

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Montgomery Broadcasting Company, licensee of Station WQZQ-FM, Channel 273C1, Dickson, Tennessee, deletes Dickson, Tennessee, Channel 273C1, from the FM Table of Allotments, allots Channel 273C1 at Pegram, Tennessee, as the community's first local FM service, and modifies the license of Station WQZQ-FM to specify operation on Channel 273C1 at Pegram. Channel 273C1 can be allotted to Pegram, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 32.9 km (20.5 miles) northwest of Pegram. The coordinates for Channel 273C1 at Pegram, Tennessee, are 36-17-50 North Latitude and 87-19-31 West Longitude.

DATES: Effective November 17, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 03-51, adopted October 1, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Dickson, Channel 273C1, and by adding Pegram, Channel 273C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Parts 17, 21 and 22**

RIN 1018-AH87

Migratory Bird Permits; Regulations Governing Rehabilitation Activities and Permit Exceptions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This regulation creates a permit category specifically to authorize migratory bird rehabilitation. Migratory bird rehabilitation is the practice of caring for sick, injured, or orphaned migratory birds with the goal of releasing them back to the wild. In addition to establishing this new permit category, this regulation creates two exceptions to migratory bird permit requirements: For public officials responsible for tracking infectious diseases, and for veterinarians who receive injured or sick migratory birds.

EFFECTIVE DATE: This rule is effective November 26, 2003.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Suite 400, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service; 703/358-1714.

SUPPLEMENTARY INFORMATION:**Background**

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) prohibits possession of any bird protected by treaties between the U.S. and Canada, Mexico, Japan, and Russia. Birds covered by the Act are referred to as "migratory birds." Prior to this rulemaking, persons engaged in providing treatment to sick, injured, or orphaned migratory birds had to obtain a special purpose permit from the U.S. Fish and Wildlife Service under 50 CFR 21.27. The special purpose permit category is used to authorize activities

not specifically covered by other existing types of permits.

Currently, approximately 2,500 special purpose permits for migratory bird rehabilitation purposes are active nationwide, representing almost half the approximately 5,500 currently active special purpose permits. The permits were tailored to address migratory bird rehabilitation activities by means of Standard Conditions attached to every permit. Those Standard Conditions are the basis of the regulatory framework established by this rulemaking, which creates a new permit category specifically for rehabilitation of migratory birds.

The rule addresses rehabilitation of threatened and endangered migratory bird species and amends 50 CFR 17 (Endangered and Threatened Wildlife) to exempt persons who obtain a rehabilitation permit from having to obtain an additional permit under part 17 to care for threatened and endangered migratory bird species. Accordingly, the rule contains numerous provisions addressing rehabilitation of threatened and endangered migratory bird species, including additional requirements to notify and coordinate with the Service.

New Permit Exceptions

This rule also adds a new permit exception to 50 CFR 21.12 to allow Federal, State, and local wildlife officials, land managers, and public health officials responsible for monitoring public health threats to collect, possess, transport, and dispose of sick or dead migratory birds or their parts for analysis to confirm the presence or absence of infectious disease such as West Nile virus and botulism. The exception does not apply to healthy birds, or where circumstances indicate that the death, injury, or disability of a bird was caused by factors other than infectious disease. This permit exception will facilitate timely response to public health concerns and outbreaks of avian infectious disease.

The rule also provides an exemption to the permit requirements of 50 CFR part 17 and 50 CFR part 21 for veterinarians to temporarily hold and treat listed migratory bird species.

Proposed rule and comments received. On December 6, 2001 (66 FR 63349), we proposed a rule establishing a permit category specifically governing the rehabilitation of migratory birds to replace our system of issuing permits for migratory bird rehabilitation under the miscellaneous Special Purpose permit category authorized by 50 CFR 21.27. We received 199 comments on the proposed rule. Of those, 60 were general

comments, most of which were submitted by individuals who were not rehabilitators. Of the remaining 139 comments, 123 were from rehabilitators; 10 were from State agencies; and 6 were from associations.

Section-by-Section Analysis

The following preamble text discusses the substantive comments received and provides our responses to those comments. Additionally, it provides an explanation of significant changes from the proposed rule. We do not address the comments that were favorable and contained no recommendations for revisions. Comments are organized by topic. The citations in the headings correspond to provisions within the Final Rule.

Revisions to 50 CFR part 17:

Comment: The rulemaking contains provisions that revise § 17.21 to exempt permitted migratory bird rehabilitators from having to obtain an additional permit under 50 CFR 17, which governs federally listed threatened and endangered species. Yet the word “endangered” is not accompanied by the word “threatened.” Do those provisions apply to species that are threatened, as well as to those that are endangered?

Service response: The rule addresses both threatened and endangered species. Within existing regulations, § 17.21 addresses endangered species, specifically, while § 17.31 addresses threatened species. However, by reference, most of § 17.21 does apply to threatened, as well as endangered, species because the regulations at § 17.31 state: “Except as provided in subpart A of this part, or in a permit issued under this subpart, *all of the provisions of § 17.21 shall apply to threatened wildlife*, except § 17.21(c)(5)” [italics added here for emphasis]. Thus, in order to exempt rehabilitators from the requirement to obtain a separate permit under part 17 to rehabilitate both endangered and threatened species, this rule needs only to amend the sections of part 17 that address endangered species (§ 17.21), and not also § 17.31, which addresses threatened species.

Scope of Regulations. (§ 21.2): The proposed rule contained revisions to § 21.2 in order to allow the new permit regulation to cover rehabilitation of eagles as well as other migratory birds. This was necessary because, under current regulations, permits authorizing activities involving eagles are covered under separate regulations at part 22, rather than part 21, which covers permits for all other migratory birds. Eagles have their own permit

regulations because they are protected not only by the MBTA, but also by the Bald and Golden Eagle Protection Act (BGEPA), which contains different, and in some respects more protective, language than the MBTA. This final rule revises the proposed § 21.2 language in order to clarify that the migratory bird permit exemptions at § 21.12(a), (c), and (d) also apply to eagles.

This final rule also introduces a minor revision to part 22 (eagle permits). The revision to § 22.11 accomplishes the same purpose as the changes to § 21.2, and was necessary to bring part 21 (migratory bird permits) and part 22 into agreement. Prior to this rulemaking, § 22.11 provided that certain actions prohibited by the BGEPA may be permitted only under part 22, part 13, and/or § 21.22 (banding or marking permits). Thus, the only permit regulations within part 21 that applied to eagles were regulations pertaining to banding and marking permits. The new § 22.11 language extends the application of part 21 to eagles, by providing that actions prohibited under the BGEPA may be permitted by part 22, part 13, and/or part 21, as provided by § 21.2.

Permit exemption for public health officials. § 21.12(c): The Service has revised this provision for the final rule by adding employees of land management agencies to the list of exempted personnel who may collect infected birds without a permit. We made this revision because of the increasing presence of West Nile virus nationwide, which has been accompanied by an increased need for land managers, such as the National Park Service, to monitor the spread of the virus in avian populations on public lands.

Comment: The word “toxins” should be changed to “causes” to allow public health officials to pick up birds injured by natural causes.

Service response: Replacing the word “toxins” with “causes” would create a different result from what we intended. This provision was not meant to allow public health officials to collect birds injured by natural causes or accidents. Rather it is intended to cover only situations where birds are suspected to have been stricken by infectious diseases (including those caused by natural toxins). The final rule continues to provide that public health officials acting without a permit would not be authorized to collect and possess birds that appear to have been injured as the result of anything but infectious diseases or natural toxins. (A different provision within the new permit regulation authorizes any person to pick up an injured bird in order to

immediately take it to a permitted migratory bird rehabilitator.)

Comment: Persons exempt from migratory bird permit requirements by § 21.12 should still have to adhere to some facility and husbandry standards.

Service response: As part of a separate rulemaking, we intend to propose language that addresses § 21.12 permit exemptions and establishes baseline facility and husbandry requirements for those entities exempted under § 21.12.

Comment: Public health officials will not adequately safeguard the birds, because they won't be able to recognize the differences between public health threats and other conditions that do not affect public health. Rehabilitators should accompany them. Birds may be unnecessarily killed. The regulations need to include provisions addressing the care of these birds after they are collected, as well as a requirement to notify a permitted rehabilitator, and recordkeeping requirements.

Service response: Rehabilitators are free to volunteer their services to accompany such public health officials. However, whether or not rehabilitators are present, these officials need to be able to pick up birds that may be evidence of a high risk to public health. Furthermore, the majority of these birds will already be dead or mortally ill. We do not agree that it would be in the best interest of the overall protection of migratory birds, or that it will enhance public perception of the field of migratory bird rehabilitation, to impose onerous recordkeeping requirements on persons acting to protect public health in situations where most birds are dead or doomed.

Permit exemption for veterinarians § 21.12(d): **Comment:** Veterinarians are not usually trained to treat birds. And wild birds may be given less priority since they are not associated with paying customers. Veterinarians should be required to get permits.

Service response: The purpose of this exemption is to make legal a practice that is common today—that is, the situation where a person finds an injured bird, and not knowing what else to do, brings it to a veterinarian. Many veterinarians do not want to turn away an injured creature, particularly if it means that it may not survive long enough to be taken to a permitted migratory bird rehabilitator. Right now, if the veterinarian tries to stabilize the bird, he or she is violating the law. The Service believes that veterinarians should not be forced to make the choice between providing emergency care to a stricken bird and breaking the law. Furthermore, we believe that this provision will foster greater awareness

within the veterinary community of legal status and medical needs of migratory birds, and will build relationships and strengthen communication between veterinarians and migratory bird rehabilitators, resulting in an overall net benefit to migratory birds.

Comment: The veterinary permit exemption is not needed because the new permit regulation's "Good Samaritan clause" at § 21.31(a) should cover veterinarians already.

Service response: The good Samaritan clause does not authorize persons to retain birds or to provide stabilizing medical treatment or euthanasia. Under the Good Samaritan clause, a person who finds and takes temporary possession of an injured bird is required to contact a permitted rehabilitator, and transfer the bird to them immediately.

Comment: Veterinarians should be required to contact the Service for one of the following: a referral to a permitted migratory bird rehabilitator, permission to stabilize for transfer within 24 hours, or permission to euthanize.

Service response: The rule states that veterinarians must transfer any bird they do not euthanize to a permitted migratory bird rehabilitator. Veterinarians may contact the Service if they need to find a local rehabilitator, but we do not see what purpose it would serve to require them to contact us for a referral, when in some cases, they will already have such information. Second, the rule only provides authority for necessary stabilization of the bird's condition, which we would certainly grant, should the vet call us, so we do not see what purpose it would serve to require the veterinarian to call us for permission. Finally, euthanasia is a means to stop the suffering of the bird. To require a veterinarian to call the Service could unduly prolong such suffering, so the rule does not require this either.

Comment: Veterinarians should not have to call U.S. Fish and Wildlife Service's Ecological Services personnel when they receive an injured federally listed migratory bird species. Rather, they should have to call a permitted rehabilitator.

Service response: The rule requires veterinarians to contact the Service for the same reason that it requires rehabilitators to contact the Service: specialized facilities exist to care for some listed species, and in those cases, it could be critical that the bird be transferred to the designated facility as soon as possible.

Comment: Why is the veterinarian's requirement to contact the Service when they receive a listed species different

than the requirement for rehabilitators? The rule requires veterinarians to contact the Ecological Services Office, whereas rehabilitators are required to contact their issuing Migratory Bird Permit Office?

Service response: Veterinarians are not permit holders, and therefore have no special relationship with the Service. It is just as easy for them to keep the telephone number of the local Ecological Services Office handy (which is the decisionmaking body in this scenario) as it is for them to contact the Regional Migratory Bird Permit Office. In contrast, permitted rehabilitators established a relationship with the Service's Migratory Bird Permit Office (the issuing office) when they applied for and were issued a permit. Contacting the issuing office is easier for them because the telephone number is included with their permit. The issuing office can then contact the Ecological Services Office. In addition, we hope that this rule will foster a new relationship between veterinarians and the Service in relation to migratory birds. In the case of endangered species, it makes sense that that relationship be with Ecological Services, the Service's office that handles listed species.

Comment: Veterinarians should not have to keep records, except for the birds they euthanize, since the rest are transferred to permittees who keep the records.

Service response: We agree with this comment. The rule has been revised to require veterinarians to keep records of only those birds that they euthanize or which otherwise die in their care.

Comment: The phrase "necessary treatment" is not well-defined. "As soon as practicable" is too ambiguous. Veterinarians should have to apply for a permit if they wish to do more. Veterinarians should be required to contact rehabilitators before performing any extended treatment.

Service response: We have revised the final rule to clarify that, absent a permit, veterinarians may only stabilize or euthanize birds, and we have established a time limit of 24 hours in which veterinarians may keep birds after stabilization without contacting the permit office for permission to retain the bird.

Comment: The rule should require veterinarians to keep birds separated from other animals and away from noise and disturbance.

Service response: While we agree with the recommendation to separate birds from noise and other animals, many vets may not be able to provide such an ideal situation, yet may still be able to aid

injured birds that otherwise might not be saved.

Comment: Veterinarians should be required to record the name and contact information for the person who delivered the bird, so that fledglings can be reunited with their parents.

Service response: Under the rule, veterinarians are not authorized to accept healthy fledglings. The rule exempts them from the permit requirement only in cases of sick or injured birds.

Comment: Many veterinarians are not trustworthy; some will use birds to experiment on. How will they be monitored?

Service response: We do not agree that many veterinarians are likely to experiment on migratory birds.

Comment: Veterinarians should not be exempt from permitting requirements. They do far too much damage (stress issues, imprinting, medical supply issues, surgical issues, caging concerns, etc.).

Service response: The rule requires veterinarians to transfer birds to rehabilitators within 24 hours after the bird is stabilized. Many of the concerns noted by the commenter will not arise under this scenario (surgical issues, imprinting). While there is some risk that veterinarians will not provide adequate care, we believe that the majority will, and that the ability of veterinarians to accept birds from the public and stabilize them will result in an overall benefit to migratory birds.

"Good Samaritan clause." § 21.31(a). *Comment:* This provision should be revised to require people who pick up birds to transfer them to a permitted rehabilitator within 24 hours, not just "immediately" as the proposed rule says.

Service response: We believe that the language of the proposed rule will better ensure that Good Samaritans do not delay in finding a permitted rehabilitator to accept the bird.

General permit provisions § 21.31(b).

Comment: The rule should say that rehabilitators provide "rehabilitative services," not "medical care." Only veterinarians may provide medical care, under State licensure.

Service response: We have revised the rule to state that rehabilitators are authorized to provide "rehabilitative care."

Comment: The 24-hour limit within which rehabilitators are required to transfer species for which they do not have authorization is too short. Sometimes a qualified rehabilitator is not easily accessible or readily available. Also, in some situations it is

better for the bird not to be moved so soon.

Service response: We have revised the rule to state that the bird must be transferred within 48 hours. The rule also now provides that the permittee must contact the issuing office for authorization to retain the bird until it can be transferred, if a rehabilitator authorized to receive the bird is not available within 48 hours.

Comment: Rehabilitators should be able to use their birds in educational programs.

Service response: The purpose of the rehabilitation permit is to rehabilitate birds for release to the wild. Birds held under a rehabilitation permit can be used for education only if transferred to an educational permit—after being deemed nonreleasable by a veterinarian. Birds undergoing rehabilitative care that are exposed to humans in educational programs could become imprinted, compromising successful reestablishment in the wild. (Within the context of this rulemaking, the word imprinted means *habituated to humans*). Even if not imprinted, the stress from this type of exposure can inhibit the rehabilitation of the bird.

Application process and fee § 21.31(c). *Comment:* The rule does not say what form the applicant must use to apply for a rehabilitation permit.

Service response: The rule has been revised to state that the applicant must use Service Form 3–200–10b. We removed the provisions within this section that specified what the application must include, since all application requirements are specified on the application form. Notice is published in the **Federal Register** every 3 years alerting the public of their opportunity to review and comment on Service permit application forms and other forms used to collect information from the public. The current Rehabilitation permit application form was open for public comment on September 6, 2000 (65 FR 54060) and March 8, 2001 (66 FR 13947), and will be open for review and comment again in 2003 or 2004.

Comment: The applicant must submit a letter from a permitted rehabilitator stating that the rehabilitator will provide assistance to the applicant, but the rule does not specify what kind of assistance is envisioned. Is it for mentoring purposes for new rehabilitators, or is it supposed to ensure that there is a “back-up” rehabilitator available in case of illness or absence? If the former, the requirement to have a relationship with another permitted rehabilitator seems to be geared towards novices. Persons

renewing their permits should not need to show this.

Service response: The purpose of this requirement is primarily for mentoring purposes for new applicants. A rehabilitator renewing a permit does not need to resubmit the same information he or she provided in the original permit application. Instead, he or she will use a Service permit renewal form, which only asks for any information that has changed since the applicant last applied.

Comment: The requirement to have another permitted rehabilitator vouch for the applicant's experience is unnecessarily burdensome and implies distrust.

Service response: The letter serves to show that the applicant has had experience rehabilitating birds. We do not believe that asking for a showing of experience implies distrust. It is merely a way to distinguish those applicants who have experience from those who do not. We also do not agree that this requirement is overly burdensome. The letter need not be lengthy. Furthermore, this requirement is not new; it has been a requirement on the Special Purpose—Rehabilitation permit application form for over a decade.

Comment: As part of the application requirements, the cooperating veterinarian should not be required to state knowledge of the training and qualifications of the applicant.

Service response: The application does not require such a statement; rather, it recommends that the veterinarian provide such knowledge if he or she has it. However, we will reconsider the need for this language when the application form is eligible for revision.

Comment: People should not be required to have facilities in place before obtaining their permit. It is not reasonable to ask the applicant to build expensive facilities without knowing whether the permit will be granted.

Service response: Having adequate facilities in place is a standard requirement for all permits authorizing possession of live wildlife. A permit can be issued to authorize rehabilitation of types of birds that do not require extensive or expensive facilities. Then, the permittee can upgrade his or her facilities at any time after the permit is issued to house more birds or different species. When such additions are made, the issuing office will expand the authorization on the permit, assuming the other criteria are also met (i.e., the applicant must also have the required experience to rehabilitate the new species he or she wishes to add to the permit).

Comment: The permit application fee should be waived because of the vital public service rehabilitators perform. Rehabilitators voluntarily do the Service's work for them, and are funded through donations and community support. Some may not be able to afford to pay the fee.

Service response: Although we believe the work of rehabilitators is very valuable, it is not a Service responsibility. None of the applicable laws or treaties make provision for care of individual birds, nor are funds appropriated by Congress for such a purpose. Rather, we are charged with and receive funding for implementing the various Migratory Bird Treaties and the Migratory Bird Treaty Act, which prohibit virtually any human contact with migratory birds unless authorized by regulations we issue, or by a permit from us. The permit program has significant costs, and we are directed by Congress and the Office of Management and Budget to charge a fee for providing permits, to recover at least some of these costs. Because of this, we do not receive appropriated funding sufficient to cover all costs of issuing permits, and must depend upon application fee revenues to make up the balance. In this particular case, the permit application fee is \$5 or \$10 dollars annually, which is not a significant financial burden upon any one applicant.

What criteria will the Service consider before issuing a permit? § 21.31(d).

Comment: What criteria will the Service use to decide what species a person will be qualified to rehabilitate? The rule only says he or she must have “adequate experience.” What is “adequate experience?”

Service response: We were reluctant to define exactly what type and amount of experience will be considered adequate, because of the different types of experiences that a person could have that might contribute to his or her ability to rehabilitate birds. An applicant who has cared for hundreds of uninjured orphaned nestlings, but who has never had any hands-on experience with injured birds, will not be qualified for a permit that authorizes rehabilitation of injured and sick birds. Depending on the extent of the applicant's experience working with baby birds, he or she may be qualified for a permit that is restricted to caring for orphaned nestlings. Similarly, hands-on experience working with injured and sick songbirds will not be sufficient to qualify an applicant for a permit to rehabilitate eagles—though it may be enough to enable the applicant to obtain a permit to work with passerines. However, because numerous

commenters were uncomfortable without some guidance as to what we will consider "adequate experience," we revised this section to require at least 100 hours of hands-on experience with the types of species (not each and every specific species) that the applicant intends to rehabilitate, or "comparable experience." Applicants' experience with migratory bird rehabilitation must span at least 1 year. This indicates an enduring interest in the field, as opposed to a temporary enthusiasm. Up to 20 hours of the time requirement may be fulfilled through attending migratory bird rehabilitation seminars and training courses.

Comment: There should be a formal examination or review process to ensure that applicants have the necessary knowledge to treat migratory birds. Or the Service should set up a training and accreditation program to train prospective rehabilitators.

Service response: While a written test or accreditation program may have value, our priority is that the applicant have hands-on experience in migratory bird rehabilitation. We believe that the application requirements and issuance criteria of this rule will adequately ensure that permittees are qualified.

Comment: People should not be required to have experience before getting their own rehabilitation permit. It is too hard for them to get that experience without first having a permit. Having a permitted rehabilitator with little or no experience is better than having no rehabilitator at all, as would be the case in some areas. In order to gain the prior experience, the Service could institute a "novice" class of rehabilitators who would be more tightly regulated. They could gain their experience during the time spent in the novice class. Also, applicants may not want to admit to experience acquired without a permit.

Service response: We do not believe it is advisable to allow people with little or no experience to handle migratory birds, which are wild animals and have very particular needs. We do not think it would be safe for the people or the birds. Providing safe and effective rehabilitative care for sick and injured migratory birds requires knowledge that is difficult to impossible to acquire without rehabilitation experience. To gain experience, a person dedicated to becoming a migratory bird rehabilitator can volunteer as a subpermittee for a federally permitted rehabilitator. Most rehabilitators can always use the assistance of capable individuals who are willing to learn.

Comment: The regulations should provide for a licensed sponsor who

could determine after a year if the subpermittee was ready to receive permittee status.

Service response: We feel that this rule accomplishes the same objectives as a formal 1-year requirement for a sponsor, but with more flexibility. We expect most applicants to gain experience by working with permittees as subpermittees, and we ask the permit applicant to include a letter of reference from a permitted rehabilitator who has knowledge of the applicant's experience.

Comment: The rule should require permittees to have at least 6 months of experience in rehabilitation, a portion of which must occur in the spring.

Service response: The rule has been revised to require that an applicant have experience spanning an entire year, in order to qualify for a permit. The purpose of this provision is primarily to ensure that the applicant's interest is more than fleeting, but it will also make it more likely that successful applicants will have rehabilitation experience during nesting season.

Comment: People should not have to show prior experience with every species they wish to rehabilitate, since more than 800 species of birds are protected by the MBTA.

Service response: The rule requires experience with the types of species you intend to rehabilitate, not with each and every species. For example, if you have adequate experience working with red-tailed hawks, goshawks, and barred owls, we may issue you a permit authorizing rehabilitation of raptors, even though you have never handled Cooper's Hawks, Harris's Hawks or American Kestrels. Of course, issuance of the permit would also be contingent on whether you have adequate facilities for rehabilitating raptors.

Comment: The rule states that the Service will consider how much experience a person has rehabilitating species that are federally listed as threatened or endangered. This language should be removed because most people will have no experience with listed species, since these species are rare.

Service response: We agree with this comment. Although some listed species may be locally abundant where they do occur, most are rarely encountered. Furthermore, rehabilitative treatment for most listed species will not differ categorically from treatment for unlisted birds. The language of the rule has been revised to reflect that permittees will be authorized to accept listed species with the condition that they immediately contact the Service to ascertain whether the Service will require the permittee to

transfer the bird to a designated special facility.

Comment: The requirement to have a working relationship with a veterinarian should not apply to rehabilitators who are veterinarians or "other qualified biological specialists" such as ornithologists or raptor biologists.

Service response: We agree that an applicant need not have an agreement with a licensed veterinarian if the applicant is a licensed veterinarian. The rule has been revised to reflect this. However, we do not agree that an advanced degree in biology or ornithology includes the type of medical education that can substitute for veterinary expertise.

Comment: Some rehabilitators do not have access to a veterinarian. They should be able to send birds to rehabilitators who have such a relationship.

Service response: A veterinarian must be available to treat birds that need medical care. To involve another rehabilitator in the transfer to the veterinarian is an unnecessary burden on the second rehabilitator and is not in the best interest of the bird, which may need more immediate medical attention. We believe, and the rule reflects, that the originating rehabilitator should establish his or her own agreement with the veterinarian without going through another rehabilitator, particularly if the veterinarian will wind up treating the bird anyway.

Comment: The rule should state that the veterinarians will provide "medical care," not "veterinary assistance." Also, the rule does not define "qualified" veterinarian. It should be changed to "licensed."

Service response: We agree with these comments and have revised the rule accordingly.

Comment: The rule should contain provisions addressing what happens if the relationship with the veterinarian is terminated. Commenters make no suggestion of what kind of provisions would be appropriate. The rule should state that the rehabilitator must maintain a working relationship with a veterinarian throughout the tenure of the permit.

Service response: We agree with this comment and have revised the rule to add a condition within § 21.31(e) that the permittee must maintain a working relationship with a licensed veterinarian.

Comment: Veterinarians could encounter liability issues if they commit on paper to providing assistance.

Service response: No veterinarian is required to enter into such an agreement. None need participate in

migratory bird rehabilitation if it makes him or her uncomfortable. Also, the veterinary relationship has been a requirement of the rehabilitation permit for many years, and we have not heard any concerns from veterinarians regarding this provision.

Comment: The rule should state that an applicant must have "State authorization" rather than a State "permit or license" if required by the State. Some States require authorization, but it is not in the form of either a permit or a license.

Service response: The rule has been revised to include "other authorization."

Comment: The rule does not say what happens when the rehabilitator loses his or her State permit.

Service response: Section 21.31(g) has been revised to further clarify that the Federal permit is not valid unless the permittee possesses and adheres to the terms of his or her State authorization.

Facilities § 21.31(e)(1). *Comment:* The Service should not use the Minimum Standards for Wildlife Rehabilitation (MSWR) as guidelines because the MSWR includes references to requirements that are outside the purview of the Service.

Service response: The rule has been revised to clarify that it refers only to the suggested caging dimensions within the MSWR, and not to the other topics within the MSWR.

Comment: The Service should not require rehabilitators to conform to MSWR recommendations because they are too restrictive, and could be cost prohibitive.

Service response: The rule does not require anyone to conform to the MSWR; rather it states that the Service will use the MSWR as guidelines in evaluating applicants' facilities. This provision reflects the Service's current policy. Use of the Minimum Standards provides the permit issuing office with preliminary parameters to use as guidelines for judging what constitutes suitable avian housing. The use of a common reference will foster consistent treatment for applicants.

Comment: The Service may be too rigid about enforcement of the MSWR caging dimensions.

Service response: We have revised the language of this section to state that the Service will authorize variation from the standards where doing so is reasonable and necessary to accommodate a particular rehabilitator's circumstances, unless a determination is made that such variation will jeopardize migratory birds. The revised language states more strongly that the Service will apply flexibility in our use of the Minimum

Standards. We will use the Minimum Standards as a "starting point" for evaluating what are acceptable cage sizes, without forcing rehabilitators to have cages with the published dimensions. The rule leaves room for variation, while providing the regulated community with basic parameters that the Service considers acceptable.

Comment: The Service's reliance on the MSWR disenfranchises those rehabilitators who do not belong to IWRC and NWRA and those who are unaware of the existence of the standards document.

Service response: We do not agree that the proposal would disenfranchise nonmembers of the IWRC/NWRA, since that MSWR document is widely available to members and nonmembers alike, and we have been using it and referencing it for years in the Standard Conditions for rehabilitation permits.

Comment: The rule should not reference an external document (MSWR), because it is privately published and subject to change. Which edition does the Service mean to use?

Service response: The rule has been revised to state that it refers to the 2000 (3rd Edition) of the MSWR.

Comment: The Service should replace the use of the MSWR as guidelines with the exact language on Page 20, paragraph 2, of the MSWR. This would give the applicant more flexibility, but ensure high standards.

Service response: The language to which the commenter refers does not include any mention of actual cage dimensions. We need established general parameters for what the Service will consider acceptable cage dimensions. Such parameters give the Service something consistent to work with in assessing applicants' facilities, as well as providing guidance for applicants to use in planning their facilities.

Comment: The rule makes no provision for flight caging. Birds need to do more than open their wings to be conditioned for release.

Service response: Cages used to condition birds for release are addressed in the MSWR as part of the caging dimensions that the Service will use as guidelines.

Comment: No mention is made of overcrowding. No mention is made of providing clean, fresh water and food. No mention is made of the need to safely clean the cage.

Service response: We have added the following conditions to the rule: "Birds must not be overcrowded" and "You must provide the birds in your care with a diet that is appropriate and nutritionally approximates the natural

diet consumed by the species in the wild, with consideration for the age and health of the individual bird." We also replaced the requirement to keep the floor clean and well-drained with the following condition: "Enclosures must be kept clean, well-ventilated, and hygienic."

Comment: The rule should require that birds not be in sight of predators, including predatory birds. Also, the rule should require facilities to have quarantine areas to protect against the spread of infectious diseases.

Service response: While we view these suggestions as good advice, we consider them beyond the threshold of what ought to be mandated by this regulation.

Comment: The caging dimensions of the MSWR are too "ambitious" for Unlimited Activity and Limited Activity birds, more than a reasonable minimum. Some reduction in overall sizes should be acceptable.

Service response: We realize that some recommendations within the MSWR are viewed by some rehabilitators to be ambitious or optimum rather than minimal, and we agree that in many instances, some reduction in cage size will be acceptable. The rule provides for variation from the suggested dimensions of the MSWR where such variation will not jeopardize migratory birds.

Comment: The MSWR recommends too much water depth in pools for wading birds. Two feet of water can be a struggle for a recuperating pelican. It could also result in hypothermia. These minimum depths should either be reduced or dropped entirely.

Service Response: We appreciate observations like this because they can help us to evaluate facilities. Common sense information from applicants with experience is valuable and will help us to understand why variation from the standards may not jeopardize birds.

Comment: The MSWR recommends wood as a caging material. However, this is a bad material to use in some areas, such as Florida, because it rapidly rots, fails to withstand tropical storms, and blocks healthy air flow in humid environments. Also, soft netting can entangle birds and interfere with air circulation.

Service Response: The rule does not state what specific materials must be used for caging or netting, nor does it reference the MSWR's recommendations for materials.

Comment: The facilities criteria in the rule give no guidance to permit applicants and leave too much to the discretion of the Service.

Service Response: Most people who commented on the facilities standards of the rule were not concerned that too much discretion was left to the Service. Rather, many commenters felt that the standards will not allow for enough flexibility. As written, the rule reflects the Service's intent to be as specific as possible, while at the same time ensuring we remain flexible in authorizing reasonable variation from the specifics.

Comment: The requirement that caging be large enough for the birds to fully extend their wings does not make sense for facilities that are used during the first stages of rehabilitation—when the birds' movement is intentionally restricted.

Service Response: We deleted this provision from the final rule, since cage dimensions are already addressed by reference to the MSWR, which provide for the different types of cages recommended for different stages of recovery.

Comment: The rule should not require permittees to dedicate one cage to just one species. People need to be able to "decorate" cages to suit different species. Will the Service have to approve every new cage to house a different species?

Service Response: The rule does not require that cages be dedicated to particular species. As long as the cage is adequate for any species that will be housed in it, it is acceptable. The permit will authorize categories of species, not individual species. Facilities generally can be built to house types of species (e.g., large raptors, small waterbirds), not individual species (e.g., Swainson's Hawk, American Avocet). When rehabilitators receive species for which they do not have adequate facilities, they must transfer the birds to rehabilitators with such facilities.

Comment: The prohibition against displaying birds to the public is unrealistic. Keeping the birds from hearing and seeing people (in particular hearing people) can be difficult. Also, rehabilitation birds are a good educational tool that generates public empathy and support for the facility.

Service Response: The Service issues a permit to hold and use birds for educational programs, but it is not the rehabilitation permit. The purpose of the rehabilitation permit is to rehabilitate birds for reintroduction to the wild. Proximity to people can cause stress that impedes recovery, and exposure to human activity can habituate birds to people to the degree that they lose natural instincts necessary to survive in the wild. For those reasons, use of rehabilitation birds in

educational formats remains prohibited in the rule. It is possible to insulate birds from the public. However, it is also true that some birds enter rehabilitation facilities already somewhat habituated to humans. The rule continues to provide that rehabilitation birds not be exposed to the public or used in educational formats. However, in rare cases, birds enter rehabilitation facilities already somewhat habituated to humans. Accordingly, the language of the rule has been revised to state that birds may not be displayed to the public "unless you use video equipment, barriers, or other methods to reduce noise and exposure to humans to levels *the birds would normally encounter in their habitat*." (emphasis added).

Comment: The rule should provide that facilities currently approved under the existing Special Purpose Rehabilitation permit will not fall out of compliance under the new rule.

Service Response: The final rule contains a "grandfather clause," which states, in part, "If your facilities have already been approved on the basis of photographs and diagrams, and authorized under a valid § 21.27 special purpose permit, then they are preapproved to be authorized under your new permit issued under this section, unless those facilities have materially diminished in size or quality from what was authorized when you last renewed your permit, or unless you wish to expand the authorizations granted by your permit (e.g., the number or types of birds you rehabilitate)."

Subpermittees § 21.31(e)(3).

Comment: The rule should not authorize subpermittees, because their lack of experience results in higher mortality rates and imprinting. People should be encouraged to volunteer with permitted rehabilitators, but volunteers should not be allowed to take birds home to facilities outside those of the rehabilitator.

Service Response: Volunteers are often critical to migratory bird rehabilitation. Few rehabilitators can afford to pay staff to do the work that volunteers do. In addition to the valuable services subpermittees provide to rehabilitators, the subpermittee system serves as a training and recruitment program for bringing new rehabilitators into the field. We do not believe that allowing subpermittees to take birds to off-site facilities endangers migratory birds, because the permittee is responsible for ensuring that subpermittees are qualified to provide adequate care. Off-site subpermittee facilities must meet the same standards as the permittee's facilities. For these

reasons, we believe that allowing subpermittees to take birds to authorized off-site facilities ensures better care for migratory birds by increasing the availability of round-the-clock care.

Comment: Subpermittees should not have to be 18 or older. Many younger people can provide valuable services while gaining valuable knowledge and experience.

Service Response: The rule requires that a person who will be performing activities that require permit authorization in the absence of the permittee or subpermittee must be a subpermittee, and it also requires that subpermittees be 18 or older. However, minors would be allowed to help in all other situations except those that involve actions for which a permit is required (handling the birds, basically) when the permittee or a subpermittee is not present. Since we would not issue a rehabilitation permit to minors, we will not authorize minors to perform activities that require a permit without supervision.

Comment: Subpermittees' names should be on file, but including all their qualifications could be difficult for big facilities, where large numbers of subpermittees change frequently.

Service Response: The application requirement to list the qualifications of the subpermittees has been deleted from the rule. However, this information is still requested on the permit application form 3-200-10b. We intend to drop this requirement from the form when our application forms are revised and reauthorized. Meanwhile, new subpermittees need only be named in writing to the issuing office without an accompanying description of their qualifications.

Comment: Large facilities should not have to immediately submit the names of new subpermittees. This requirement is too burdensome with so much turnover amongst volunteers at large facilities. Instead, there should be a requirement to send in amendments every quarter listing the current subpermittees.

Service Response: Not everyone who works under a rehabilitation permit needs to be on file with the Service as a subpermittee under that permit. Numerous people may be assisting at large rehabilitation centers. However, only those who will be conducting activities that require a permit in the absence of the permittee or a named subpermittee must be on file with the permit office. For instance, a facility may have 25 volunteers, but only four who conduct activities that require permit authority when the permittee is

offsite or otherwise unavailable to oversee activities conducted under his or her permit. In that case, only those four volunteers need to be on file with the Service as subpermittees. The remaining 21 people do not need to be named subpermittees as long as the permittee or one of the four listed subpermittees is present when they conduct activities that require permit authorization. We believe that, even for large centers with high volunteer turnover, the need to update named subpermittees will not be onerous, since not everyone assisting with permitted activities is required to be on file with the Service.

Comment: This requirement to list subpermittees would be particularly burdensome as applied to those who transport birds to and from the facility. Transporters don't really have contact with the birds anyway. Could they merely be listed with the rehabilitator's records, and not with the permit office?

Service response: Many transporters have frequent contact with the birds they pick up and deliver to rehabilitators, so we believe they should be treated like other subpermittees.

Comment: The subpermittee system should be replaced by an apprentice licensing program with mandatory training.

Service response: We believe the subpermittee requirements of the rule, together with the oversight of permitted rehabilitators, will provide sufficient training for persons entering the field of migratory bird rehabilitation. This system has been in place for many years, with few problems.

Comment: The rule does not specify whether the subpermittee's facilities must meet the same requirements as the permittee's facilities.

Service response: The rule has been revised to state that the subpermittee's facilities must meet the same standards as the permittee's facilities.

Comment: Do a subpermittee's facilities really need to be approved when it is just a shoe box for nestlings?

Service response: The Service does not need to see photographs and diagrams of a shoe box. However, the address where any subpermittee will be caring for nestlings outside of the permittee's premises must be provided in writing to the permit office and authorized by the permit office before any nestlings are transferred to the alternate site.

Comment: The rule does not state whether subpermittees are bound by all the requirements of the regulation. Also, who is responsible to supervise off-site activities of subpermittees?

Service response: The final rule states that "As the primary permittee, you are legally responsible for ensuring that your subpermittees, staff, and volunteers adhere to the terms of your permit when conducting migratory bird rehabilitation activities."

Comment: Subpermittees who provide frequent or long-term care offsite should be required to obtain their own permits.

Service response: We have considered mandating that permittees who provide frequent and/or, long-term care off-site obtain their own permits, but decline to do so because some people simply do not want to be permittees but may be able to provide quality care for birds under another person's permit. The rule requires the same standards for subpermittee facilities, and because it requires the permittee to be responsible for the subpermittee's rehabilitation activities, we believe that permittees will keep sufficient oversight over subpermittees to protect the birds under their care.

Imprinting § 21.31(e)(4)(i). Comment: The provision requiring imprinted birds to be turned over to the Service should be removed from the rule. Sometimes rehabilitators receive birds that have already been imprinted. And, some imprinting is likely to occur no matter what.

Service response: The rule has been revised to clarify that the requirement to transfer imprinted birds to a third party applies only to birds that have been imprinted while under the care of the permittee. The permittee will be required to transfer any bird imprinted under his or her care to another facility specified by the Service. After no longer than 180 days, however, all surviving birds that are nonreleasable, whether imprinted or not, must be transferred to another permit (unless additional authorization is granted from the permit office)—since the rehabilitation permit only authorizes possession of birds undergoing rehabilitative care.

Comment: Turning birds over to the Government will result in needless euthanasia. Rehabilitators will have to tell the public that the birds were transferred and possibly euthanized.

Service response: In the rare situations when the Service has removed imprinted birds from a permittee, we have placed the birds with migratory bird education permit holders to use in educational programs.

Comment: Some degree of imprinting will not interfere with a bird's ability to survive in the wild. If birds are too imprinted to survive in the wild, they should be placed in licensed sanctuaries.

Service response: The intent of this provision is to require rehabilitators to take precautions to prevent birds from becoming so habituated to humans that they cannot survive in the wild. It is in the best interest of migratory birds as a whole that they not be perceived as pets by the public or treated as such by permittees. Therefore, the rule requires that rehabilitators take precautions to avoid imprinting, and provides that the Service may remove birds from the care of those who do not do so.

Comment: The Service should not take imprinted birds away from rehabilitators because the Government doesn't have good facilities for holding them.

Service response: We do not hold birds in these situations. We place them with other permittees whom we have identified prior to the transfer.

Comment: The rule should require that all imprinted birds that are not listed as threatened or endangered be euthanized.

Service response: We do not agree that all non-listed imprinted birds should be euthanized. (See next comment.)

Comment: Imprinted birds should be allowed to be used for education or for foster parenting.

Service response: Imprinted birds may be used for foster parenting under the proposed rule—but the rule does not allow persons to use birds they themselves have allowed to become imprinted. The Service places imprinted birds with other permit holders for foster parenting or educational use.

Release § 21.31(e)(4)(ii) Comment: The 180-day limit for keeping birds in rehabilitation without additional authorization is too short. Many birds take over a year to be ready for release, plus it must be done during an appropriate season. A specific limit is arbitrary and not necessary. This decision should be left to the rehabilitator.

Service response: Rarely do birds need to be kept longer than 180 days. If more time is needed for rehabilitation, or if a bird must be held until the appropriate season for its release, the rule provides that the permittee need only contact the permit office for authorization. The instances where birds need longer than 180 days to be readied for release are infrequent enough that we do not consider this notification requirement to be burdensome. The longer birds remain in rehabilitation, the greater the chance they will become habituated to captivity. Moreover, without a limit, birds could be kept indefinitely.

Comment: The 180-day provision is good for experienced rehabilitators, but

less experienced rehabilitators should still be held to the 90-day period with permission needed to extend it.

Service response: We do not agree that less experienced rehabilitators should be allotted less time to treat and condition birds for release.

Comment: The proposed rule says nothing about the need to release birds as soon as possible. The 180-day period is too long. Birds will become habituated to people and the conditions of rehabilitation facilities.

Service response: The final rule states that birds must be released as soon as they are releasable (and seasonal conditions allow). Therefore, the 180-day limit will apply only to those birds that are not yet ready for release.

Comment: Rehabilitators should not need to get permission to keep birds longer than 180 days for foster parenting.

Service response: The purpose of the rehabilitation permit is to authorize possession of birds so that they may be provided the rehabilitative care necessary to return them to the wild. If a bird is not ready for release before the 180-day limit, but is still expected to be releasable in the future, and is suitable for foster parenting, it may be used for that purpose until released. If the rehabilitator's veterinarian determines that a bird is permanently injured and nonreleasable, the rehabilitator may submit a written request to possess the bird for foster-parenting purposes. If the request is justified and approved, the Regional permit office will amend the rehabilitator's permit to reflect this authority.

Comment: The rule should include the guidelines for release that are contained within the Minimum Standards for Wildlife Rehabilitation, or it should provide some other guidance for when the bird is ready for release.

Service response: Generally, regulations should state what is required, not what is recommended. In the interest of flexibility, the rule does not establish regulatory requirements for release of birds. There are simply too many variables. The Minimum Standards and other publications of the rehabilitation community, as well as the guidance provided by peers, can serve as valuable sources for determining suitable conditions for release.

Comment: Rehabilitators should not have to coordinate with State and local wildlife officials about where to release the birds. Most local and State wildlife officials would not want to be consulted so frequently.

Service response: This was a recommendation in the proposed rule, not a requirement. Since it was not a

requirement, we have removed it from the final rule.

Comment: State conservation agencies should be notified before rehabilitators release listed species.

Service response: The rule provides that if a bird is of a species that is listed by the Federal Government as threatened or endangered, the rehabilitator must coordinate with the Service before releasing the bird. In many cases, we will involve the State because we work in partnership with State agencies on issues involving wildlife. However, some States may not wish the Federal Government to mandate State involvement in the release of federally listed species via Federal regulation. It is more appropriate that State regulations, rather than Federal, address whether or not rehabilitators must contact the State before releasing listed species.

Comment: The rehabilitator should not need to contact the Service before releasing a threatened or endangered species.

Service response: We strongly disagree with this comment. The determination of where to release an individual of a listed species is more critical than it is for nonlisted species in terms of overall success of the species. The optimal release site may be one where the individual bird is most likely to rejoin wild populations and reproduce. The Service's biologists will often have information the rehabilitator does not regarding the location and viability of wild populations of listed migratory bird species.

Euthanasia § 21.31(e)(4)(iii) and § 21.31(e)(4)(iv). *Comment:* You should delete the requirement to euthanize birds that cannot feed themselves, perch upright, or ambulate; or are blind, or require amputation of a leg, foot, or wing at the elbow or above. Some birds with these conditions can lead useful lives as educational birds or foster parents for juvenile migratory birds in rehabilitation. These decisions should be left up to the permittee and the veterinarian.

Service response: The euthanasia requirements are based on humane consideration for the birds. The handicaps and stress caused by these type of injuries frequently lead to repeated additional injuries and ailments throughout the duration of the bird's life. The Service does not believe that birds should be subjected to this trauma and poor quality of life for the sake of their human keepers, even if such birds could be used as educational tools. Educational programs face no shortage of less disabled nonreleasable birds. However, because extraordinary

circumstances may warrant an exception to this rule, we have revised the rule to include the following narrow exemption: The permit issuing office may waive the euthanasia requirement where (1) a veterinarian makes a written recommendation that the bird should be kept alive despite the severity of its injuries, including an analysis of why the bird is not expected to experience the injuries and/or ailments that typically occur in birds with these injuries, and a commitment (from the veterinarian) to provide medical care for the bird for the duration of its life, including complete examinations at least once a year; and (2) a placement is available for the bird with a person or facility authorized to possess it (e.g., someone with a migratory bird education permit), where it will be provided that veterinary care.

Comment: If a permitted rehabilitation facility is willing to take on the burden of caring for birds with the types of injuries for which the rule requires euthanasia, why not let them?

Service response: First and foremost, the Service considers keeping a bird alive under these conditions to be inhumane (see above). Secondly, the purpose of the rehabilitation permit is to recover birds for release to the wild, not to retain birds in captivity. Nonreleasable birds must be transferred to another permit to be legally possessed. Most rehabilitated birds that are kept in captivity are transferred to an educational use permit, which requires that the bird be used for conservation education. The Service does not issue permits simply to keep birds in captivity. Allowing people to maintain migratory birds in sanctuary situations would compromise the status of migratory birds as wildlife. We believe that this outcome would be detrimental to migratory birds and would constitute an abrogation of our responsibility to protect and conserve wildlife.

Comment: The mandatory euthanasia requirements will stop people from bringing sick and injured birds to rehabilitators.

Service response: We think this scenario is highly unlikely. People bring birds to rehabilitators out of humane consideration for the birds. The euthanasia requirements are borne from the same humane consideration. If a bird has sustained trauma and injuries that are likely to cause the bird stress, pain, and/or further injury throughout the duration of its life, euthanasia is the kindest, most humane treatment people can provide.

Comment: Euthanasia for these types of injuries should only be mandatory if

the bird does not acclimate well and cannot be placed.

Service response: We disagree with this comment. Birds should not be subjected to amputations only to be euthanized later due to failure to acclimate. That is why the rule states that birds must be euthanized rather than undergo amputation.

Comment: Euthanasia requirements should not be different for listed species. Rehabilitators should be authorized to euthanize any bird that is suffering due to an injury too serious to heal without having to call the Service for permission.

Service response: The final rule continues to require rehabilitators to contact the issuing office before euthanizing listed species. The reason for this difference in treatment is that a rare situation could arise in which the suffering of the bird might be outweighed by a critical need to recover its species. For example, the addition of a blind endangered bird could be significant to a dwindling gene pool. The rule continues to provide that the rehabilitator may proceed with euthanasia if Service personnel are not available and the euthanasia is warranted because of humane considerations for the bird.

Placement and Transfer of Birds § 21.31(e)(4)(v) and § 21.31(e)(4)(vi).

Comment: Rehabilitators should not have to get prior approval from the Service before placing nonreleasable birds or their parts or feathers with another permittee authorized to hold migratory birds.

Service response: The requirement to obtain approval from the issuing office before transferring nonreleasable birds will ensure that birds are transferred to persons authorized to possess such birds, and not to someone whose permit has expired, or who already has the maximum number of birds authorized by his or her permit.

Comment: Rehabilitators should be required—not just allowed—to donate dead specimens to institutions authorized by permit to possess migratory bird specimens or exempted from the permit requirements under § 21.12.

Service response: We encourage permittees to transfer dead specimens to other permit holders or exempt institutions who can use them. However, many rehabilitators are already stretched to their limits trying to care for the live birds they hold under their permit, and the Service believes they should not be burdened with an additional requirement to locate authorized persons to receive each dead specimen.

Comment: The rule should not require that all dead eagles be sent to the National Eagle Repository. Rather, it should require permittees to notify the State so the State can do necropsy, and then send the birds to the Repository.

Service response: Not all States wish to be contacted by rehabilitators with eagle carcasses. The rule has been revised to clarify that permittees must comply with State requirements requiring State notification and necropsy—where such requirements exist.

Imping Feathers § 21.31(e)(4)(viii).

Comment: The rule does not specify what the Service considers to be a “reasonable” number of feathers that a rehabilitator may keep for imping purposes.

Service response: We do not believe the regulation should establish a specific number of feathers that may be legally retained for imping purposes. Based on location, populations of species, and specialization, rehabilitators will need varying numbers of feathers of particular species. The final regulation states that a “reasonable number” will be based on the numbers and species for which the permittee regularly provides care.

Taking blood samples

§ 21.31(e)(4)(ix). Comment: The rule should allow rehabilitators to take blood and tissue samples for research that would aid rehabilitators and the species with which they work, as long as doing so does not jeopardize the individual bird. For example, blood may be drawn to establish normal values for particular species, or to research contagious diseases that are not human health hazards.

Service response: We have modified this provision to clarify that samples may be taken for purposes of diagnosis and recovery not just of the individual bird, but of the birds under the permittee’s care, generally. For broader research purposes, the rehabilitator should obtain a migratory bird scientific collecting permit issued under 50 CFR 21.23.

Recall of birds § 21.31(e)(4)(xi).

Comment: The proposed rule states that migratory birds held under a rehabilitation permit remain under the stewardship of the Service and may be recalled at any time. Under what circumstances would the Government recall birds? What is the justification?

Service response: The rule has been revised to clarify that permittees do not own the migratory birds they hold under this permit. The language concerning recall has been removed because we do not believe it is necessary that this regulation state that

the Service would and does remove birds from the possession of permittees when the quality of care provided to the birds is not adequate or when a permittee violates wildlife laws, regulations, or the terms of the permit.

Notification to the Service

§ 21.31(e)(5) and throughout. Comment: The rule contains too many notification requirements. The requirements for permittees to contact the Service so often are too burdensome.

Service response: The proposed regulation contained 11 discreet requirements for the permittee to notify the Service and/or gain additional authorization under certain circumstances. Ten of those notification requirements are not new in this regulation, but are carried over from the current standard conditions attached to all existing permits. Seven apply only to threatened and endangered species, and are needed so that the Service can determine the best placement for these birds. The Service is engaged in active recovery efforts for many listed migratory bird species, and because of the relative scarcity of listed species, the placement of each individual can have greater ramifications for the conservation of the species than is the case for non-listed species. Because listed species are relatively rare, most rehabilitators do not routinely encounter them, so these notification requirements will not be used often and should not create a burden for rehabilitators.

Of the remaining three notifications, two should seldom be needed: the requirement to contact a Service law enforcement officer when there is reason to believe that a bird has been injured as the result of criminal activity; and the requirement to gain approval from the issuing office to keep a bird longer than 180 days. The final requirement—to obtain authorization from the issuing office before transferring a nonreleasable bird to another person—is an important safeguard to ensure that birds are placed with persons who are legally authorized to possess migratory birds.

The only new notification provision the proposed rule contained was the requirement to contact the Service if the rehabilitator suspects that a bird has an avian virus or other contagious disease. We have revised that provision to require the permittee to contact his or her State or local authority that is responsible for monitoring the particular health threat, rather than notify the Service. In the case of West Nile Virus, for example, the public is usually advised to contact their county public health agency to report diseased

birds, but in some States a designated State agency is responsible for receiving those calls. While this information may be of some use to the Service, we do not have primary responsibility for responding to reports of contagious diseases that are considered to be public health threats, even when such diseases are carried by birds. Requiring rehabilitators to contact the responsible State or local agency, rather than the Service, will eliminate what would have been a redundant notification. Because rehabilitators are in a good position to contribute to nationwide efforts to monitor contagious avian diseases, the requirement to notify the appropriate State or local authority will benefit to the public by enhancing efforts to protect the health and safety of humans, livestock and wildlife.

Comment: The Service should set up a 24-hour hotline to receive the required calls from rehabilitators, and it should be an 800 number.

Service response: Aside from the notifications required in circumstances involving threatened and endangered species, which we believe will not be exercised often, the rule does not contain excessive requirements to contact the Service (see above).

Comment: The rule relies too heavily on the Internet for obtaining phone numbers of other Service offices. Other forms of access to such information should be provided.

Service response: We are revising our permit information tracking system so that it can record and generate the phone numbers for Service Law Enforcement offices that are local to the permittee. Permits will be issued using this new capacity, with the necessary contact information printed on the permit. The rule has been revised to reflect the fact that the contact information for these offices is listed on the permit.

Comment: Rehabilitators should not have the burden of contacting the Service immediately upon receiving a threatened or endangered species. This provision fails to recognize the actual conditions under which rehabilitators are working. Immediate notification could jeopardize the bird, which may need immediate stabilization. Often personnel are not there to receive the calls (e.g., on weekends).

Service response: The rule has been revised to require the permittee to contact the Service within 24 hours of receiving a threatened or endangered species. If Service personnel cannot be reached, you should leave a message.

Comment: The proposed rule requires rehabilitators to report birds that appear to have been injured by criminal activity

to both the Office of Law Enforcement and to the Migratory Bird Permit Office. Rehabilitators should not have to call two Service offices to report this.

Service response: We agree with this comment and have revised the rule to remove the requirement to notify the permit office.

Comment: Immediate notification to law enforcement where birds appear to have been injured as the result of criminal activity is not practicable. Rehabilitators are often busy stabilizing bird(s). Instead, the requirement to notify the Service should be "within 48 hours."

Service response: Service Law Enforcement personnel need to be notified immediately when it appears a crime has taken place. Otherwise, evidence needed to build a successful investigation may be compromised or lost before it can be collected.

Comment: "Criminal activity" should be more clearly defined. Poisoning and electrocution should not be considered criminal activity.

Service response: Poisoning and electrocution are considered criminal activity in many circumstances. Power companies and pesticide manufacturers and applicators are frequently held liable for killing birds, particularly when ample evidence exists that they knew or should have known that their actions were likely to kill birds. Electrocution of birds on power lines is generally considered a prosecutable violation, since reasonable industry-accepted measures have been identified that can be implemented to avoid killing migratory birds. We believe that the rule need not further specify what is meant by criminal activity, since it is not possible to define all the criminal activities that could take place, or always clearly identify under what circumstances a particular action is criminal. The provision requires that rehabilitators notify the Service when they have reason to believe that birds under their care were injured as the result of a criminal act, so that we have the opportunity to pursue the case, if appropriate.

Comment: The rule should require permittees to contact their State conservation agencies as well as the Service whenever notification is required.

Service response: Not all States want these notifications. As a Federal agency, we will not impose this requirement on States that do not wish to be contacted. It is more appropriate for State regulations to address this requirement.

Recordkeeping § 21.31(e)(7).

Comment: It would be useful to some States if the information required in the

recordkeeping provisions included the county and distance to the nearest town.

Service response: The information required to be kept in the permittee's records is the same information that we ask for in the annual report. It is not useful for our purposes to document the county or the nearest town, and we do not have enough staff to sift through extra information that we will not use. Also, we do not wish to burden permittees by requiring them to keep and submit information that we will not use. Those States that find that information useful may wish to include those items as reporting requirements in their State regulations.

Comment: Rehabilitators should be required to record the location where the bird was found, if known, because it is important for purposes of data collection and release. Also, the location of release should be required in records for enforcement purposes. The incident that caused the distress or injury should be recorded (e.g., collision with window, cat attack), if known, for purposes of future analysis. Records should include the name and contact information of the person who found and/or delivered the bird because of possible exposure to zoonotic diseases.

Service response: While much of this information could be useful to the rehabilitator, or to a third party, we do not at this time have a need to collect this information. If permittees wish to keep these records, we encourage them to do so, but we see no reason to require information to be collected and submitted to us when we will not use it.

Comment: Why should the permittee be required to keep the records for 5 years? That should be the Service's responsibility. This requirement is an unnecessary burden on the permittee.

Service response: The requirement that permittees keep records for 5 years predates this rule and applies to all Service permits, and is codified at 50 CFR part 13.46. We also keep the information submitted via annual reports, but if discrepancies arise, permittees may benefit by being able to produce their own records.

Additional Conditions May be Placed on the Face of the Permit. § 21.31(e)(9).

Comment: There should be no further reason to condition permits if a person meets the requirements set forth in the rule. This provision appears to contradict the rule's stated intent to "codify * * *, clarify * * *, and * * * specify" migratory bird rehabilitation permit policy. The Service should specify what sort of "additional conditions" are meant by

this provision. It's too open-ended and could be abused.

Service response: We have revised this provision to clarify its meaning and scope. Our intent is to provide that permits may be tailored so that they differ from one another according to the circumstances of the applicants (e.g., what kind of experience and facilities they have). If all rehabilitation permits had exactly the same set of standard conditions and no additional conditions, every permittee would be qualified to rehabilitate any number of all types of migratory birds, without exception. For example, rehabilitators who intend to rehabilitate only nestlings do not need extensive caging. The Service needs to be able to differentiate what types of birds these nestling rehabilitators are authorized to rehabilitate from those a passerine rehabilitator is authorized to rehabilitate or those a large facility with flight cages or pools for waterbirds may rehabilitate. This can be done only if permits can be further conditioned on their face at the time of issuance (or later, if the permittee demonstrates that he or she has expanded the facilities and/or gained additional experience).

Comment: The "additional conditions" provision would be more palatable if there existed some kind of review/appeal process for applicants to appeal.

Service response: Regulations addressing the process for challenging permit decisions, including permit conditions, are set forth in 50 CFR 13.29. These regulations address procedures for all Service permits, and cover how to file a Request for Reconsideration to the issuing office. They also set forth procedures for filing a written appeal to the Regional Director if the applicant/permittee is dissatisfied with the determination made on the Request for Reconsideration.

Comment: To avoid the creation of additional conditions, the Service should establish a multi-tiered permit incorporating different levels of experience and facilities standards, where each level has standardized conditions.

Service response: We do not believe such a system could adequately capture all the variables and particulars that make one situation different from another. Additional conditions would still be necessary in order to accommodate these variables, or else some permits would simply have to be denied—which we do not view as a good alternative.

Liability Clause § 21.31(e)(10).

Comment: As worded, the provision of the proposed rule that indemnifies the

Service from liability could confer unreasonable liability to the permittee, resulting in lawsuits against rehabbers.

Service response: We have removed this provision from the rule because permit liability for all Service permits is already set forth at 50 CFR 13.50, which reads: "any person holding a permit under this subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit."

Oil Spill Provisions § 21.31(ff).

Comment: Why does the Service want to be notified whenever a dead bird is found at the site of an oil spill?

Service response: There are a variety of legal aspects relating to oil spills, including the ability of the government to recover damages for birds and other wildlife killed or injured, and in some cases to bring criminal charges. In such cases, the Service must be able to document the number and locations of dead birds and other wildlife before they are removed from the site. Since it is not generally possible to determine until after the immediate cleanup or site stabilization whether this information will be needed, we collect it routinely.

Comment: How can the public get copies of *Best Practices for Care of Migratory Birds During Oil Spill Response*, the document referenced in the rule?

Service response: We have inserted a footnote into the rule, providing information on how to obtain this document.

Term of Permit § 21.31(h). Comment: Permit tenure should be 1 year only. If a 5-year tenure is included in the final regulation, the wording should be more clear as to whether all rehabilitation permits will be issued for 5 years, or whether some will have shorter terms.

Service response: Because the majority of rehabilitators' circumstances will not substantially change from year to year, we do not see any purpose in renewing permits annually. We believe that the annual report requirement will allow the Service to monitor the factors that are most important to safeguard the welfare of birds held under rehabilitation permits. We do not wish to burden the permittees with an annual permit renewal, nor do we believe that processing every permittee's renewal every year is a good use of limited Service resources. Although most permits will have a tenure of 5 years under the final regulation, the wording "No rehabilitation permit will have a term exceeding five (5) years" allows the Service the flexibility to issue some rehabilitation permits for less than 5 years, if appropriate.

Comment: The rule does not contain any provisions for the renewal process.

Service response: Regulations covering permit renewal for all Service-issued permits are set forth in 50 CFR 13 (General Permit Procedures). For the rehabilitation permit, as for other migratory bird permits, the permittee need not submit all of the information required in an original permit application. Instead, he or she should submit a Service permit renewal form, which is mailed to all permittees when their permits are nearing expiration. The form asks the permittee to certify that the information previously submitted (through either the original permit application or a subsequent renewal or amendment) is still accurate. If any required information has changed, the permittee must submit the updated information.

Comment: The annual report/permit renewal process is not timed smoothly, with permits expiring at the end of the calendar year, but annual reports due at the end of the following January. Renewal permits should be sent separately (first), so the rehabilitator does not have to operate under an expired permit.

Service response: We have adjusted the timing of the permit renewal process to address this problem. Rehabilitation permits will be issued to be valid starting on April 1, rather than January 1. As existing permits are renewed, they will be re-issued with a 5-year tenure, as provided by this rule. Permits will expire on March 31st rather than December 31st. This will result in a more logical, coordinated process wherein permittees can submit their annual reports and renewal requests together, and the renewal request will be received well before the expiration of the permit.

Comment: Renewal should be correlated with State permit renewal.

Service response: Permit tenure and renewal dates vary widely from State to State. Federal permits would have to have different tenures depending on the State in which the permittee resides. Tracking and maintaining renewals under these circumstances would be very difficult for the Service. Therefore, we will continue to process renewals at the same time each year.

Will I need to apply for a new permit if I already have a Special Purpose—Rehabilitation permit? § 21.31(i)

Comment: The rule does not say whether current permit holders will be "grandfathered," or whether they will have to reapply under the new regulations.

Service response: Current permit holders need not take any special action

as a result of the new rule. When it is time to renew their permits, if they wish to continue rehabilitating migratory birds, they should apply for renewal using the Service permit renewal form mailed to them by the issuing office. Rehabilitation permits will be renewed under the new permit category created by this rule. In addition, the final rule contains a "grandfather clause," which states, in part: "If your facilities have already been approved on the basis of photographs and diagrams, and authorized under a valid § 21.27 special purpose permit, then they are preapproved to be authorized under your new permit issued under this section, unless those facilities have materially diminished in size or quality from what was authorized when you last renewed your permit, or unless you wish to expand the authorizations granted by your permit (e.g., the number or types of birds you rehabilitate)."

Inspections. *Comment:* The rule does not address rehabilitation facility inspections.

Service response: Inspection of permittees' facilities is addressed in 50 CFR 13.47. The regulations provide that a Service Law Enforcement official ("the Director's agent") may inspect the premises, wildlife, and records at "any reasonable hour."

Comment: Facility inspections should be conducted before issuing each permit and then at regular intervals during the term of the permit to ensure that facilities maintain standards.

Service response: Although we will conduct site visits prior to issuing some permits, we do not have the resources to inspect all applicants' facilities. As part of the application process, the applicant must submit photographs and diagrams of his or her facilities. These should provide enough information to determine whether most applicants' facilities are adequate. Many State conservation agencies have more resources available to them than we do, and are able to send officers out to perform inspections more regularly. Coordination between State agencies and the Service allows us to identify situations where problems exist and Federal inspection may be warranted.

Additional Comments

Comment: Permitted rehabilitators should not be allowed to raise, rehabilitate, or release non-native species such as European starlings and house sparrows because these negatively affect native migratory bird species.

Service response: The Service does not have the authority to prohibit possession or rehabilitation of birds that

are not protected by the Federal laws we are charged with implementing. We agree that rehabilitation of common invasive species such as starlings and house sparrows could have a minor negative impact on conservation of native species, and we would prefer that exotic species not be released to the wild. However, this issue is the jurisdiction of State governments, which have primary regulatory authority on most matters concerning wildlife.

Comment: The Service should transfer permitting authority to the States to administer, where States demonstrate they meet certain Federal standards.

Service response: At this time, the majority of the States have not developed specific regulations regarding migratory bird rehabilitation. As of 1999, according to a study conducted by Allan M. Casey III and Shirley J. Casey (*A Study of the State Regulations Governing Wildlife Rehabilitation During 1999*), only 33 States had regulations addressing wildlife rehabilitation. These vary widely in terms of scope and the level of detail addressed. State regulations pertaining specifically to migratory bird rehabilitation are virtually nonexistent.

Comment: The rule should require that the permittee be a member of either the National Wildlife Rehabilitators Association (NWRA), the International Wildlife Rehabilitation Council (IWRC), or both.

Service response: We do not agree that membership in the NWRA or the IWRC should be a prerequisite for obtaining or maintaining a Federal migratory bird rehabilitation permit. Both associations have contributed to the increasing quality of wildlife rehabilitation, and they have much to offer rehabilitators in the way of continuing education, networking, and other services.

However, both the NWRA and the IWRC are nongovernmental organizations and are not affiliated with the Service. The criteria of this rule should ensure that permittees have basic competence and qualifications necessary for migratory bird rehabilitation. As with any profession, rehabilitators will always be in a position to gain additional knowledge and skills. Membership in the NWRA and/or IWRC may provide a means of attaining this growth and improvement, should rehabilitators elect to join either or both associations.

Comment: The rule should require permittees to provide evidence of continuing education every 2 years.

Service response: While we strongly encourage permittees to attend classes, conferences, seminars, and presentations in order to increase knowledge and improve skills, we

believe that the qualifications for obtaining the Federal permit, together with the experience gained by putting the permit to use, will guarantee a basic level of knowledge and experience sufficient to rehabilitate migratory birds, without our mandating additional formal training.

Comment: Some provisions of the rule will interfere with recovery operations of chemical companies that operate under special purpose rehabilitation permits. The troubling provisions include the following requirements: listing all individuals on the permit (helpers at the chemical company recovery operations are usually seasonal college students and other temporary labor), conforming to facility requirements, maintaining a working relationship with veterinarians, and establishing a working relationship with another permitted rehabilitator. These recovery operations only hold birds long enough to clean off sodium carbonate (Na_2CO_3) or to allow fresh water to rinse off dilute phosphoric acid.

Service response: Because such recovery efforts operate under parameters much different from those governing the activities of "typical" migratory bird rehabilitators, the Service will continue to issue permits for this type of recovery operation under the Special Purpose permit (§ 21.27) rather than the permit category created by this rule.

Comment: The rule has far too many new paperwork requirements.

Service response: This rule does not introduce any new paperwork requirements. All reporting requirements remain unchanged from what has been required under the Special Purpose—Rehabilitation permit category.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531, *et seq.*), requires all Federal agencies to "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat." The Service underwent intra-Service consultation pursuant to section 7 of the ESA and determined that the activities authorized by this rule will not jeopardize listed species or result in destruction or adverse modification of critical habitat.

Required Determinations

Responsibilities of Federal Agencies To Protect Migratory Birds (Executive

Order 13186). This rule has been evaluated for impacts to migratory birds, with emphasis on species of management concern, and is in accordance with the guidance in E.O. 13186.

Regulatory Planning and Review (Executive Order 12866). In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB has made this final determination of significance under E.O. 12866.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

b. This rule will not create serious inconsistencies or otherwise interfere with other agencies' actions. The Fish and Wildlife Service is the only Federal agency responsible for enforcing the Migratory Bird Treaty Act.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not have anything to do with the aforementioned programs.

d. This rule does not raise novel legal or policy issues. Rehabilitation activities for migratory birds currently operate under a different permit than that proposed in this rule.

Regulatory Flexibility Act. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must either certify that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.*, small business, small organizations, and small governmental jurisdictions) or prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act. This rule requires applicants for migratory bird rehabilitation permits to pay the fee listed in the Service permit application fee schedule at 50 CFR 13.11. Currently, the Service waives fees for migratory bird rehabilitation permit applicants. This rulemaking reinstates the standard \$25 permit application fee and extends the term of the permit to 5 years. The net effect is that approximately 2,500 persons will pay

\$25 every 5 years to obtain and renew migratory bird rehabilitation permits, amounting to \$5 per year per rehabilitator. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities. A final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Unfunded Mandates Reform Act. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. We have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year; *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings. In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings implication assessment is not required.

Federalism. In accordance with Executive Order 13132, and based on the discussions in Regulatory Planning and Review above, this rule does not have significant Federalism effects. A Federalism assessment is not required. Because of the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. This rule does not have a substantial direct effect on fiscal capacity, nor does it change the roles or responsibilities of Federal or State governments or intrude on State policy or administration.

Civil Justice Reform. In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system, and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Department of the Interior has certified to the Office of Management and Budget that this rule meets the applicable standards provided in Sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act. This rule does not contain new or revised information collection for which Office

of Management and Budget approval is required under the Paperwork Reduction Act. Information collection associated with migratory bird permit programs has been approved by OMB under control number 1018-0022, which expires April 30, 2004. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act. We have determined that this rule is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1.10.

Government-to-Government Relationship with Tribes. In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, this rule will have no effect on federally recognized Indian tribes.

List of Subjects

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons set forth in this preamble, we amend 50 CFR chapter I as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.21 to add paragraphs (c)(6), (c)(7), (d)(3), and (d)(4) to read as follows:

§ 17.21 Prohibitions.

* * * * *

(c) * * *

(6) Notwithstanding paragraph (c)(1) of this section, any person acting under a valid migratory bird rehabilitation permit issued pursuant to § 21.31 of this subchapter may take endangered migratory birds without an endangered

species permit if such action is necessary to aid a sick, injured, or orphaned endangered migratory bird, provided the permittee:

(i) Notifies the issuing Migratory Bird Permit Office immediately upon receipt of such bird (contact information for your issuing office is listed on your permit and on the Internet at <http://offices.fws.gov>); and

(ii) Disposes of or transfers such birds, or their parts or feathers, as directed by the Migratory Bird Permit Office.

(7) Notwithstanding paragraph (c)(1) of this section, persons exempt from the permit requirements of § 21.12(c) and (d) of this subchapter may take sick and injured endangered migratory birds without an endangered species permit in performing the activities authorized under § 21.12(c) and (d).

(d) * * *

(3) Notwithstanding paragraph (d)(1) of this section, any person acting under a valid migratory bird rehabilitation permit issued pursuant to § 21.31 of this subchapter may possess and transport endangered migratory birds without an endangered species permit when such action is necessary to aid a sick, injured, or orphaned endangered migratory bird, provided the permittee:

(i) Notifies the issuing Migratory Bird Permit Office immediately upon receipt of such bird (contact information for your issuing office is listed on your permit and on the Internet at <http://offices.fws.gov>); and

(ii) Disposes of or transfers such birds, or their parts or feathers, as directed by the Migratory Bird Permit Office.

(4) Notwithstanding paragraph (d)(1) of this section, persons exempt from the permit requirements of § 21.12(c) and (d) of this subchapter may possess and transport sick and injured endangered migratory bird species without an endangered species permit in performing the activities authorized under § 21.12(c) and (d).

* * * * *

PART 21—MIGRATORY BIRD PERMITS

■ 3. The authority citation for part 21 is revised to read as follows:

Authority: 16 U.S.C. 703–712; Pub. L. 106–108; 16 U.S.C. 668a.

■ 4. Revise § 21.2(b) to read as follows:

§ 21.2 Scope of regulations.

* * * * *

(b) This part, except for § 21.12(a), (c), and (d) (general permit exceptions); § 21.22 (banding or marking); § 21.29 (Federal falconry standards); and § 21.31 (rehabilitation), does not apply to the bald eagle (*Haliaeetus leucocephalus*) or

the golden eagle (*Aquila chrysaetos*), for which regulations are provided in part 22 of this subchapter.

* * * * *

■ 5. Amend § 21.12 to add paragraphs (c) and (d) to read as follows:

§ 21.12 General exceptions to permit requirements.

* * * * *

(c) Employees of Federal, State, and local wildlife and land management agencies; employees of Federal, State, and local public health agencies; and laboratories under contract to such agencies may in the course of official business collect, possess, transport, and dispose of sick or dead migratory birds or their parts for analysis to confirm the presence of infectious disease. Nothing in this paragraph authorizes the take of uninjured or healthy birds without prior authorization from the Service.

Additionally, nothing in this paragraph authorizes the taking, collection, or possession of migratory birds when circumstances indicate reasonable probability that death, injury, or disability was caused by factors other than infectious disease and/or natural toxins. These factors may include, but are not limited to, oil or chemical contamination, electrocution, shooting, or pesticides. If the cause of death of a bird is determined to be other than natural causes or disease, Service law enforcement officials must be contacted without delay.

(d) Licensed veterinarians are not required to obtain a Federal migratory bird permit to temporarily possess, stabilize, or euthanize sick and injured migratory birds. However, a veterinarian without a migratory bird rehabilitation permit must transfer any such bird to a federally permitted migratory bird rehabilitator within 24 hours after the bird's condition is stabilized, unless the bird is euthanized. If a veterinarian is unable to locate a permitted rehabilitator within that time, the veterinarian must contact his or her Regional Migratory Bird Permit Office for assistance in locating a permitted migratory bird rehabilitator and/or to obtain authorization to continue to hold the bird. In addition, veterinarians must:

(1) Notify the local U.S. Fish and Wildlife Service Ecological Services Office immediately upon receiving a threatened or endangered migratory bird species. Contact information for Ecological Services offices can be located on the Internet at <http://offices.fws.gov>;

(2) Euthanize migratory birds as required by § 21.31(e)(4)(iii) and § 21.31(e)(4)(iv), and dispose of dead

migratory birds in accordance with § 21.31(e)(4)(vi); and

(3) Keep records for 5 years of all migratory birds that die while in their care, including those they euthanize. The records must include: the species of bird, the type of injury, the date of acquisition, the date of death, and whether the bird was euthanized.

■ 6. Add § 21.31 to subpart C to read as follows:

§ 21.31 Rehabilitation permits.

(a) *What is the permit requirement?* Except as provided in § 21.12, a rehabilitation permit is required to take, temporarily possess, or transport any migratory bird for rehabilitation purposes. However, any person who finds a sick, injured, or orphaned migratory bird may, without a permit, take possession of the bird in order to immediately transport it to a permitted rehabilitator.

(b) *What are the general permit provisions?*

(1) The permit authorizes you to:

(i) Take from the wild or receive from another person sick, injured, or orphaned migratory birds and to possess them and provide rehabilitative care for them for up to 180 days;

(ii) Transport such birds to a suitable habitat for release, to another permitted rehabilitator's facilities, or to a veterinarian;

(iii) Transfer, release, or euthanize such birds;

(iv) Transfer or otherwise dispose of dead specimens; and

(v) Receive, stabilize, and transfer within 48 hours types of migratory bird species not authorized by your permit, in cases of emergency. If a rehabilitator authorized to care for the bird is not available within that timeframe, you must contact the issuing office for authorization to retain the bird until it can be transferred.

(2) The permit does not authorize the use of migratory birds for educational purposes.

(c) *How do I apply for a migratory bird rehabilitation permit?* You must apply to the appropriate Regional Director—Attention Migratory Bird Permit Office. You can find addresses for the appropriate Regional Directors in § 2.2 of subchapter A of this chapter. Your application package must consist of the following:

(1) A completed application (Form 3–200–10b);

(2) A copy of your State rehabilitation permit, license, or other authorization, if one is required in your State; and

(3) A check or money order made payable to the “U.S. Fish and Wildlife Service” in the amount of the

application fee for permits issued under this section listed in § 13.11 of this chapter.

(d) *What criteria will the Service consider before issuing a permit?* (1) Upon receiving an application completed in accordance with paragraph (c) of this section, the Regional Director will decide whether to issue you a permit based on the general criteria of § 13.21 of this chapter and whether you meet the following requirements:

(i) You must be at least 18 years of age with at least 100 hours of hands-on experience, gained over the course of at least 1 whole year, rehabilitating the types of migratory birds you intend to rehabilitate (e.g., waterbirds, raptors), or comparable experience. Up to 20 hours of the 100-hour time requirement may be fulfilled by participation in migratory bird rehabilitation seminars and courses.

(ii) Your facilities must be adequate to properly care for the type(s) of migratory bird species you intend to rehabilitate, or you must have a working relationship with a person or organization with such facilities.

(iii) You must have an agreement with a licensed veterinarian to provide medical care for the birds you intend to rehabilitate, unless you are a licensed veterinarian.

(iv) You must have a State permit, license, or other authorization to rehabilitate migratory birds if such authorization required by your State.

(2) In issuing a permit, the Regional Director may place restrictions on the types of migratory bird species you are authorized to rehabilitate, based on your experience and facilities as well as on the specific physical requirements and behavioral traits of particular species.

(e) *What are the standard conditions for this permit?* In addition to the general permit conditions set forth in part 13 of this chapter, rehabilitation permits are subject to the following conditions:

(1) *Facilities.* You must conduct the activities authorized by this permit in appropriate facilities that are approved and identified on the face of your permit. In evaluating whether caging dimensions are adequate, the Service will use as a guideline the standards developed by the National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council (*Minimum Standards for Wildlife Rehabilitation, 2000*).¹ The

Regional Migratory Bird Permit Office will authorize variation from the standards where doing so is reasonable and necessary to accommodate a particular rehabilitator's circumstances, unless a determination is made that such variation will jeopardize migratory birds. However, except as provided by paragraph (f)(2)(i) of this section, all facilities must adhere to the following criteria:

(i) Rehabilitation facilities for migratory birds must be secure and provide protection from predators, domestic animals, undue human disturbance, sun, wind, and inclement weather.

(ii) Caging must be made of a material that will not entangle or cause injury to the type of birds that will be housed within.

(iii) Enclosures must be kept clean, well-ventilated, and hygienic.

(iv) Birds must not be overcrowded, and must be provided enough perches, if applicable.

(v) Birds must be housed only with compatible migratory bird species.

(vi) Birds may not be displayed to the public unless you use video equipment, barriers, or other methods to reduce noise and exposure to humans to levels the birds would normally encounter in their habitat. You may not use any equipment for this purpose that causes stress or harm, or impedes the rehabilitation of any bird.

(2) *Dietary requirements.* You must provide the birds in your care with a diet that is appropriate and nutritionally approximates the natural diet consumed by the species in the wild, with consideration for the age and health of the individual bird.

(3) *Subpermittees.* Except as provided by paragraph (f)(2)(ii) of this section, anyone who will be performing activities that require permit authorization under paragraph (b)(1) of this section when you or a subpermittee are not present, including any individual who transports birds to or from your facility on a regular basis, must either possess his or her own Federal rehabilitation permit, or be authorized as your subpermittee by being named in writing to your issuing Migratory Bird Permit Office. Subpermittees must be at least 18 years of age and possess sufficient experience to tend the species in their care. Subpermittees authorized to care for migratory birds at a site other than your facility must have facilities adequate to house the species in their care, based on

the criteria of paragraph (e)(1) of this section. All such facilities must be approved by the issuing office. As the primary permittee, you are legally responsible for ensuring that your subpermittees, staff, and volunteers adhere to the terms of your permit when conducting migratory bird rehabilitation activities.

(4) *Disposition of birds under your care.* (i) You must take every precaution to avoid imprinting or habituating birds in your care to humans. If a bird becomes imprinted to humans while under your care, you will be required to transfer the bird as directed by the issuing office.

(ii) You may not retain migratory birds longer than 180 days without additional authorization from your Regional Migratory Bird Permit Office. You must release all recuperated birds to suitable habitat as soon as seasonal conditions allow, following recovery of the bird. If the appropriate season for release is outside the 180-day timeframe, you must seek authorization from the Service to hold the bird until the appropriate season. Before releasing a threatened or endangered migratory bird, you must coordinate with your issuing Migratory Bird Permit Office.

(iii) You must euthanize any bird that cannot feed itself, perch upright, or ambulate without inflicting additional injuries to itself where medical and/or rehabilitative care will not reverse such conditions. You must euthanize any bird that is completely blind, and any bird that has sustained injuries that would require amputation of a leg, a foot, or a wing at the elbow or above (humero-ulnar joint) rather than performing such surgery, unless:

(A) A licensed veterinarian submits a written recommendation that the bird should be kept alive, including an analysis of why the bird is not expected to experience the injuries and/or ailments that typically occur in birds with these injuries and a commitment (from the veterinarian) to provide medical care for the bird for the duration of its life, including complete examinations at least once a year;

(B) A placement is available for the bird with a person or facility authorized to possess it, where it will receive the veterinary care described in paragraph (e)(4)(iii)(A) of this section; and

(C) The issuing office specifically authorizes continued possession, medical treatment, and rehabilitative care of the bird.

(iv) You must obtain authorization from your issuing Migratory Bird Permit Office before euthanizing endangered and threatened migratory bird species. In rare cases, the Service may designate

¹ Copies may be obtained by contacting either the National Wildlife Rehabilitators Association: 14 North 7th Avenue, St. Cloud MN 56303-4766, <http://www.nwwildlife.org/default.asp>; or the

International Wildlife Rehabilitation Council: 829 Bancroft Way, Berkeley, CA 94710, <http://www.iwrc-online.org>.

a disposition other than euthanasia for those birds. If Service personnel are not available, you may euthanize endangered and threatened migratory birds without Service authorization when prompt euthanasia is warranted by humane consideration for the welfare of the bird.

(v) You may place nonreleasable live birds that are suitable for use in educational programs, foster parenting, research projects, or other permitted activities with persons permitted or otherwise authorized to possess such birds, with prior approval from your issuing Migratory Bird Permit Office.

(vi)(A) You may donate dead birds and parts thereof, except threatened and endangered species, and bald and golden eagles, to persons authorized by permit to possess migratory bird specimens or exempted from permit requirements under § 21.12.

(B) You must obtain approval from your issuing office before disposing of or transferring any live or dead endangered or threatened migratory bird specimen, parts, or feathers.

(C) You must send all dead bald and golden eagles, and their parts and feathers to: National Eagle Repository, Building 128, Rocky Mountain Arsenal, Commerce City, CO 80022. If your State requires you to notify State wildlife officers of a dead bald or golden eagle before sending the eagle to the Repository you must comply with State regulations. States may assume temporary possession of the carcasses for purposes of necropsy.

(D) Unless specifically required to do otherwise by the Service, you must promptly destroy all other dead specimens by such means as are necessary to prevent any exposure of the specimens to animals in the wild.

(vii) With authorization from your issuing Migratory Bird Permit Office, you may hold a nonreleasable bird longer than 180 days for the purpose of fostering juveniles during their rehabilitation. You may also use birds you possess under an educational permit to foster juveniles.

(viii) You may possess a reasonable number of feathers for imping purposes, based on the numbers and species of birds for which you regularly provide care.

(ix) You may draw blood and take other medical samples for purposes of the diagnosis and recovery of birds under your care, or for transfer to authorized facilities conducting research pertaining to a contagious disease or other public health hazard.

(x) You may conduct necropsies on dead specimens in your possession, except that you must obtain approval

from your Regional Migratory Bird Permit Office before conducting necropsies on threatened or endangered species.

(xi) This permit does not confer ownership of any migratory bird. All birds held under this permit remain under the stewardship of the U.S. Fish and Wildlife Service.

(5) *Notification to the U.S. Fish and Wildlife Service.*

(i) You must notify your issuing Migratory Bird Permit Office within 24 hours of acquiring a threatened or endangered migratory bird species, or bald or golden eagle, whether live or dead. You may be required to transfer these birds to another facility designated by the Service.

(ii) You must immediately notify the local U.S. Fish and Wildlife Service Law Enforcement Office if you have reason to believe a bird has been poisoned, electrocuted, shot, or otherwise subjected to criminal activity. Contact information for your local Service Law Enforcement office is listed on your permit, or you can obtain it on the Internet at <http://offices.fws.gov>.

(iii) If the sickness, injury, or death of any bird is due or likely due to avian virus, or other contagious disease or public health hazard, you must notify and comply with the instructions given by the State or local authority that is responsible for tracking the suspected disease or hazard in your location, if that agency is currently collecting such information from the public.

(6) You must maintain a working relationship with a licensed veterinarian. If your working relationship with your original cooperating veterinarian is dissolved, you must establish an agreement within 30 days with another licensed veterinarian to provide medical services to the birds in your care, and furnish a copy of this agreement to the issuing office.

(7) *Recordkeeping.* You must maintain complete and accurate records of all migratory birds that you receive, including for each bird the date received, type of injury or illness, disposition, and date of disposition. You must retain these records for 5 years following the end of the calendar year covered by the records.

(8) *Annual report.* You must submit an annual report that includes the information required by paragraph (e)(7) for the preceding calendar year to your issuing Migratory Bird Permit Office by the date required on your permit. You may complete Service Form 3–202–4, or submit your annual report from a database you maintain, provided your

report contains all, and only, the information required by Form 3–202–4.

(9) At the discretion of the Regional Director, we may stipulate on the face of your permit additional conditions compatible with the permit conditions set forth in this section, to place limits on numbers and/or types of birds you may possess under your permit, to stipulate authorized location(s) for your rehabilitation activities, or otherwise specify permitted activities, based on your experience and facilities.

(f) *How does this permit apply to oil and hazardous waste spills?* Prior to entering the location of an oil or hazardous material spill, you must obtain authorization from the U.S. Fish and Wildlife Service Field Response Coordinator or other designated Service representative and obtain permission from the On-Scene Coordinator. All activities within the location of the spill are subject to the authority of the On-Scene Coordinator. The U.S. Fish and Wildlife Service is responsible for the disposition of all migratory birds, dead or alive.

(1) Permit provisions in oil or hazardous material spills. (i) In addition to the rehabilitation permit provisions set forth in paragraph (b) of this section, when under the authority of the designated U.S. Fish and Wildlife Service representative this permit further authorizes you to temporarily possess healthy, unaffected birds for the purpose of removing them from imminent danger.

(ii) This permit does not authorize salvage of dead migratory birds. When dead migratory birds are discovered, a Service law enforcement officer must be notified immediately in order to coordinate the handling and collection of evidence. Contact information for your local Service Law Enforcement office is listed on your permit and on the Internet at <http://offices.fws.gov>. The designated Service representative will have direct control and responsibility over all live migratory birds, and will coordinate the collection, storage, and handling of any dead migratory birds with the Service's Division of Law Enforcement.

(iii) You must notify your issuing Migratory Bird Permit Office of any migratory birds in your possession within 24 hours of removing such birds from the area.

(2) Conditions specific to oil and hazardous waste spills. (i) *Facilities.* Facilities used at the scene of oil or hazardous waste spills may be temporary and/or mobile, and may provide less space and protection from noise and disturbance than facilities authorized under paragraph (e)(1) of this

section. Such facilities should conform as closely as possible with the facility specifications contained in the Service policy titled *Best Practices for Migratory Bird Care During Oil Spill Response*.²

(ii) *Subpermittees*. In cases of oil and hazardous waste spills, persons who assist with cleaning or treating migratory birds at the on-scene facility will not be required to have a rehabilitation permit or be a subpermittee; however, volunteers must be trained in rescue protocol for migratory birds affected by oil and hazardous waste spills. A permit (or subpermittee designation) is required to perform extended rehabilitation of such birds, after initial cleaning and treating, at a subsequent location.

(g) *Will I also need a permit from the State in which I live?* If your State requires a license, permit, or other authorization to rehabilitate migratory birds, your Federal migratory bird rehabilitation permit will not be valid if you do not also possess and adhere to the terms of the required State authorization, in addition to the Federal permit. Nothing in this section prevents a State from making and enforcing laws or regulations consistent with this section that are more restrictive or give further protection to migratory birds.

(h) *How long is a migratory bird rehabilitation permit valid?* Your rehabilitation permit will expire on the date designated on the face of the permit unless amended or revoked. No

rehabilitation permit will have a term exceeding 5 years.

(i) *Will I need to apply for a new permit under this section if I already have a special purpose permit to rehabilitate migratory birds, issued under § 21.27 (Special purpose permits)?* (1) If you had a valid Special Purpose—Migratory Bird Rehabilitation Permit issued under § 21.27 on November 26, 2003, your permit will remain valid until the expiration date listed on its face. If you renew your permit, it will be issued under this section.

(2) If your original permit authorization predates permit application procedures requiring submission of photographs and diagrams for approval of your facilities, and your facilities have never been approved by the migratory bird permit office on the basis of such photographs and diagrams, you must submit photographs and diagrams of your facilities as part of your renewal application. If those facilities do not meet the criteria set forth under this section, your permit may be renewed for only 1 year. We will re-evaluate your facilities when you seek renewal in a year. If you have made the improvements necessary to bring your facilities into compliance with paragraph (e)(1) of this section, and the other criteria within this section for permit issuance are met, your permit may be renewed for up to the full 5-year tenure.

(3) If your facilities have already been approved on the basis of photographs and diagrams, and authorized under a valid § 21.27 special purpose permit,

then they are preapproved to be authorized under your new permit issued under this section, unless those facilities have materially diminished in size or quality from what was authorized when you last renewed your permit, or unless you wish to expand the authorizations granted by your permit (e.g., the number or types of birds you rehabilitate). Regulations governing permit renewal are set forth in § 13.22 of this chapter.

PART 22—EAGLE PERMITS

■ 7. The authority citation for part 22 continues to read as follows:

Authority: 16 U.S.C. 668a; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

■ 8. Amend § 22.11 by revising the first sentence to read as follows:

§ 22.11 What is the relationship to other permit requirements?

You may not take, possess, or transport any bald eagle (*Haliaeetus leucocephalus*) or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds, except as allowed by a valid permit issued under this part, 50 CFR part 13, and/or 50 CFR part 21 as provided by § 21.2, or authorized under a depredation order issued under subpart D of this part. * * *

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Dated: October 14, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

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² You can obtain copies of this document by writing to the U.S. Fish and Wildlife Service, Division of Environmental Quality, 4401 North Fairfax Drive, MS 322, Arlington, VA, 22203.