

Wildlife Law and the Birder

by Scott R. Craven

We all enjoy seeing and hearing birds around our homes or places of work, and doing so is a basic right available to everyone. There is no impact on the birds, and no permit, license, or wildlife laws are involved. However, there are numerous circumstances in which you must know and understand state and federal laws pertaining to live birds, dead birds, or bird parts, such as feathers.

Since I am neither a lawyer nor a wildlife law enforcement officer, I am not an authority on the interpretation of wildlife law. However, from experience and consultation with both state and federal officials, I can suggest several potential areas of conflict and offer some advice on the proper course of action.

In Wisconsin virtually all of our 392 species of birds are protected by state and federal laws. State law may be more restrictive, but not more liberal, than federal law. Protected species may be an endangered bird, a resident game bird, a migratory game bird, or simply a migratory bird covered under the Migratory Bird Treaty Act—between the U.S. and Great Britain (Canada) in

1916, with Mexico added in 1936—or some combination of these categories. In Wisconsin, the only “unprotected” birds are feral Rock Doves, House Sparrows, European Starlings, and 2 species of much less significance—Coturnix Quail and Chukar. Despite the “unprotected” status of exotic pest species, such as starlings and sparrows, they do receive some measure of protection under the law. The hunting regulations clearly state “A valid hunting license is required for hunting any unprotected species.” Thus, assuming no firearms laws are being broken, a homeowner with an overabundance of House Sparrows at the feeder or the farmer with a silo full of pigeons must have a valid Wisconsin small game hunting license before resorting to a pellet gun or .22 rifle as a solution. Likewise, if such species are to be killed with an avicide, such as Starlicide or Avitrol, a permit from the Wisconsin Department of Natural Resources (WDNR) is required. The nests and eggs of “unprotected” species are treated as adult birds. Thus, under a strict interpretation of the law, removal of a House Sparrow nest from

your Purple Martin condo or Eastern Bluebird box also requires permission from the WDNR. In most cases, a verbal authorization from your local conservation officer is sufficient.

As the protection level of the species increases, so does the complexity of the pertinent laws. Take, for example "blackbirds," including American Crows, Common Grackles, and Brown-headed Cowbirds. Once routinely persecuted for agricultural damage and "target practice," these birds are now protected. Quoting again from the Wisconsin hunting regulations: "crows, grackles, red-winged blackbirds, and cowbirds may not be killed at any time without a federal permit unless they are causing damage or about to cause damage to trees, crops, livestock, or wildlife or when concentrated in large numbers that may constitute a health hazard or nuisance." This, of course, creates a gaping loophole in the intended protection; it is basically open to interpretation. For example, do these provisions allow you to control nuisance grackles in a suburban area or to remove cowbird eggs from a warbler's nest? Yes, I believe they do. Remember that no permits are needed if you only scare or herd depredating migratory birds, other than endangered or threatened species or eagles. The permits come into play for lethal control of problems.

The woodpecker problem in Wisconsin is an excellent example of permit requirements. Each year, woodpeckers cause thousands of dollars in damage to many kinds of wood siding on homes. Frustration levels for the affected homeowners are also significant, because no easy, effective, non-lethal control technique now exists. However, before homeowners can

legally kill a woodpecker of any kind, by any means, they must have a federal permit which is also approved by the area WDNR office. The proper procedure is to contact the USDA Animal Damage Control office in Sun Prairie, WI (608-837-2727); a permit will be processed through the U.S. Fish and Wildlife Service. In cases of severe damage, immediate verbal authorization may be granted. Remember that most bird damage or nuisance problems can and should be solved with non-lethal, unrestricted techniques. The purpose of this discussion is to point out circumstances where legal issues must be considered.

The hunting of resident game birds, such as pheasants, grouse, turkeys, and quail, is covered by state law. Migratory game birds such as ducks, geese, or woodcock are covered by federal *and* state law. A hunter must be familiar with numerous and sometimes complex regulations relating to open and closed seasons, bag limits, license and special permit requirements, means of taking, and others before taking to the field. During most of the year "game" birds are not hunted and are then covered by the same general protection afforded to other species.

Hawks and owls, once widely persecuted as vermin, are now completely protected. A permit is required to kill raptors, even when causing damage; such a permit may or may not be granted depending on the situation.

The pet bird trade is another area with many laws and regulations designed to protect species in their native habitats, wildlife health in this country, and the integrity of our native wildlife communities. The release of exotics gave us the European Starling and House Sparrow. Without rigorous

eradication efforts, we might now be dealing with expanding populations of Monk Parakeets. In 1979, the U.S. Fish and Wildlife Service reported that 422,000 live birds were imported into the U.S. The burgeoning interest in exotic pet birds means the annual total is much larger today. Most of these birds are legally taken in the wild and imported; but many are not, and smuggling and illegal trade remains a major conservation and enforcement problem. With prices for some birds in the thousands of dollars—perhaps \$12,000 for a pair of Golden-shouldered Parakeets, for example—the incentive for illegal activity is clearly present. In the case of live animals, the direct relationship between rarity and dollar value is a dangerous trend. Court cases for illegal trade in live birds are pending right here in Wisconsin.

What can you do? If you desire a pet bird of any species, attempt to determine its origin. Purchase from a reputable dealer or get involved with a cage-bird association. Many species are raised in captivity in the U.S., with no impact on native populations. Never release an unwanted pet bird of any kind in the wild; it is both unwise and illegal. Find a home for it or have it euthanized by a veterinarian.

What about native species as a pet? The state has no statutory authority to issue permits to retain a live protected or unprotected bird as a pet. Falconry is a special case. Licensed falconers may take raptors from the wild but under a very rigorous set of regulations, including a written exam and a 2-year apprenticeship with an experienced falconer.

Young or injured birds may be given immediate care or transported to a rehabilitator or release site without a

permit; however, to care for a bird for an extended period of time you must notify a conservation warden within 24 hours of taking possession of the bird. Remember, in the case of “orphaned” young, the best help you can provide is to remove them from immediate danger (cats, cars, etc.) and then leave them alone. They may not be obvious, but the parent birds are usually in attendance.

Birds’ eggs, nests, feathers or other parts are generally afforded the same legal protection as the bird itself. Thus, possession of a handful of Northern Cardinal feathers is, for example, illegal. Schools, nature centers, and museums have the appropriate permits to possess such materials; the average citizen does not and cannot expect to obtain them. Native Americans have special rights when it comes to possessing migratory bird parts, such as eagle feathers, for ceremonial purposes, but they cannot be sold.

There are many bird related laws and regulations—too many to allow a complete review here. But if you are now aware of some possible conflicts between the law and your own activities, my purpose has been accomplished.

The bottom line: virtually all of our birds are afforded the protection of numerous laws and regulations, and with just cause. Admittedly, some of the laws (e.g., the requirement for a hunting license to shoot “unprotected” pigeons in a barn) are confusing or seem inconsistent. However, if you intend to control a pest species with a lethal technique, or if you have the opportunity to handle any live or dead bird or parts thereof, it’s better to be safe than sorry; CHECK with your local Wisconsin DNR Conservation Officer to determine the legality of your

actions and to obtain any necessary verbal or written permission.

Copies of federal bird laws are available from the U.S. Fish and Wildlife Service, Law Enforcement Office in Madison (608-264-5237) or other offices around the country. State laws are covered in the various WDNR annual Hunting Regulations pamphlets avail-

able from WDNR offices and private license vendors. Permits and more detailed information should be obtained from WDNR offices.

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CORRIGENDUM

In a recent article on birds of wet-mesic and wet prairies in Wisconsin by Hoffman and Sample (*Passenger Pigeon* 50:143-152), the definitions for bird abundance in Table 2 were incorrectly listed. The proper definitions are as follows. Common: greater than 16 birds per 100 acres; uncommon: between 2 and 16 birds per 100 acres; rare: less than 2 birds per 100 acres.