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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 21

Docket No. FWS–R9–MB–2009–0045; FF09M21200–134–FXMB1232099BPP0]

RIN 1018–AW75

Migratory Bird Permits; Abatement Permit Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We propose permit regulations to govern the use of captive-bred, trained raptors to control or take birds or other wildlife to mitigate damage or other problems, including risks to human health and safety. This action would allow us to respond to increasing public interest in the use of trained raptors to haze (scare) depredating and other problem birds from airports and agricultural crops while maintaining our statutory responsibility to protect migratory birds.

DATES: There are two dates for submissions relevant to this proposed rule. Electronic comments on this proposed rule via <http://www.regulations.gov> must be submitted by 11:59 pm Eastern time on **[INSERT DATE 90 DAYS AFTER DATE OF**

PUBLICATION IN THE FEDERAL REGISTER]. Comments submitted by mail must be postmarked no later than **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].** Comments on the information collection must be submitted by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: We are soliciting comments on two separate actions with different addresses: (1) a proposed rule, and (2) information collection. You may submit comments for the proposed regulation by either one of the following two methods:

- *Federal eRulemaking portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2009–0045.

- *U.S. mail or hand delivery:* Public Comments Processing, Attention: FWS–R9–MB–2009–0045; Division of Policy and Performance Management; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS MB; Falls Church, VA 22041–3830.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information that you provide. See the **Public Comments** section below for more information.

Submit comments on the information collection requirements to the Desk Officer for the Department of the Interior at Office of Management and Budget (OMB–OIRA) at (202) 395–5806 (fax) or OIRA_Submission@omb.eop.gov (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and

Wildlife Service, 5275 Leesburg Pike, MS PPM, Falls Church VA 22041-3830 (mail), or *Hope_Grey@fws.gov* (email).

FOR FURTHER INFORMATION CONTACT: George Allen at 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (FWS or Service) is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by 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). We implement the provisions of the MBTA through regulations in parts 10, 13, 20, 21, and 22 of title 50 of the Code of Federal Regulations (CFR). Regulations pertaining to migratory bird permits are at 50 CFR part 21; subpart C of part 21 contains regulations for specific permit provisions.

In response to public interest in the use of trained raptors to haze depredating and other problem birds from airports and agricultural crops, we drafted a policy in 2007 to establish a migratory bird abatement permit. On January 12 of that year, we published a **Federal Register** notice containing draft permit conditions for abatement permits for public comment (72 FR 1556–1557). On December 10, 2007, we published a **Federal Register** notice (72 FR 69705–69706) announcing final permit conditions, accompanied by Migratory Bird Permit Memorandum Number 5, Abatement Activities Using Raptors, issued August 22, 2007, available at

[http://www.fws.gov/migratorybirds/mbpermits/Memorandums/Abatement Activities Using Raptors.pdf](http://www.fws.gov/migratorybirds/mbpermits/Memorandums/Abatement%20Activities%20Using%20Raptors.pdf)

The 2007 policy Memorandum and conditions have governed administration of Federal Migratory Bird Special Purpose Abatement (SPA) permits (Federal abatement permits) through the present time. The provisions for abatement in the Memorandum have worked well, but we have seen increased use of the Special Purpose permits, and the States have inquired about abatement activities that are not addressed in the Memorandum. Therefore, on July 6, 2011, we announced through an advance notice of proposed rulemaking (ANPR) that published in the **Federal Register** that we were considering developing regulations to govern the use of raptors in abatement (76 FR 39368).

Most of the comments we received on the ANPR supported development of regulations for abatement. This proposed rule largely incorporates the conditions and procedures that governed abatement permits under the 2007 Memorandum and language developed in response to the public comments. The permit that would be established under the proposed regulations would provide the public with a nonlethal management tool to mitigate problems caused by birds and other wildlife.

Proposed Permit Provisions

An abatement permit would authorize the use of trained, captive-bred raptors protected under the MBTA to abate problems caused by migratory birds or other wildlife. A permittee would have to be a Master falconer in good standing under the Federal falconry regulations (50 CFR 21.29). A Master falconer or a General falconer with 3 or more years of experience at the General falconer level would be allowed to conduct

abatement activities as a subpermittee. We would issue abatement permits only to U.S. resident Master falconers.

We would not limit the number of raptors an abatement permit holder may possess under a Federal abatement permit if the raptors are used in abatement and are maintained under humane and healthful conditions as required in 50 CFR 13.41, and if the permittee's facilities and equipment meet the standards in 50 CFR 21.29. We would require each captive-bred MBTA raptor held or used under an abatement permit to be banded with a seamless metal band issued by the Service, unless exempted because of problems caused by the band. State wildlife agencies may have additional requirements for maintaining raptors.

The abatement permit holder would not be authorized to use birds he or she possesses under other types of permits for abatement activities, except that falconry birds could be used for abatement if no compensation is received for the service. The proposed regulations also would not allow a raptor held under a Federal abatement permit to be used for falconry.

A Federal abatement permit, by itself, would not authorize the killing, injuring, or other take of migratory birds or other wildlife. Any take of protected migratory birds by an abatement permit holder must be authorized by hunting regulations, a Federal depredation order, or a depredation permit issued to the landowner. Harassment, disturbance, or other take of bald eagles (*Haliaeetus leucocephalus*), golden eagles (*Aquila chrysaetos*), or endangered or threatened species by an abatement permit holder would have to be authorized by the appropriate Federal permit. Abatement activities also

would have to be conducted in accordance with any other applicable Federal, State, tribal, or municipal laws.

Raptors that could be used for abatement under these proposed regulations include all native raptor species listed in 50 CFR 10.13 except bald eagles and golden eagles. Included are falconiformes (forest-falcons, caracaras, and falcons); accipitriformes (vultures, osprey, kites, hawks, and eagles [except bald eagles and golden eagles]); and strigiformes (owls).

Possession and use for abatement of exotic raptor species that are not on the list of MBTA-protected species at 50 CFR 10.13 is not regulated under the MBTA and is outside the scope of the proposed regulations. However, hybrid raptors of MBTA-protected species are subject to this proposed regulation.

An applicant for a Federal abatement permit would have to complete and submit Service application form 3–200–79 (<http://www.fws.gov/forms/3-200-79.pdf>) to his or her Regional Migratory Bird Permit Office.

Permit Application Processing Fee

We propose to charge a fee sufficient to offset the estimated costs associated with processing the application and annual reports and our periodic review of these permits. Revised Office of Management and Budget (OMB) circular A-25 directs Executive Branch agencies to recover costs, stating that, “When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price).” Further, Circular A-25 directs that, “Except as provided in Section 6c, user charges will be sufficient to

recover the full cost to the Federal Government (as defined in Section 6d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign.” Thus, the directive to the Service is to recover the costs for working with applicants to issue permits and to summarize reporting. We estimate that processing an abatement permit application will take up to 2 hours of a permit examiner’s time (or about \$101, on average) and ¼ hour of a permit supervisor’s time (or about \$18, on average) at current hourly rates. Our proposed processing fee of \$150 should recover our costs for most permits for the next several years.

Issues from the ANPR

We considered the comments on the advance notice of proposed rulemaking, and have drafted proposed regulations accordingly.

Issue. Subpermittees should be allowed to conduct abatement activities outside the direct supervision of the SPA permit holder.

Response. The proposed regulations would allow subpermittees (Master falconers and General falconers with 3 or more years of experience at the General falconer level) to conduct abatement. Direct supervision by the permittee would not be required.

Issue. “Limiting the species that should be authorized may encumber abatement activity. NAFA [North American Falconers Association] finds that often the species of bird used will depend on the species to be abated and the circumstances (i.e., gulls soaring over an airport may be best abated by using a falcon, where gulls roosting in an area may best be abated using a goshawk). . . Rabbits may be destroying crops and two of the best raptors for the abatement of rabbits are the red tailed hawk and Harris’ hawk.

Similarly, restricting the use of golden eagles may be short sighted. Canada geese present huge problems for abatement and the most effective species for use in abatement of the Canada goose may well be the golden eagle. The appropriate species of raptor to be used to conduct abatement should be the permittee's decision.”

Response. In this proposed regulation, most MBTA-listed raptor species could be used in abatement. However, the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) does not allow the use of bald eagles for falconry or abatement, and does not allow the use of golden eagles in abatement.

Issue. The use of all falconry birds, including wild-caught birds, for abatement should be allowed. Falconry birds are trained in the same manner as abatement birds. There appears to be no substantial justification not to allow use of wild-caught falconry raptors in abatement operations.

Response. We believe that using wild-caught raptors in commercial activities could conflict with the intent of Congress to protect wild populations of birds from commercial exploitation.

Issue. Any person authorized by the primary permittee should be allowed to care for the birds, such as feeding, watering, and weathering, similar to the provisions found in 50 CFR 21.29(d)(7).

Response. This proposed regulation allows this care of abatement raptors.

Issue. Only Master falconers should be permitted for abatement; Master and general falconers should be allowed as subpermittees for both flying and caretaking of raptors.

Response. This proposed regulation would allow other Master falconers and General falconers with 3 or more years of experience at the General falconer level to be subpermittees.

Issue. The same housing and facilities standards under the Federal falconry regulations at 50 CFR 21.29 should be applied to abatement permits, including the defined temporary housing husbandry standards. Permit holders' facilities should be inspected and approved for use prior to issuance of the abatement permit as defined under the Federal falconry regulations.

Response. This proposed regulation would require facilities and care as specified in the falconry regulations.

Issue. We believe the proposed permitting process can be streamlined, more effectively described, and justified relative to the existing Federal and State falconry permitting system. A simplified process would be to permit abatement activities for State-permitted falconers within the framework of existing regulation rather than to establish stand-alone regulations under abatement permits. Such integration would reduce confusion and administrative complexity to the states.

Response. Though we appreciate the concern about simplification of regulations, we do not believe it would be appropriate to regulate falconry and abatement under one set of regulations. Falconry is a recreational and sporting activity. Abatement requires the use of falconry techniques in caring for and training abatement raptors, but it is usually a commercial activity that often requires the possession and management of many more birds than falconry requires. In addition, though we expect all falconry permitting

to be handled by the States after January 1, 2014, we do not expect abatement permitting to be done by all States.

Issue. Several commenters wanted the Service to allow the use of falconry birds in abatement: “The Service should allow the use of subpermittees’ birds for abatement and for falconry. Hawks are best kept in shape and healthy by pursuing game when not actively doing abatement jobs. Raptors held under abatement permits should be able to conduct both activities to keep them fit.”

Issue. “Subpermittees should only be allowed to use their own birds if they are master falconers. Allowing falconers to use their own birds would confound the requirement that abatement permit holders be master falconers. Master falconers have a higher level of experience and, thus, are more suited to accomplish abatement activities.”

Issue. “A subpermittee should be allowed to use captive-bred birds held on his or her falconry permit for abatement activities.”

Response. We do not propose to allow birds held on abatement permits to be used for falconry. Further, while allowing abatement permittees and subpermittees to use falconry birds in abatement might have some value, we are concerned about potential enforcement difficulties for State and Federal law enforcement officers and about potential exploitation of the liberal possession limits for Master falconers under the falconry regulations. Under the proposed regulations, we would not allow the use of falconry birds in abatement.

Issue. Falconers with abatement permits, and perhaps subpermittees, too, should be allowed to use their falconry birds for abatement.

Response. For the reasons provided in the response above, and because of concerns about the use of wild-caught falconry birds for commercial purposes, these proposed regulations would not allow the use of falconry birds in abatement unless the permittee receives no compensation for the abatement services.

Issue. The Memorandum's stipulation that hybrids be fitted with a minimum of two radio transmitters so that the birds may be tracked and recovered in the event they are lost is consistent with the federal falconry regulations. However, the notice does not include a like stipulation.

Response. This proposed regulation would require that hybrids be fitted with a minimum of two radio transmitters.

Issue. Species limits should follow State and Federal falconry regulations. If additional limits are imposed, then a resulting compliance issue will add a further level of complexity to State falconry management. Alternatively, raptors used in abatement activities could be banded with an FWS band as is required for a select number of species under the federal falconry regulations.

Response. Conducting abatement might require many birds in order to address depredation issues. For example, conducting abatement at a large airport might require that a number of falcons be available to keep rested abatement birds in the air. A concurrent job might require the use of a number of buteos. Therefore, we do not propose to limit the number of raptors an abatement permittee may possess.

Only captive-bred raptors would be allowed in abatement, and each would have to be banded with a seamless FWS band. We do not believe that additional banding is

needed. The raptors could be purchased from, or sold or transferred to, authorized permittees.

Issue. The abatement permit holder should be required to complete an annual report of all abatement activities, not limited to only those instances where take is involved as required in the Memorandum. Annual reports should include: location, date, landowner/business owner information, raptors used, subpermittees, and other appropriate information for each abatement activity that is conducted within and outside the permit holder's state of residence.

Response. An annual report that requires this information is included in the proposed regulations.

Issue. "I would like to see insurance become a part of the application process."

Response. Our authority allows us to require accurate recordkeeping of abatement activities and acquisition and disposition of raptors held under the permit. We do not believe we may put requirements for insurance or other aspects of the business operations for abatement activities into our migratory bird regulations.

Issue. Contracts between permittees and subpermittees should be left unregulated. These contracts are beyond the scope of the MBTA. The birds are personal property and not of wild origin and beyond the scope of the FWS protecting migratory raptors.

Response. We do not propose to be involved in the contracts between permittees and subpermittees. However, we disagree that captive-bred raptors are "beyond the scope of the FWS protecting migratory raptors." Neither the statute nor the regulations excludes protections on the basis of whether the bird was taken from the wild or is

captive-bred. In fact, the definition of migratory bird in 50 CFR 10.12 “means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in § 10.13 . . .”

Public Comments

You may submit your comments and supporting materials by one of the methods listed in **ADDRESSES**. We will not consider comments sent by e-mail or fax, or written comments sent to an address other than the one listed in **ADDRESSES**. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, are available for public inspection at <http://www.regulations.gov>. We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for

achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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 that describes the effect of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would 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 would not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act and determined that this action would not have a significant economic impact on a substantial number of small entities because there are fewer than

100 abatement permittees in the United States. Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It would not have a significant impact on any small entities.

a. This proposed rule would not have an annual effect on the economy of \$100 million or more.

b. This proposed rule would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This proposed rule would 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.

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 proposed rule would not “significantly or uniquely” affect small governments. A small government agency plan is not required. The proposed regulations changes would not affect small government activities in any significant way.

b. This proposed rule would not produce a Federal mandate of \$100 million or greater in any year. It is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule would not have significant takings implications. This proposed rule contains no provision that could constitute taking of private property. Therefore, a takings implication assessment is not required.

Federalism

This proposed rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the States' abilities to manage themselves or their funds. No significant economic impacts are expected to result from the regulations change.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule would 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 contains a new information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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. OMB has reviewed and approved the collections of information for (1)

applications for abatement and depredation permits, (2) annual reporting for depredation permits, and (3) reporting of acquisition and disposition of migratory birds. These information collections are covered by existing OMB Control No. 1018–0022, which will expire on February 28, 2017. OMB has also approved the recordkeeping and reporting associated with depredation orders and assigned OMB Control Numbers 1018-0022.

We are asking OMB to approve the following new information collection requirements associated with this proposed rule:

- Each Abatement permittee must provide each of his or her subpermittees with a legible copy of his or her abatement permit and an original signed and dated letter designating the person as a subpermittee for part or all of the authorized activities (§ 21.32(e)(2)(ii)).
- Each subpermittee must report take under a depredation order to the permit holder (§ 21.32(e)(2)(iii)(A)).
- Each permittees must maintain complete and accurate records of the activities conducted under the abatement permit, including, but not limited to: (1) the name and address of the property owner; (2) the location, date(s), and crop or property protected for each abatement job that permit holders and each of their subpermittees conduct; (3) the date, species, and location of any unintentional take that occurs; (4) the name, address, and falconry permit number of each subpermittee, and any subpermittee designation letters; (5) the raptors used for each job; (6) FWS form 3–186A for each acquisition and disposal of birds; and (7) documentation for acquisition and disposal of feathers. You must

retain these records for 5 years following the end of the last calendar year covered by the records (§ 21.32(e)(8)(ii) and (iii) and § 21.32(e)(11)).

- Each permittee must submit an annual report to his or her migratory bird permit issuing office. The report must include the information required in Service form 3–202–22-2133 (§ 21.32(e)(11) and (12)).

Title: Abatement Permit Reporting and Recordkeeping, 50 CFR 21.32.

OMB Control Number: 1018–0022.

Service Form Number: 3–202–22–2133.

Description of Respondents: Master falconers conducting paid abatement or having subpermittees conduct paid abatement.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

ACTIVITY	NUMBER OF RESPONDENTS	NUMBER OF RESPONSES	COMPLETION TIME PER RESPONSE	TOTAL ANNUAL BURDEN HOURS
Designation Letter (§ 21.32(e)(2)(ii))	100	200	10 minutes	33 1/3 hours
Subpermittees Report of Take (§ 21.32(e)(2)(iii)(A))	200	200	1 hour	200 hours
Recordkeeping (§ 21.32(e)(8)(ii) and (iii) and § 21.32(e)(11))	100	100	5 hours	500 hours
Annual Reports (§ 21.32(e)(11) and (12))	100	100	1 hours	100 hours
TOTALS	100	200	7 hours	~833 hours

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting burden, including:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- and
- Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS PPM, 5275 Leesburg Pike, Falls Church, VA 22041-3830 (mail), or *Hope_Grey@fws.gov* (email).

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437(f). Using captive-bred raptors in abatement would mean harassing wildlife to solve depredation or other wildlife problems. Because no raptors could be taken from the wild for this activity and take of migratory birds would not be authorized, this proposed regulation would have negligible environmental effects.

Categorical exclusion Part 516 8.5(C)(1) in the Department of the Interior Manual is the following.

The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter 1, Subsection B, when such permits cause no or negligible environmental disturbance. These

permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

Further, none of the extraordinary circumstances in 43 CFR 46.215 apply to the proposed regulation. Therefore, the proposed regulation is categorically excluded from further NEPA evaluation.

Endangered and Threatened Species

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 use other programs in furtherance of the purposes of the ESA (16 U.S.C. 1536(a)(1)). It also states that the Federal agency must “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” (16 U.S.C. 1536(a)(2)). This proposed rule would not affect endangered or threatened species or critical habitats. Abatement activities would not be allowed in circumstances where harassment or take of endangered or threatened species could occur. Take of endangered or threatened species would require an ESA permit.

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, we have evaluated potential effects on federally recognized Indian tribes. We have determined that this proposed rule would not interfere with tribes' abilities to manage themselves, their funds, or tribal lands.

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

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 13211, and no Statement of Energy Effects is required.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (1) Be logically organized; (2) use the active voice to address readers directly; (3) use clear language rather than jargon; (4) be divided into short sections and sentences; and (5) use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 21

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

Proposed Regulation Promulgation

For the reasons described in the preamble, we propose to amend subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below.

PART 13—GENERAL PERMIT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j-1, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901-4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

2. Amend the table in § 13.11(d)(4) by adding an entry for “Migratory Bird Abatement” immediately following the entry for “Migratory Bird Rehabilitation” to read as follows.

§ 13.11 Application procedures.

* * * * *

(d) * * *

(4) *User fees.* * * *

Type of permit	CFR citation	Fee	Amendment fee
Migratory Bird Treaty Act			
* * * * *			
Migratory Bird Abatement	50 CFR 21	150	50
* * * * *			

PART 21— MIGRATORY BIRD PERMITS

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

Authority: 16 U.S.C. 703–712.

4. Amend § 21.3 by adding a definition for “Abatement” in alphabetical order to read as follows:

§ 21.3 Definitions.

* * * * *

Abatement as used in § 21.32 means the use of a trained raptor to scare, flush, or haze wildlife to manage depredation or other damage, including threats to human health and safety, caused by the wildlife.

* * * * *

5. Amend § 21.29 by revising paragraph (f)(11)(ii) and adding paragraph (f)(11)(iii) to read as follows:

§ 21.29 Falconry standards and falconry permitting.

* * * * *

(f) * * *

(11) * * *

(ii) You may receive payment for providing abatement services if you have an abatement permit (see § 21.32 of this subpart).

(iii) You may conduct abatement without an abatement permit if you are not compensated for doing so.

* * * * *

6. Add § 21.32 to read as follows:

§ 21.32 Abatement permit.

(a) *Authorization and scope.* (1) An abatement permit authorizes possession and use of captive-bred raptors protected by the Migratory Bird Treaty Act to flush or haze (scare) birds or other wildlife to mitigate depredation or other damage, including threats to human health and safety.

(2) An abatement permit does not authorize the take (such as capturing, killing, injuring, or collecting) of wildlife. Any take of federally protected wildlife must be authorized by a separate permit or regulation.

(3) An abatement permit authorizes the purchase, sale, or barter of captive-bred raptors with seamless bands for abatement purposes.

(4) An abatement permittee may charge for his or her services.

(5) A permitted falconer may conduct abatement without an abatement permit if he or she is not compensated for doing so.

(b) *Qualification requirement.* You must possess a valid U.S. Master falconer permit in accordance with § 21.29 to qualify for an abatement permit.

(c) *Application procedures.* You must apply to the appropriate Regional Migratory Bird Permit Office. You can find the addresses for the Regional Offices in § 2.2 of subchapter A of this chapter. Your application package must include a completed application (FWS form 3–200–79) and a copy of your Master falconer permit. You must apply as an individual, but you may include the name of the company under which you are doing business.

(d) *Issuance criteria.* Upon receiving a complete application, the Permit Office will decide whether to issue you a permit based on the general criteria of § 13.21 of this chapter and whether you hold a valid U.S. Master falconer permit.

(e) *Permit conditions.* In addition to the general permit conditions set forth in part 13 of this chapter, abatement permittees are subject to the following conditions:

(1) An abatement permit is valid only if your Master falconer permit is valid.

(2) *Subpermittees.* We allow certain activities to be carried out by subpermittees as follows:

(i) Except as provided in paragraph (e)(2)(v) of this section, only a Master falconer or a General falconer with 3 or more years of experience at the General falconer

level may be a subpermittee under your abatement permit and conduct abatement activities on your behalf. You are responsible for all activities conducted under your abatement permit.

(ii) You must provide each subpermittee with a legible copy of your permit and an original signed and dated letter designating the person as a subpermittee for part or all of the authorized activities.

(iii) Each subpermittee must carry and display a copy of your abatement permit, the designation letter, and a copy of their valid falconry permit when conducting abatement activities under your permit.

(iv) You are responsible for maintaining current records of who you have designated as a subpermittee, including copies of the designation letters you have provided.

(v) If your State allows it, you may designate an individual who is not a falconer to provide care for raptors held under your abatement permit.

(3) *Taking protected wildlife.* Any take of federally protected wildlife by an abatement permit holder must be authorized by:

(i) Hunting regulations in effect at the time that the take occurs;

(ii) A Federal depredation order; or

(iii) A Federal depredation permit or other Federal permit that identifies you as a subpermittee.

(A) You must report take under a depredation order as required by the order. You must report all take as a subpermittee on a depredation permit to the permit holder.

(B) You may not flush, haze, harm, harass, disturb, kill or injure endangered or threatened species, bald eagles (*Haliaeetus leucocephalus*), or golden eagles (*Aquila chrysaetos*) unless the activity is specifically authorized by an Endangered Species Act permit or Bald and Golden Eagle Protection Act permit.

(C) You must immediately report any unauthorized take of federally protected wildlife, disturbance of bald eagles or golden eagles, or harassment of endangered species to the appropriate Service Regional Law Enforcement office. You can find the addresses for the offices at <http://www.fws.gov/le/regional-law-enforcement-offices.html>.

(4) *Abatement raptors.* (i) A raptor used for abatement must be captive-bred and banded with a seamless band issued by the Service. You may not use wild-caught raptors in abatement. You may purchase the raptors from, or sell or transfer them to, any permittee authorized to possess them.

(ii) You and your subpermittees may use only raptors that you possess under your abatement permit in abatement.

(iii) We do not limit the number of captive-bred raptors that you may hold under your abatement permit, but each bird must be used for abatement.

(iv) You may possess and use any captive-bred falconiform, accipitriform, or strigiform species listed in § 10.13 of this chapter (including a hybrid) in abatement, except that you may not possess or use a bald eagle or golden eagle for abatement.

(v) A subpermittee may use only species that he or she is authorized to possess under his or her falconry permit.

(5) *Facilities and care requirements.* You must house and maintain raptors that you hold under your abatement permit in accordance with the Federal falconry regulations housing and care requirements (see § 21.29).

(6) *Using a hybrid raptor in abatement.* When flown free in abatement, a hybrid raptor must have attached at least two functioning radio transmitters to ensure that you can locate the bird.

(7) *Acquisition, transfer, or loss of abatement raptors.* You must report acquisition and disposition of a raptor under your abatement permit by submitting Service form 3-186A (the Migratory Bird Acquisition and Disposition Report) completed in accordance with the instructions on the form and filed by you and the recipient, if applicable, to your migratory bird permit issuing office.

(8) *Feathers molted by an abatement bird.* -- (i) *Imping.* For imping (replacing a damaged feather with a molted feather), you may possess tail feathers and primary and secondary wing feathers for each species of raptor that you possess or previously held under your abatement permit for as long as you have a valid abatement permit.

(ii) *Donating.* You may donate molted feathers to any entity with a valid permit to acquire and possess them, or to an entity exempt from the permit requirement under §21.12. You may not buy, sell, or barter the feathers. You must keep the documentation for your acquisition and disposal of the feathers.

(iii) *Receiving.* You may receive feathers for imping purposes from any entity authorized to donate them to you. You may not buy, sell, or barter the feathers. You must keep the documentation for your acquisition and disposal of the feathers.

(9) *Disposition of carcasses of abatement birds that die.* You may donate the carcass, feathers, or parts of any deceased raptor held under your abatement permit to any entity authorized to acquire and possess it.

(10) *Prey items.* If your abatement bird kills an animal without your intent, including wildlife taken outside of a regular hunting season, you may allow your abatement bird to feed on the animal, but you may not take the animal into your possession. You must report the take in your annual report.

(11) *Recordkeeping.* You must maintain complete and accurate records of the activities conducted under your abatement permit, including, but not necessarily limited to, the name and address of the property owner; the location, date(s), and crop or property protected for each abatement job that you and each of your subpermittees conduct; the date, species, and location of any unintentional take that occurs; the name, address, and falconry permit number of each of your subpermittees, and any subpermittee designation letters; the raptors used for each job; and FWS form 3–186As for each acquisition and disposal of birds. You must retain these records for 5 years following the end of the last calendar year covered by the records.

(12) *Annual report.* You must submit an annual report to your migratory bird permit issuing office. Your report must include the information required in Service form 3–202–22–2133, which is available at www.fws.gov/forms/3-202-2133.pdf.

(13) *Inspections.* Agents or employees of the Service may inspect your abatement raptors, facilities, equipment, and records in your presence at any reasonable hour on any day of the week.

(f) *Permit tenure.* Your abatement permit will expire on the date designated on the face of the permit unless amended or revoked. No abatement permit will have a term of more than 5 years.

(g) *Acquisitions, transfers, and losses of abatement raptors.* You must have a copy of a properly completed FWS Form 3-186A (Migratory Bird Acquisition and Disposition Report) for each raptor you acquire transfer, or lose, or that dies.

Dated: March 17, 2015.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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