

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: May 16, 2011.

**Edward L. Connor,**

*Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 21

[Docket No. FWS-R9-MB-2009-0018; 91200-1231-9BPP]

RIN 1018-AT60

#### Migratory Bird Permits; Changes in the Regulations Governing Raptor Propagation

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We amend the regulations governing captive propagation of raptors in the United States. We reorganize the current regulations, and add or change some provisions therein. The changes make it easier to understand the requirements for raptor propagation, make it simpler to conduct raptor propagation, and clarify the procedures for obtaining a propagation permit. These regulations continue to prohibit propagation of golden eagles, though we may consider allowing it in the future.

**DATES:** This rule is effective on June 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703-358-1825.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Fish and Wildlife Service is the Federal agency with the primary responsibility for managing migratory birds. Our authority is based on the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Raptors (birds of prey) are afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States-Mexico, as amended; the Convention between the United States and Japan for the Protection of Migratory Birds in Danger of Extinction

and Their Environment, September 19, 1974; and the Convention Between the United States of America and the Union of Soviet Socialist Republics (Russia) Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976.

The taking and use of raptors are strictly prohibited except as permitted under regulations implementing the MBTA. Raptors also may be protected by State or tribal regulations. The issuance of permits for migratory birds is authorized by the MBTA and subsequent regulations. They are in title 50, Code of Federal Regulations (CFR), parts 10, 13, 21, and (for eagles) 22. Regulations for issuing permits for propagation of captive raptors are at 50 CFR 21.30.

On October 14, 2005, we published in the **Federal Register** a proposed rule to change the regulations governing captive propagation of raptors in the United States (70 FR 60052). We proposed to reorganize the current regulations and add or change some provisions. Our goal was to make it easier for the public to understand the requirements for raptor propagation and the procedures for obtaining a propagation permit. We opened a public comment period on the proposed rule until January 12, 2006.

On June 21, 2006, we published a notice of availability of a "Draft Environmental Assessment on Take of Raptors From the Wild for Falconry and Raptor Propagation" (71 FR 35599). We solicited comments on the draft environmental assessment until September 19, 2006, and then on that day, we published a notice in the **Federal Register** to extend the comment period until November 21, 2006 (71 FR 54794). After consideration of all the comments received, we published a notice of availability of the "Final Environmental Assessment on Take of Raptors From the Wild for Falconry and Raptor Propagation" and a Finding of No Significant Impact on June 6, 2007 (72 FR 31268).

##### II. Changes in the Regulations Governing Raptor Propagation

We have rewritten the regulations at 50 CFR 21.30 on the propagation of captive raptors in plain language and have changed or added some provisions. The following are substantive changes to the regulations:

1. The permit period is changed from 3 to 5 years.
2. Until they are 1 year old, captive-bred offspring may be used in actual hunting as a means of training them.
3. We eliminate the requirement for reporting within 5 days on eggs laid by

raptors in propagation. An annual report on propagation efforts will be required from permittees.

4. A permittee will not have to submit or have a copy of a FWS Form 3-186A for raptors produced by captive propagation if the raptors are kept in the permittee's possession under his or her propagation permit.

##### III. Changes From the Proposed Rule

We made many wording and organizational changes from the proposed rule of October 14, 2005 (70 FR 60052). Major changes from the proposed rule are limited.

1. We deleted the provision requiring proof of successful propagation in order to renew a raptor propagation permit.

2. We simplified the facilities requirements now found in paragraph (c).

3. We will allow the use of propagation raptors in education programs per paragraph (n).

4. We will allow hacking of raptors produced by captive propagation per paragraph (q).

5. We will allow ISO-compliant microchips in addition to banding per paragraphs (e)(1)(ii) and (e)(3).

##### IV. Comments on the Proposed Rule

We received approximately 500 comments from individuals and organizations, including 6 from States, on the proposed rule published on October 14, 2005 (70 FR 60052). We reviewed the comments, and respond here to the most significant issues raised.

**Issue. Requirement for demonstrated propagation success for permit renewal.** A significant proportion of those who commented on this requirement opposed it. Most pointed out that it is very difficult to achieve breeding success with some species, and it may even be difficult with some individual raptors. The change was supported, without explanation, by some States.

**Response.** We agree that this requirement may set too high a standard. We deleted it from this final rule.

**Issue. Requirement that propagation raptors be housed separately from other raptors.** Most commenters, including some States, opposed this proposal because it would add an "undue financial burden" for construction of facilities to house the birds. Visual barriers would suffice for separating them.

**Response.** We eliminated this requirement.

**Issue. Hacking of captive-bred raptors should be allowed.** Hacking the birds, particularly in their first year, would

make them more fit for use in falconry and propagation.

Response. We added a provision for hacking.

Issue. *Returning used bands.* The current regulations and the proposed regulations require return of used bands. The bands are destroyed when removed, and returning them adds concerns about disease transmission.

Response. We revised the language to require destruction of the bands at paragraph (e)(2)(iv).

Issue. *Temporary care of nestlings.* It was suggested that we provide a way for "assistants" to the propagator to care for young nestlings, including keeping the nestlings at a location other than the propagator's facilities. This would allow better care of nestlings when, for example, the permittee is at work.

Response. We added provisions for such care to the regulations at paragraph (j).

Issue. *Maintenance of records after expiration of a propagation permit.* Many commenters argued that the requirement for keeping records for 5 years after a permit expires is unwarranted.

After the expiration of the permit, law enforcement is no longer authorized to come onto the former permittee's premises to inspect anything, including the former permittee's paperwork. Law enforcement would have to seek a judicially issued search warrant to come onto the premises to inspect the paperwork of an expired permit. Consequently, the requirement for a permittee to maintain paperwork for an additional 5 years is a burden without any useful benefit.

Response. Maintenance of records for 5 years is required of all permit types issued by the Fish and Wildlife Service (50 CFR 13.46). The burden from keeping these records is minimal. Law Enforcement officers may not inspect a former permittee's premises, but they may request the permittee's records, which the permittee agreed to keep. Each permittee should recognize that he or she may want the records later if he or she wishes to get another migratory bird permit, a Convention on International Trade in Endangered Species of Wild Fauna and Flora permit, or a Wild Bird Conservation Act permit.

Issue. *"The Division believes that a form 3-186A should be completed and submitted for all birds, including those produced in captive propagation, and kept under the propagation permit of the original propagator. Requiring 3-186A for all birds whenever a bird is produced (reaches 2 weeks post-hatch), acquired, transferred, or added to a propagation permit will enable adequate regulatory oversight by*

*documenting each bird's history."* (State agency)

Response. We understand the State's concerns on this point. However, we believe that banding records should be sufficient for law enforcement purposes.

Issue. *"Given the current threats of West Nile Virus, Avian Influenza and environmental pollutants to wild raptor populations, and considering the overwhelming costs of recovering endangered raptor populations, the Service might consider taking steps to encourage raptor propagation in the private sector with more user-friendly oversight."* (State agency)

Response. We have attempted to simplify and clarify these regulations, and we hope that they accomplish what the agency asked.

Issue. *Allowing propagators to train offspring by allowing them to hunt.* Two States opposed the provision that would allow propagators to use captive-bred raptors produced in their facilities in hunting or other training activities until the raptors are 1 year old.

Response. We recognize that this provision would essentially allow a propagator to fly birds in falconry. However, there is value in exposing first-year raptors to training, hunting, or both. A State may wish to further restrict training of raptors in this manner.

Issue. *Many commenters said that we should not require that non-native raptors be banded.*

Response. These regulations cover only species protected under the MBTA. We do not require that species not protected under the MBTA be banded.

#### *Required Determinations*

#### *Regulatory Planning and Review* (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government,

(b) Whether the rule will create inconsistencies with other Federal agencies' actions,

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, and

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

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, Pub. L. 104-121), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no RFA is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities. This determination is based on the fact that we are not making any changes to the current requirements for raptor propagation facilities (housing). The changes we are making are intended primarily to clarify the requirements for raptor propagation and the procedures for obtaining a raptor propagation permit. In addition, the changes do not affect either the information collected or the fee required to obtain a permit. Consequently, we certify that this rule will not have a significant economic effect on a substantial number of small entities, and a regulatory flexibility analysis is not required. Therefore, this is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)) because it will not have a significant impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of \$100 million or more. We foresee no effects on the economy from implementation of this rule.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The practice of raptor propagation does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Raptor propagation is an endeavor of private individuals. Neither regulation nor practice of raptor propagation significantly affects business activities.

#### Unfunded Mandates Reform Act

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

a. This rule will not “significantly or uniquely” affect small governments, and thus a Small Government Agency Plan is not required. Raptor propagation is an endeavor of private individuals. Neither regulation nor practice of raptor propagation affects small government activities in any significant way.

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. States will not have to alter their raptor propagation regulations to comply with the proposed revisions.

#### Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule has no provision for taking of private property. A takings implication assessment is not required.

#### Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It will not interfere with the States’ ability to manage themselves or their funds. No significant economic impacts should result from the changes in the regulation of raptor propagation. However, this rule provides the opportunity for States to cooperate in management of raptor propagation permits and to ease the permitting process for permit applicants.

#### 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 meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### Paperwork Reduction Act

This proposed rule does not contain new or revised information collection requirements for which OMB approval is required under the Paperwork

Reduction Act. Information collection required by this regulation is covered by OMB approval 1018–0022, which expires on November 30, 2010. This regulation does not add to that approved information collection. We may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### National Environmental Policy Act

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437f and Part 516 of the U.S. Department of the Interior Manual (516 DM).). We completed a Final Environmental Assessment (FEA) in June 2007 (U.S.F.W.S. 2007) (72 FR 31268; June 6, 2007) to assess establishment of regulations governing the take of raptors for falconry and raptor propagation. We concluded in a Finding of No Significant Impact that the take of raptors from the wild for these purposes is not a major Federal action significantly affecting the quality of the human environment. You can obtain a copy of the EA by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### Environmental Consequences of the Action

The changes we make are primarily in the combining, reorganizing, and rewriting of the regulations. The environmental impacts of this action are limited.

Socio-economic. We do not expect the action to have discernible socio-economic impacts.

Raptor populations. This rule will not significantly alter the conduct of raptor propagation in the United States. We expect it to have no discernible effect on them.

Endangered and Threatened Species. The regulations have no provisions that affect threatened or endangered species.

#### 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), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that there are no potential effects. This rule will not interfere with the Tribes’ ability to manage themselves or their funds, or to regulate raptor propagation on tribal lands.

#### Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of raptor propagation in the United States, it is not a significant regulatory action under Executive Order 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and thus no Statement of Energy Effects is required.

#### Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that “The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter” (16 U.S.C. 1536(a)(1)). It further states that the Secretary must “insure that any authorized, funded, or completed action” \* \* \* “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” (16 U.S.C. 1536(a)(2)). The Division of Threatened and Endangered Species concurred with our finding that the revised regulations will not affect listed species.

#### List of Subjects in 50 CFR Part 21

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

#### Regulation Promulgation

For the reasons stated in the preamble, we hereby amend subparts A and C of part 21, subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

#### PART 21—[AMENDED]

- 1. The authority citation for part 21 continues to read as follows:

**Authority:** Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

- 2. Revise § 21.30 to read as set forth below.

#### § 21.30 Raptor propagation permits.

(a) *Legal basis for regulating raptor propagation.* (1) Among other actions, the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) prohibits any person from capturing from the wild, possessing, purchasing, bartering,

selling, or offering to purchase, barter, or sell raptors (vultures, kites, eagles, hawks, caracaras, falcons, and owls) listed in § 10.13 of this chapter unless the activities are allowed by Federal permit issued pursuant to this part and part 13 of this chapter, or as permitted by regulations in this part.

(i) This section covers all “native” raptors (accipitriformes, falconiformes, and strigiformes listed in § 10.13 of this chapter), and applies to any person who possesses one or more wild-caught, captive-bred, or hybrid raptors protected under the MBTA to use in raptor propagation, except that neither bald eagles (*Haliaeetus leucocephalus*) nor golden eagles (*Aquila chrysaetos*) may be propagated under these regulations or any other permit regulation listed in part 21 of this chapter.

(ii) You must have a Federal raptor propagation permit before you may capture from the wild, possess, transport, import, purchase, barter, or offer to sell, purchase, or barter any raptor, raptor egg, or raptor semen for propagation purposes. Your State may require that you also have a State permit.

(2) Other regulations, such as those for the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Wild Bird Conservation Act, and State regulations, may affect propagation-related activities. In cases in which more than one set of regulations affect raptor propagation, the most restrictive requirements affecting the activity will apply.

(b) *Species available for raptor propagation.* If you have a raptor propagation permit, you may attempt to propagate any species of raptor listed in § 10.13 of this chapter, with the following exceptions:

(1) You may not propagate bald eagles (*Haliaeetus leucocephalus*) or golden eagles (*Aquila chrysaetos*) under a raptor propagation permit or any other permit regulation listed in part 21 of this chapter.

(2) If you are authorized by your Regional Migratory Bird Permit office to do so, you may possess and attempt to propagate threatened or endangered raptor species. See paragraphs (f) and (u) of this section.

(c) *Facilities used for raptor propagation.* In addition to the general conditions found in part 13 of this chapter, raptor propagation permits are subject to the following additional conditions:

(1) You must maintain any tethered raptor you possess under this permit in accordance with the facilities and standards requirements in § 21.29,

unless you obtain a written exception to this requirement from your Regional Migratory Bird Permit Office.

(2) For untethered raptors, your breeding facilities must be soundly constructed and entirely enclosed with wood, wire netting, or other suitable material that provides a safe, healthy environment.

(i) Your facilities must minimize the risk of injury by providing protection from predators, pets, and extreme weather conditions.

(ii) Your facilities must minimize the risk of raptor injuries due to collision with interior or perimeter construction materials and equipment, such as support poles, windows, wire netting, perches, or lights.

(iii) Your facilities must have suitable perches and nesting sites, fresh air ventilation, a source of light, a well-drained floor, and ready access for cleaning. Each bird must have access to a pan of clean water unless weather conditions, the perch type used, or some other factor makes access to a water pan unsafe for the raptor.

(iv) You do not need to house your propagation raptors separately from other raptors you hold. However, you must keep raptors that you are not authorized to propagate separated from those you use in propagation.

(d) *Inspection.* In the presence of the permittee, Federal or State officials may inspect propagation raptors, facilities, equipment, and records during business hours on any day of the week.

(e) *Banding of raptors used for propagation.* —(1) *Certain species.* You must band a goshawk (*Accipiter gentilis*), Harris’s hawk (*Parabuteo unicinctus*), peregrine falcon (*Falco peregrinus*), or gyrfalcon (*Falco rusticolus*) that you take from the wild to use in captive propagation.

(i) You must use a nonreusable band that we provide.

(ii) You may purchase and implant an ISO (International Organization for Standardization)-compliant 134.2 kHz microchip in the raptor in addition to banding it.

(iii) You must report the information on the raptor (including information identifying the microchip, if you implant one, and where it is located) at <http://permits.fws.gov/186A> or by submitting a paper FWS Form 3–186A form to your State or tribal agency that governs propagation, if applicable, and to us.

(2) *Banding nestlings.* Unless a particular nestling is specifically exempted, you must band every captive-bred raptor within 2 weeks of hatching.

(i) You must use a numbered, seamless band that we will provide.

(ii) You must use a band with an inside diameter that is small enough to prevent loss or removal of the band when the raptor is grown without causing serious injury to the raptor or damaging the band’s integrity or one-piece construction.

(iii) You may band a nestling with more than one band of different sizes if you cannot determine the proper size when you band the nestling. You must then remove and destroy all but the correctly sized band before the nestling is 5 weeks old.

(iv) You may submit a letter requesting an exemption from the banding requirement for any nestling or fledgling for which the band causes a problem. If you demonstrate that the band itself or the behavior of the raptor in response to the band poses a hazard to the raptor, we may exempt that raptor from the banding requirement. You must destroy the band after you remove it.

(3) You may purchase and implant an ISO-compliant 134.2 kHz microchip in the raptor in addition to a band. You must report information to identify the microchip and where on the raptor the chip is implanted when you report your acquisition of the raptor.

(4) If a captive-bred raptor is not banded with a seamless band, or if you must remove the seamless band from a captive-bred raptor, you must band the bird with a nonreusable band that we provide.

(f) *Taking and transferring raptors or raptor eggs from the wild to use in propagation.* You may take no more than two raptors or raptor eggs from the wild each year to use in propagation.

(1) The State must authorize you to take the raptor(s) or egg(s) from the wild.

(2) You must comply with all State laws in taking raptor(s) or egg(s) from the wild.

(3) You may take a raptor listed in § 17.11(h) of this chapter as “endangered” or “threatened” from the wild only if you have a permit under part 17 of this chapter (See paragraph (u) of this section.).

(4) You may transfer a raptor taken from the wild for propagation to any other person authorized to possess it, except that you must comply with the prohibitions in § 21.29 on a transfer to a falconer.

(g) *Transfer, purchase, sale, or barter of captive-bred raptors, eggs, or semen.*

(1) You may transfer, sell, or barter a lawfully possessed captive-bred raptor to another person authorized to possess captive-bred raptors if the raptor is marked on the metatarsus by a seamless, numbered band that we provide.

(2) You may transfer, sell, or barter a lawfully possessed raptor egg or raptor semen produced by a raptor held under your captive propagation permit (including a raptor taken from the wild) to another raptor propagation permittee.

(3) You may not purchase, sell, or barter any raptor eggs or any raptors taken from the wild in the United States or its territories or possessions, any semen collected from a raptor in the wild in the United States or its territories or possessions, or any raptor hatched from eggs taken from the wild in the United States or its territories or possessions.

(h) *Required paperwork.* You must have a copy of a properly completed FWS Form 3-186A (Migratory Bird Acquisition and Disposition Report) for each raptor you acquire or that is transferred to you.

(1) You do not have to submit or have a copy of an FWS Form 3-186A for raptors you produce by captive propagation if you keep the raptors in your possession under your propagation permit.

(2) If you sell, trade, barter, or transfer a raptor held under your captive propagation permit, even if the transfer is to a falconry permit you hold, you must complete an FWS Form 3-186A and send it to us within 5 calendar days of the transfer.

(i) *Care of a propagation raptor by another person—*

(1) *Care of a propagation raptor by another permittee.* The regulations in this paragraph pertain to care of propagation raptors by persons other than the permittee. Another person who can legally possess raptors may care for a propagation raptor for you for up to 120 calendar days.

(i) The person must have a letter from you authorizing him or her to care for the birds, beginning on the date of your letter.

(ii) The raptor will remain on your raptor propagation permit. If the person who temporarily holds it for you is a falconer or a captive propagator, the raptor will not be counted against his or her possession limit on raptors held for falconry or propagation. However, the other person may not use the raptor in falconry or in propagation.

(iii) If you wish to have someone else care for a propagation raptor for more than 120 days, or if you wish to let another person use the raptor in falconry or captive propagation, you must transfer the raptor to that person and report the transfer by submitting a completed FWS Form 3-186A.

(2) *Care of a propagation raptor by an individual who does not have a propagation or falconry permit.* Another

person may care for propagation raptors you possess for up to 120 consecutive calendar days.

(i) The raptor(s) will remain on your propagation permit.

(ii) The raptors must remain in your facilities.

(iii) This care may be extended indefinitely in extenuating circumstances, such as illness, military service, or for a family emergency. The person(s) caring for your raptors may not fly them for any reason.

(j) *Care of nestlings by an individual who does not hold a migratory bird permit.* Another person may temporarily care for and band nestlings you hold from the time they are hatched until they are fully feathered. You may allow the other person to keep the nestlings at another location. You must give the individual a letter authorizing him or her to care for the nestlings, beginning on the date of your letter. The care might be part of each day during the nestling period so that the nestlings can be fed, or it might be a series of full days if transport to and from the breeding facility is not practical or needed.

(k) *Disposition of molted feathers from a live raptor or carcasses of raptors held under your permit.*

(1) You may donate the body or feathers of any species you possess under your propagation permit to any person or institution exempt under § 21.12 or authorized by permit to acquire and possess such parts or feathers.

(2) For any raptor you hold under your propagation permit, if the bird was banded or microchipped prior to its death, you may keep the body to have the feathers available for imping or to have the body mounted by a taxidermist. You may use the mount in propagation activities or in giving conservation education programs. If the bird was banded, you must leave the band on the body. If the bird has an implanted microchip, the microchip must be placed inside the mounted bird.

(3) If you do not wish to donate the bird body or feathers or keep it or them yourself, you must burn, bury, or otherwise destroy it or them within 10 days of the death of the bird or after final examination by a veterinarian to determine cause of death. Carcasses of euthanized raptors could pose a risk of secondary poisoning of eagles and other scavengers. You must take appropriate precautions to avoid such poisonings.

(4) If you do not donate the bird body or feathers or have the body mounted by a taxidermist, you may possess the flight feathers for as long as you have a valid raptor propagation or falconry permit. However, you may not buy, sell, or

barter the feathers. You must keep the paperwork documenting your acquisition of the bird.

(l) *Raptor products.* You may possess addled or blown eggs, nests, and feathers from raptors held under permit, and may transfer any of these items to any other person authorized to possess them.

(m) *Release to the wild.* You may release a captive-bred raptor to the wild if it is allowed by the State or territory in which you wish to release the raptor, except that you may not release a hybrid raptor to the wild. You must leave the captive-bred band on any raptor you release to the wild.

(n) *Conservation education programs.* You may use a raptor you possess for raptor propagation in conservation education programs presented in public venues.

(1) You do not need a Federal education permit to conduct conservation education activities using a propagation raptor.

(2) You must use the raptor primarily for propagation.

(3) You may charge a fee for presentation of a conservation education program. The fee may not exceed the amount required to recoup your costs.

(4) In conservation education programs, you must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation. You may not give presentations that do not address falconry and conservation education.

(5) You are responsible for all liability associated with conservation education activities you undertake (see § 13.50 of this chapter).

(o) *Permit restrictions.* With limited exceptions, you may use raptors held under your captive propagation permit only for propagation or keep them to transfer or sell. You must transfer a raptor used in captive propagation to a falconry permit before you or another person may use it in falconry. If you transfer a raptor used in captive propagation to another permit, you and the recipient of the raptor (which might be you) must complete an FWS Form 3-186A and report the transfer. You do not need to transfer a bird from your falconry permit (if you hold one) if you use the bird for fewer than 8 months in a year in captive propagation, but you must do so if you permanently transfer the bird for propagation. The bird must then be banded as required in paragraph (e).

(p) *Training propagation raptors.* You may use falconry training or conditioning practices such as, but not

limited to, creance (tethered) flying, lures, balloons, or kites in training or conditioning captive-bred progeny of raptors you hold under your permit.

(1) Until the raptors are 1 year old, you may use captive-bred offspring in actual hunting as a means of training them. To do so, you will not need to transfer them to another permit type. You may not use them in hunting after their first year if they are held under your captive propagation permit.

(2) Any hybrid raptor that you fly free must have at least two attached radio transmitters to help you to locate the bird.

(3) You may not hunt at any time with raptors you use in propagation.

(q) *Hacking of propagation raptors.* "Hacking" (temporary release to the wild) is an approved method to condition raptors. You may hack a raptor that you produce under your propagation permit.

(1) You may need permission from your State or tribal wildlife agency to hack a raptor you possess under your propagation permit. Check with your State or tribal agency that regulates falconry to determine if hacking is allowed.

(2) Any hybrid you hack must have two attached functioning radio transmitters during hacking.

(3) You may not hack a raptor near a nesting area of a federally threatened or endangered bird species or in any other location where the raptor is likely to harm a federally listed threatened or endangered animal species that might be disturbed or taken by your falconry raptor. You should contact your State or territorial wildlife agency before hacking a falconry raptor to ensure that this does not occur. Contact the Fish and Wildlife Service office in your State or territory for information on federally listed species.

(r) *Transfer of propagation raptors and offspring if a permittee dies.* A surviving spouse, executor, administrator, or other legal representative of a deceased raptor propagation permittee may transfer any bird, eggs, or semen held by the deceased permittee to another authorized permittee within 90 days of the death of the falconry permittee. After 90 days, disposition of a bird held under the permit is at our discretion.

(s) *Records of captive propagation efforts.* You must maintain complete and accurate records of all operations, including the following, for at least 5 years after the expiration of your permit. However, you may want to retain your records for a longer time if you want to get another migratory bird permit, a Convention on International Trade in

Endangered Species of Wild Fauna and Flora permit, or a Wild Bird Conservation Act permit.

(1) The acquisition of raptors, eggs, or semen you acquired from the wild or that were transferred to you.

(i) What you acquired, and the species, sex, age, and band number of each bird you acquired.

(ii) Whether you acquired the raptor, egg, or semen from the wild or you purchased it or it was transferred to you.

(2) The disposition of raptors, eggs, or semen you sell or transfer to another permittee. The information should include the band number of raptors you sell or transfer.

(t) *Annual report.* You must submit a completed FWS Form 3–202–8 to your Regional Migratory Bird Permit office by January 31 each year for January 1 through December 31 of the preceding year.

(u) *Endangered or threatened species.* If you wish to propagate endangered or threatened species, you must have at least 2 years of experience handling raptors in a propagation program or programs. You may also need an endangered species permit to propagate threatened or endangered raptors. See §§ 17.21 and 17.22 of this chapter for permit requirements to propagate threatened or endangered raptors.

(v) *Applying for a Federal raptor propagation permit.* Using FWS Form 3–200–12, you must submit your application for a raptor propagation permit to the appropriate Regional Director, to the attention of the Migratory Bird Permit Office. You can find addresses for the Regional Directors in 50 CFR 2.2. Your application must contain the general information and the certification required in § 13.12(a) of this chapter, a copy of your State permit authorizing raptor propagation, if your State requires one, and a description (including dimensions), drawings, and photographs of the facilities and equipment you will use.

(w) *Criteria for issuing a permit.* When we receive a completed application, we will decide whether we should issue a permit to you. We will consider the general criteria in part 13 of this chapter and the following factors:

(1) You must be at least 18 years old and have at least 2 full years of experience handling raptors.

(2) You must have a propagation permit or other authorization for raptor propagation from your State or Tribe, if your State or Tribe requires it.

(3) Your raptor propagation facilities must be adequate for the number and species of raptors to be held under your permit.

(x) *Updating a raptor propagation permit after a move.* If you move within your State or get a new mailing address, you must notify us within 30 days (see § 13.23(c) of this chapter). If you move to a new State, within 30 days you must inform both your former and your new (if applicable) Migratory Bird Permit Offices of your address change. If you have new propagation facilities, you must provide information, pictures, and diagrams of them, and they may be inspected in accordance with Federal or State requirements. Thereafter, no mandatory inspections of the facilities will continue.

(y) *Permit expiration.* Your Federal permit may be valid for up to 5 years from when it is issued or renewed. It will expire on the same day as your State permit, unless your State permit is for a period longer than 5 years, or unless we amend, suspend, or revoke it.

Dated: May 12, 2011.

**Will Shafroth,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 101029427–0609–02]

RIN 0648–XA403

#### Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the State of North Carolina is transferring a portion of its 2011 commercial summer flounder quota to the Commonwealth of Virginia and the State of New Jersey. Virginia is also transferring a portion of its 2011 commercial summer flounder quota to New Jersey. Vessels from North Carolina were authorized by Virginia to land summer flounder under safe harbor provisions, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. Additionally, a vessel experiencing mechanical problems was authorized to land in New Jersey, prompting a quota transfer from North