

LEGALITIES AND PRACTICALITIES OF SALVAGING DEAD BIRDS FOR MUSEUM SPECIMENS

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Recently on the NYSbirds-L listserv, an observer reported that a possible Pacific Loon had washed up on a Long Island beach. The birder, recognizing that this might be an important record to document with a specimen, wondered if s/he should pick up the bird and bring it to a museum, and whether it was legal to do this. Digital photos eventually made the rounds and it turned out that the bird, which was never salvaged, was a Common Loon. This incident provoked a very long “thread” of discussion among the listserv readers regarding the legalities and practice of bird specimen salvage by the bird-observing public. By the time the listserv administrator cut off the discussion it was clear that New York birders appreciate the scientific value of specimens (e.g., as discussed by Kirchman 2008, *Kingbird* 58: 214-219), but that the legal implications of picking up a dead bird are not well known. One point of agreement was that there is a need for some clarification of the laws and permits that govern the salvage of birds in New York. As curator of the ornithology collection at the New York State Museum, and an enthusiastic (and permitted) salvager, I am in a position to provide some of the needed clarification and have decided to summarize in this article what I know about the subject.

Laws Governing the Salvage of Birds—The question birders have is “Is it legal to pick up and transport that dead bird?” The short answer is “no”. From a museum curator’s perspective, this is unfortunate; we are happy to receive birds from people who innocently put a road-killed, cat-killed, or window-killed bird in their freezer and then bring their frozen birds to the museum rather than leaving them to rot at the side of the road. I want state and federal wildlife agencies to protect our (living) birds, but I also know the scientific value of a specimen with accurate date and locality data. However, citizens that pick up a dead bird are in violation of the federal Migratory Bird Treaty Act of 1918 (hereafter MBTA) unless they hold a permit from the US Fish and Wildlife Service or are listed as a subpermittee of a permit holder. Further, if they do not also hold a New York State Fish and Wildlife Special License to Collect or Possess they are in violation of New York State law (Article 11, Title 3), which simply states that the New York State Department of Environmental Conservation (NYSDEC) “shall adopt rules and regulations in relation to migratory game birds consistent with federal regulations made under authority of the Migratory Bird Treaty Act”.

The federal MBTA and the state laws that follow it were born in an era of large-scale commercial hunting of wild birds for the millenary industry; people were shotgunning whole heron rookeries to harvest egret feathers that were used to adorn hats. The well publicized demise of the last Passenger Pigeon in 1914 also made it clear that commercial markets for birds and bird parts were leading to huge losses of wild bird populations. At the same time, sport hunters were pushing for a federal law that would unify state waterfowl hunting regulations and eliminate commercial harvest of ducks and geese. The MBTA made it illegal for people to "take" migratory birds, their eggs, feathers or nests. Take is defined in the MBTA to include by any means or in any manner, any attempt at hunting, pursuing, wounding, killing, possessing or transporting any migratory bird, nest, egg, or part thereof. A migratory bird is any native species belonging to a family of birds that live, reproduce or migrate within or across international borders at some point during their annual life cycle. Because there are no bird families that reside entirely within the boundaries of the United States, this definition of "migratory" covers all native bird species found in the United States, regardless of whether or not they migrate. European Starlings, Rock Pigeons, House Sparrows and other non-native species are not protected by the MBTA. Thus, as of March 1, 2010 (the most recent update to the official list of species covered by the MBTA) the total number of species protected under the MBTA is 1007, 58 of which are currently legally hunted as game birds. This list and other details regarding the MBTA can be viewed at:

<http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta>

The federal Bald and Golden Eagle Protection Act of 1940 provides additional, specific protections to both our eagle species.

Practicalities—As a condition of our permits, institutions such as the NYSM disclose in annual reports all salvaged birds, but these reports do not require disclosure of the identities of individual salvagers. In practice, government agencies understand that the motivation behind bird salvage is the advancement of ornithology, and that the spirit of the laws is to protect living animals. Enforcement of the MBTA is consequently very rare in cases where individuals are attempting to salvage specimens in good faith (eagles and their feathers have special protection and are an exception in this regard). In fact, I do not know of a single case in which a citizen was charged with violation of the MBTA for salvaging birds for a museum.

I think everyone, including the federal and state agencies that regulate us, is sympathetic to the desire to "make the most" out of the natural death of a wild animal. This is why the US Fish and Wildlife Service and the NYSDEC issue permits to research museums and educational institutions to allow their staff to possess and transport whole dead birds and bird parts for the purpose of building specimen collections that have undisputed educational and research value. USFWS issues different permit types (Special Purpose-Salvage, Scientific Collecting, Special Purpose-Possession for Educational (Dead)) depending on the needs of the institution that is applying for the permit. Individuals who have regularly salvaged specimens for permitted institutions in the past and might

expect to do so in the future can also be designated as agents of the permit-holders in question, or they can apply for their own permits:

<http://www.fws.gov/migratorybirds/mbpermits/ApplicationForms.html>

The NYSDEC allows individuals to salvage birds by issuing a Special License To Collect or Possess. Details and applications can be viewed at:

<http://www.dec.ny.gov/permits/359.html>

Museums generally refrain from advising citizens on how to handle dead birds, but the NYSDEC's Wildlife Pathology Unit provides this kind of information on their web page under the heading *If You Find Dead Wildlife*:

<http://www.dec.ny.gov/animals/6957.html>

The Wildlife Pathology Unit is responsible for diagnosing and monitoring causes of illness and death in the state's birds and other wildlife, and they encourage the public to report wildlife found dead to the NYSDEC's Regional Wildlife Offices or to the WPU directly. The NYSDEC is especially interested in cases involving species of special interest or marked specimens (research study animals), and in cases of mass mortality or recurring mortality. State education law (SED 233) gives the New York State Museum right of first refusal on all items held in the possession of the state, and employees of the Regional Wildlife Offices and the WPU contact the NYSM or one of the other two big research museums in the state with active programs in ornithology (Cornell University Museum of Vertebrates and American Museum of Natural History) from time to time to offer us birds legally salvaged in this way.

In addition to directing readers to the NYSDEC, I had hoped to provide in this article a list of permit holders so that birders would know who their "local salvager" is and could contact them directly when a bird is found. I contacted both the state and federal agencies and requested a list of the names of institutions within New York that hold these permits, explaining that I wished to contact permit holders and ask if they wanted to include their contact information in my article. Both agencies declined to help me in this regard. The NYSDEC Special Licenses Unit was willing, but is not able to search its database for permits to salvage birds because Special Licenses to Collect and Possess are issued for many reasons in addition to bird salvage. The USFWS Migratory Birds Office was unwilling to provide me with the names of permit holders, stating that "besides the obvious Privacy Act issues, his message should be, leave it where it is". Readers of *The Kingbird*, as the most active and knowledgeable bird observers in New York State, are the most likely people to find a dead bird and recognize the importance of preserving it as a specimen. My message to them is to be mindful of the law, and contact your local permitted salvager, the NYSDEC, or the New York State Museum for advice when you find a dead bird.

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