Montana Audubon • Five Valleys Audubon Society • Flathead Audubon Society • Last Chance Audubon Society • Pintler Audubon Society • Yellowstone Valley Audubon Society

September 20, 2007

Mr. Arnold Dood
Montana Fish, Wildlife and Parks
1400 South 19th Ave.
Bozeman, MT 59717-5496

Dear Mr. Dood,

Please accept the following comments on behalf of Montana Audubon, Five Valleys Audubon Society, Flathead Audubon Society, Last Chance Audubon Society, Pintler Audubon Society, and Yellowstone Valley Audubon on the Draft Environmental Assessment (EA) on the *Take of Peregrine Falcons for Falconry Purposes*, dated August 3, 2007.

Montana Audubon and its associated chapters represent approximately 3,200 Audubon members in the state. Although our membership is diverse, there is a consistent deep concern for bird populations in the state. Protection and enhancement of Montana's native bird species are priority issues for Audubon in Montana. You may receive comments from other members in the Society.

This Draft EA seems to be written to address whether or not rulemaking on a Peregrine 'take' process can occur in Montana. From the Draft EA, it is unclear what the regulations will contain. The only thing hinted at is that a 5% harvest rate may be authorized, or the "FWP Commission may adopt regulations governing the take of peregrines that are more restrictive than the federal guidelines (e.g. limit the take to something less than 5%, restrict the take of nestlings at certain locations, etc.) but may not promulgate regulations that are more liberal." This vague guidance gives citizens little to react to.

The Draft EA hints at what the regulations will contain, but does almost nothing to address many of the concerns raised during the scoping process. For example:

1. The Proposed Action is incomplete, making it impossible to understand what the regulations will include. It has a list of 9 items that will [mostly] be determined at a later date (decisions to be made at a later date include items 1, 2, 3, 5, 6, 7, and 8 on page 9). Usually in the MEPA process, the Proposed Action is described in detail—not leaving its contents up to guesswork.

2. Under Narrative Evaluation and Comment (page 20), the Draft EA indicates that the proposed regulations "should not constrain the continued expansion in the number and distribution of peregrine falcons in Montana." However, the Proposed Action gives no framework on how this condition will be met. In fact, this underlying commitment does not even appear in the Proposed Action.

3. In Appendix A, where issues are identified in scoping and responses are given, the text states that, "FWP would prohibit take of the population were it to fall below 50 occupied eyries" (Appendix A, page 23, 3rd full paragraph). However, nowhere in the Proposed Action does it say that a 50 occupied

eyrie quota is under consideration. The Proposed Action should include this information; otherwise, it is impossible to know what sideboards FWP is using to conclude that there will be no adverse effects on Peregrines (other than the fact that it is relying on the U.S. Fish and Wildlife Environmental Assessment completed in 2000).

4. There are two issues that FWP requested scoping comments on (at least in the undated scoping document that Montana Audubon received prior to the October 19, 2006 FWP Commission meeting) that are not being considered in the regulations:

    a. Establishing any limitation on how often a falconer may be eligible to capture a wild peregrine.
    b. Establishing any transferability limitations on birds captured in the wild.

   We think that both of these issues need to be addressed in the final regulations.

5. The Draft EA indicates that certain sites may be off limit for harvest and that the "criteria used to assess this option ***could*** [emphasis added] be developed during the formulation of Administrative Rule for this action" (page 16, note 7b). Two questions come to mind based on this statement. First, will the Administrative Rule address this issue? The use of the word "could" means that criteria for limiting harvest may be developed—or it may not be developed—depending upon unknown factors. Which one is it? We think that the rules should develop clear criteria that allow harvest to be limited. Establishing these criteria takes the guesswork out of designations for both the FWP Commission and citizens who might be interested in promoting closed nest sites. We also would like this process to allow designated sites to be off limits for multiple years—so that citizens who want to protect a site will not have to petition for site protection annually.

   Secondly, will the rules address in which regions of the state harvest can take place? Most of the peregrines nesting in Montana are in the western half of the state. Historic range for these birds covers the entire state. We would like the rules for this program to ensure that peregrines will continue to recover throughout the state, with restrictions on taking birds in eastern Montana where nests are few and far between.

6. The Draft EA indicates that up to 5% of the young will be considered for harvest. How will the total number of eyries be decided on an annual basis? How many young may be taken on an annual basis? We think that harvest amounts should be based on a 3 to 5 year average rather than basing the harvest on a one year survey. The Draft EA shows that Peregrine young fledged went from 94 in 2005 to 147 in 2006. We understand that the number of birds fledged in 2007 has dropped since 2006. The harvest numbers should be based on more than one year of data. We know of no other wildlife population where anyone is allowed to take 5% of the total population of young for a species—erring on the side of wildlife conservation makes sense.

7. The Proposed Action could allow up to 7 birds to be taken from nests. Based on the fact that 65 active peregrine nests were identified in 2006, harvesting young from 7 different nests could result in almost 11% of the breeding peregrines in this state being disturbed. This number seems high. We know of no other wildlife population where FWP allows 11% of the total population of a species to be disturbed. The number of adult breeding peregrines disturbed annually should be considered in the regulations and in its accompanying EA. Again, erring on the side of wildlife conservation makes sense.

8. Will the eyrie monitoring data be available for public review? We would like to see this information readily accessible.

9. The Draft EA states that falconry "is a highly regulated activity at state and federal levels" (pages 19 and 23). What does that mean? By making this statement without any background information, the public does not have any idea if this statement is true. A description of the regulations, the information contained in annual reports, etc. should be spelled out in the Final EA. This description needs to state how birds will be tracked after they are taken from the wild; how FWP will ensure that birds taken from the wilds are not sold; how transfers out-of-state will be handled; etc.

10. The application fee of $5.00 seems inadequate. In addition to a higher application fee, there should also be a trophy fee (equal to game trophy animals) when falconers register the fledging. FWP should also consider channeling all fees into nongame wildlife management.

The Draft Environmental Assessment Did NOT Answer the Following Questions Raised in Scoping:
The Draft EA indicated that Appendix A contained a summary of the issues identified during the scoping process, as well as the FWP responses to those issues. Please note that the following issues in Montana Audubon's scoping comments were NOT addressed in the Draft EA:

1. We assume that MEPA will be conducted on the proposed rules. Will the public be allowed to comment on an environmental review of the proposed rules?

2. **How** will FWP designate certain sites off limit for harvest? What is the formal process to allow citizens and other interested parties to petition for certain nests to be off limits? What criteria will be used to make this decision? Will the process allow designated sites to be off limits for multiple years—so that citizens who want to protect a site will not have to petition for site protection annually?

3. What regulations will be in place as to how often a person with a license can visit an eyrie, as nesting failure can be caused by too much disturbance?

4. How will the number of peregrine nestlings taken each year be determined?

5. How many times can a nest be disturbed? Can the same nest be disturbed every year? How will FWP monitor activities by falconers to ensure that individual breeding pairs do not abandon their nest—or never get to fledge birds because they are targeted every year by collectors?

6. What will the cost of this program be for FWP, including enforcement? How much of the program do falconers pay for?

7. How will the rules be evaluated to ensure they are working? Could a committee be developed that will monitor this program and make changes, especially during the first few years. If a committee is established, there needs to be an open process for choosing the makeup of that committee—and an objective process developed to see what the committee concluded and why.

The above comments were submitted during the first scoping comment period, which closed January 15, 2007. We would like a response to them.

In addition to the above comments, we want to make two specific requests:

1. We would like to see a stakeholders group developed to establish the Draft rules. We would also like to request that Montana Audubon be allowed to provide a participant to this stakeholder process. Our members are deeply concerned about this issue. Transparency in this process is very important.

2. All participants who submit comments during either the scoping process or on this Draft Environmental Assessment should be noticed ***in writing or email*** about the availability of the Draft rules and their associated EA. Additionally, the public comment period on the Draft rules and accompanying EA should be at least 60 days long. Montana Audubon does not feel that this Draft EA was adequately noticed. During the scoping process, FWP asked for and received from Montana Audubon a list of names of people to be contacted throughout the process. This list was NOT used. We would like this list of people noticed throughout this process.

Thank you for this opportunity to comment.

Sincerely,

Janet H Ellis *for*

Janet H. Ellis, Program Director
Montana Audubon
P.O. Box 595
Helena, MT 59624
<jellis@mtaudubon.org>

Jim Brown, President
Five Valleys Audubon Society
P.O. Box 8425
Missoula, MT 59807
<woodsy@onewest.net>

Lewis Young, Conservation Chair
Flathead Audubon Society
P.O. Box 9173
Kalispell, MT 59904
<llyoung@interbel.net>

Brian Shovers, Conservation Chair
Last Chance Audubon Society
P.O. Box 924
Helena, MT 59624

Dr. Jack Kirkley, Conservation Chair
Pintler Audubon Society
P.O. Box 432
Twin Bridges, MT 59754
<j_kirkley@umwestern.edu>

Kayhan Ostovar, President
Yellowstone Valley Audubon Society
P.O. Box 1075
Billings, MT 59103-1075
<kayhan@att.net>