Bonaparte's Gull were observed from Walla Walla Park. A Least Flycatcher and a Peregrine Falcon were observed at lower Sleepy Hollow. An American Avocet was seen at Lake Wenatchee. An American Three-toed Woodpecker was seen near Leavenworth. A White-winged Scoter was seen from Walla Walla Park. A Black-backed Woodpecker and a Gray-crowned Rosy-finch were seen on the Maple Pass trail. A White-tailed Ptarmigan was seen at Sahale Arm. A Northern Waterthrush was seen near Entiat. A Loggerhead Shrike was seen on the Colockum Road.

Douglas: A Forster's Tern, Sandhill Cranes, Eurasian Wigeon and a Red-necked Phalarope were seen at Atkins Lake. An Ash-throated Flycatcher was seen at Ruud Canyon.

compiled from the ncwabird email list and eBird and Tweeters by Teri J Pieper

Ferry: A Long-eared Owl was seen at Friedlander Meadows. A Northern Waterthrush was seen from Scatter Creek Road. Grasshopper Sparrows were seen at Swawilla Basin. A Chestnut-backed Chickadee was seen at Davis Lake.

Okanogan: A Black and White Warbler and a Least Flycatcher were found near Sun Mountain. A Bar-tailed Godwit was seen with Spotted Sandpipers on the Methow River. An American White Pelican was seen on the Okanogan River close to Tonasket. A Merlin was seen at Lost Lake. A Black-crowned Night-heron was seen at Cassimer Bar. A Sage Thrasher was seen near Pearrygin Lake. A Flammulated Owl was heard from Thompson Ridge Road. A Boreal Chickadee was seen on the Robinson Creek trail.

Help-Wanted in the Time of Covid

by Mark Oswood, Wenatchee

"Service to others is the rent you pay for your room here on earth."

Muhammad Ali



Body fluids are important these days – viruses traveling about in snot and spit, people not traveling much, in tears and sweating things out. People require community, as much as vitamin C. Other creatures, terrestrial and aquatic, are on the help-wanted list too. There is fierce need, everywhere.

Our members do all manner of helping, offering up their time, care, energy, and money. We are always grateful for every one of our donors. This year is different; we are even more grateful because you remembered us.

Our once-a-year donation request emerges in early fall. We acknowledge donors twice a year, in the February and September Phloxes. We list below folks who have made donations since mid-January 2020 (along with a few special cases). Donations made from September 2019 to mid-January 2020 were acknowledged in the February 2020 Phlox. Larry and Penny Tobiska are "first responders" for donations received. The list of donors is derived from their data.

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The symbols designate gifts of special generosity:

* = \$100 (Great Blue Heron)

** = \$200 (Greater White-fronted Goose

*** = \$500 (Magnificent Frigatebird)

Birding When Older by Susan Sampson, Wenatchee

When I was young and fearless (foolish?) I went places and did things alone. I read a romantic novel, *Lydia Bailey*, that sent me to Haiti in July, hurricane season (I didn't know) and I skated out of there just ahead of a big storm. When I was 52, I went to see Machu Picchu in Peru, but the airlines to take me from Lima to Cusco, my last stop before the mountain, went bankrupt. Things worked out, I got to the mountain top, and I was thrilled to see a Red Macaw fly out of the jungle and land on a utility wire. So why such a chicken now?

My friends talked about the vernal ponds on the Waterville Plateau, and I wanted to see them, but I did not want to go alone. What if I got lost, or what if I had car trouble and did not have cell connection?

Well, I wheedled. I told my husband that if he would take me out there, we could take the electric car he had given me for my 73rd birthday and test the navigation system. So, we went in search of Atkins Lake. We found it, just where we had expected, a short distance north of Highway 2 and just a few miles east of the Moses Coulee. And I got my reward. Flocks of small birds were flying in, too small for me to identify. Flocks of ducks sat out on the lake, too far out for me to identify, even with my binoculars. Mosquitoes surrounded us in clouds thick enough to shade the sun. But there on the shore were the first American Avocet I had ever seen, and a pair of Black-necked Stilts that my Sibley guide says aren't even supposed to be around here.



Black-necked Stilts photo by Susan Sampson, Wenatchee

Sad News from HawkWatch

After long and thoughtful consideration, HawkWatch International (HWI) is temporarily suspending operations at five of our HawkWatch research sites for the 2020 season. This difficult decision is not reached lightly and is based on health recommendations regarding COVID-19, as well as recommendations from groups like the Bird Banding Lab and North American Banding Council. Scientists the world over continue to urge distancing and travel restrictions as the most effective steps to take in slowing spread and protecting communities, and most project that these steps will be needed into 2021 in a best-case scenario. As a science-based organization that hopes our science-based findings are heard and heeded, it seems important and prudent that we do the same, however disappointing doing so may be.

One of the unique aspects of HWI's migration monitoring network is that a majority of our sites are located in remote wilderness areas. This means that field crew members don't have regular access to services, and are living together in small, communal areas. This becomes a major source of concern for social distancing during a three-month season that regularly includes sub-freezing temperatures and inclement weather. The remote nature of many of our sites also poses elevated concerns if anyone requires medical

by Dr. Dave Oleyar, Director of Long-term Monitoring & Community Science, HWI

attention, something we were not willing to risk.

The HawkWatches that will not be operating for the 2020 season are: **Chelan Ridge** (WA), Bonney Butte (OR), Commissary Ridge (WY), Goshute Mountains (NV), and Manzano Mountains (NM). Thankfully, we plan to continue operations at HawkWatches at the Grand Canyon (AZ) and Corpus Christi (TX). These two sites are situated in a way that better allows for social distancing and medical access for field crew.

Fall migration counts are a core piece of our mission, but HWI is ultimately confident that suspending them for a year will not impact our long-term work, and will ensure the safety of both the hard-working field crew and the wild birds they study. It will also allow the HWI team time to improve operation plans at all our sites, create new activities and content for visitors, and dig into our thirty plus years of data and write some scientific papers.

Thank you for your continued support. We hope you will continue to follow this year's fall migration at the Grand Canyon and Corpus Christi and join us at full capacity again in 2021. If you have questions about our decision, please contact us at hwi@hawkwatch.org.

Unexpected Trail Companion

We have been backpacking this summer, staying close to home, and exploring trails in the Glacier Peak and Alpine Lakes Wilderness areas. The wildflowers, berries, stars, and sunny weather have been wonderful. The days are getting shorter now, and the singing of birds at dawn and dusk has ended for another year. The strange part of hiking in this Covid environment is how other humans on the trail no longer stop to talk. Masks go

up, heads go down and if possible, wide berths are given. No one wants to share this virus, which is good, but I miss the camaraderie of a shared experience.

As we were walking in the Napeequa River Valley last week, we heard a rather upset bird calling from the underbrush. Not sure who it was or why it was so upset, I stopped and glanced around hoping to see a hawk or an owl. No luck there. Walking again, my head down to help

navigate the rocks and roots, I saw my booted foot was about to come down on a bird. My foot hovered as this bird was not going to move. Turning to safely lower my foot, I shouted at Tim to come back and get his camera out. This was not just any bird.



The little one hopped closer to my foot and jumped on my boot. No need for binoculars when the bird comes to you. As I looked down, he or she looked up, clearly as curious about me as I was of this youngster.

The screeches from the understory grew louder but the body that belonged with that voice stayed hidden. While the voice was no help identifying the bird, the youngster made it clear: a rufous

> tail contrasting with an ordinary brown back. Our trail companion was a Hermit Thrush.

A bird we more typically hear then see, and here it was right underfoot. He or she was not concerned by us, my foot and Tim's camera bag were just another perch along the path. This little one was on a journey and quite determined to be heading down the trail, away from his screeching parent. We both took pictures and admired the bird.

This one was not in a mood to be a hermit or to be in a nest.

We said our good wishes and watched the youngster hop down the trail out of sight. I glanced around, very relieved no hawk or owl was in sight. Putting our cameras away we continued up the trail. A life moment shared on a wilderness trail.



Birding as Covid Stress Relief

Birding for me is a quiet, solitary activity. The focus and patience it requires often makes company a chat-inducing distraction - even if it's the same person I would enjoy meeting for coffee any other day of the week. Therefore, the Covid restrictions pertaining to social distancing are a perfect fit for my birdwatching habits.

When I leave the house in the morning, having listened to yet another accounting of how many more are dead and how many more are sick with the Covid virus, I am eager to hear nothing but birdsong. Lots of it. The flicker's highpitch call, the robin's flute, the blackbirds chattering - it's all salve to the news-weary mind.

Finding birds is not a problem in the Wenatchee area. Getting close enough for decent photos can be. My birding involves a lot of hiding in the bushes and being "invisible". It is a game of "hide and seek." I try to hide, and the birds do not know they are being sought. There is an element

of hunting in birding, too, but one with good intentions: can I get close enough for the shot, will I get it just so, will the bird fly away too soon? Adrenalin kicks in and each snap of the camera is a release of tension. During these Covid days, we experience more than normal stress and bird hunting with a camera seems a healthy option for stress reduction. Snap, snap, breathe.

Being outdoors and moving is good for anyone. In times of forced confinement, even a few hours' escape to wide open spaces can make article and photo by Jaana Hatton, Wenatchee

all the difference, both physically and mentally. The body needs to move, the mind needs fresh input. Being in nature provides both; one can never know what comes along while hiking. There's that adrenalin again.

While birding has the element of surprises, it also has one of patterns. I have become familiar with the general territory of a certain Anna's Hummingbird and due to my routine timing, often see him. I know which trees the flickers occupy in some of my favorite roaming areas and which rocks the Great Blue Heron prefers. It is reassuring to feel there is something still normal in life as Covid has changed our daily patterns to the extreme.

I usually don't set out seeking a specific bird but wait and see what I come across. Even with knowing the birds' routines and territories, I am often rewarded with surprises. I look forward to discoveries. Spotting an unexpected bird is always a thrill. One morning, seeing a mother phoebe

feed its young one up on the cliffs was completely unexpected, and all the more delightful.

I come home from my birding outings feeling happy and energized. If there is a good photo or two that comes out of it, that is the icing on the cake. More than anything, it is reassuring to see the familiar birds doing their familiar things. We all need our rocks to perch on, the right branches to land upon – but with Covid, life is on a new, uncharted course. It is good to know some things are still the same.



McCown's Longspur Renamed Thick-billed Longspur

from Birdwatching Daily

The great longspur debate came to a conclusion of sorts recently when the American Ornithological Society (AOS) announced it is changing the name McCown's Longspur, a bird named after Captain John P. McCown, the naturalist who first collected the species in 1851.

Rhynchophanes mccownii will now be known as Thickbilled Longspur after a decision by the North American Classification Committee (NACC). An email from the AOS said the name change decision was unanimous.

The change was made in the midst of a larger push to have all bird species named after people renamed. The Bird Names for Birds movement, which has gathered 2,300 signatures on a petition calling for the changing of all honorific names, is itself part of the larger societal reckoning with long-standing racist symbols and practices.

As ornithologists and birders Gabriel Foley and Jordan Rutter wrote in a Washington Post op-ed this week: Honorific names, known as eponyms, "cast long, dark shadows over our beloved birds and represent colonialism, racism and inequality. It is long overdue that we acknowledge the problem of such names, and it is long overdue that we should change them."

They propose that the birds be given names that indicate something about them — their appearance, their habitat, or their range.

To read more about this change and the history behind it, see www.birdwatchingdaily.com/news/science/mccownslongspur-renamed-thick-billed-longspur/

Conservation Update

While in the last several months Covid-19 has significantly impacted many of our organization's primary programs and events, our conservation work has been as busy as ever. Since we last reported, we have been actively working on several important issues including the Icicle Strategy Process in Leavenworth, the proposed expansion of the Mission Ridge Ski Area, our Northern Spotted Owl petition to the State Forest Practices Board, and our proposals for habitat restoration and enhancements in the Horan Natural Area (Horan) in Wenatchee and at the Rock Island Ponds. All are works in progress and representative of the complexity and lengthy nature of many of the issues impacting our region's birds. For a detailed



Wood Ducks are often seen at Rock Island Ponds. photo by Bruce McCammon, Wenatcheee

overview of our Conservation Program and the issues we are involved with, please visit the conservation page on our website. Below we focus on recent, very positive developments regarding two of our key projects.

Our Horan Natural Area and Rock Island Ponds Projects Take a Big Step Forward

We have been engaged with our Horan and Rock Island Ponds

Projects for about

four years now and have developed and promoted a separate vision for each (You can read them on the conservation page of our website). Recently, the Chelan PUD (PUD) sent out a letter soliciting applications for "Early Action Projects" associated with the upcoming relicensing of Rock Island Dam. We submitted proposals for Horan and Rock Island Ponds and indicated multiple actions for each that they might consider financing. Both were accepted! As a result, the PUD has agreed as a first step to commit \$30,000 in support of our proposals to be split between the two areas. Most of the money will pay for development of a plan for the redesign of Horan and enhancements of native habitats there. A much smaller portion will underwrite a long-term bird survey at Rock Island Ponds that



The Horan Natural Area is a good place to teach about birds and habitat.

photo by Bruce McCammon, Wenatchee

By Mark Johnston, Leavenworth and Bruce McCammon, Wenatchee



Bald Eagles and many other birds have nested in the Horan Natural Area. photo by Bruce McCammon, Wenatchee



Ponds and vegetation provide habitat and a pleasant place to walk and watch birds in the Horan Natural Area photo by Bruce McCammon, Wenatchee

NCWAS has agreed to design and conduct.

Our proposals for each site, if realized, will bring substantial benefits to the region's birds, and provide important, enhanced recreational opportunities for nearby communities. We are thankful for the PUD's support and collaboration on these projects, and believe their involvement provides a critical component and tipping point in seeing them through to completion. These early investments by the PUD are just their initial contributions. They have made clear they are in this for the long run and we can look forward to additional support for both projects going forward. Things are really looking up for a better future for Horan and Rock Island Ponds!

September Wild Phlox

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